



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on: 13th December 2023**
Judgment pronounced on: 30th January 2024

+ **FAO 14/2015**

PANKAJ KATARIA & ORS Appellants
Through: **Mr. Manoj Sharma, Adv.**
versus

UNION OF INDIA Respondent
Through: **Mr. Piyush Beriwal and Mr. Nikhil Kumar Chaubey, Adv.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
J U D G M E N T

1. This judgment shall decide the present appeal filed by the appellant/claimant under Section 23¹ of the Railway Claims Tribunal Act, 1987² assailing the Impugned Order dated 17.07.2014 passed by the Railway Claims Tribunal, Principal Bench, Delhi³, whereby the claim application O.A. (Ilu) No. 233/2013⁴ titled as 'Sh. Pankaj Kataria Vs. Union of India', filed under Section 16 read with Section 13 (1A) of the RCT Act, was dismissed.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the appellant / claimant that on 04.05.2013, Smt. Madhu Kataria (deceased herein) aged 58 years,

¹ 23. Appeals.—(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5of1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.

(2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the order appealed against.

²RCT Act

³RCT



boarded the train to travel from Ferozepur Cantt. to Shakurbasti on a reserved ticket bearing No. 37065621 purchased for Rs. 494/- in Punjab Mail train No. 12138 with PNR No. 2446962413. On 05.05.2013, at about 4:30A.M., when the train reached near Shakurbasti railway station, the deceased went to the toilet and came back to wash her hands at the sink near the gate of the train compartment. Suddenly, there was a jerk in the train due to which the deceased fell down from the train and received grievous injuries all over the body and subsequently, died on the spot. The deceased was rushed to Aruna Asaf Ali government hospital, mortuary, Subzi Mandi, Delhi vide PMR No. 681/13 on 06.05.2013, but she died. FIR bearing DD No. 4-A dated 05.05.2013 was registered at PS Sarai Rohilla Railway Police Station, Delhi. As a result, the appellant (who claims to be the son of the deceased) filed a claim petition No.O.A.(Ilu) 233/2013 on 28.10.2013 seeking statutory compensation of Rs. 4,00,000/- from the respondent railways.

PROCEEDINGS BEFORE THE RCT AND IMPUGNED ORDER:

3. During the course of proceedings before the learned RCT, counsel for the respondent raised the issue of “adoption” contending that adoption is not within the meaning of the term “dependant” as defined under Section 123(b) of the Railways Act 1989⁵ and that there is no evidence on record to prove that Pankaj Kataria/appellant was officially adopted as a son of the deceased. The appellant, on the other hand, contended that they have filed all the documents including the

⁴ Claim Application



Will by the deceased dated 28.01.2014 and that the respondent filed their written statements without any documents or any DRM (Divisional Railway Manager) report. In this regard, Section 123(b) of RA reads:

“Section 123(b) - “dependant’ means any of the following relatives of a deceased passenger, namely:-

- (1) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent:
- (2) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child or a predeceased son, if dependent wholly or partly on ; the deceased passenger:
- (3) a minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger:
- (4) the paternal grand parent wholly dependent on the deceased passenger.”

4. The appellant further contended that the deceased died as a spinster and adopted him as her son and that the deceased is not survived by any other dependants except him. The learned RCT, on the other hand, was in agreement with the submissions made by the respondent in this regard. The relevant observations have been reproduced below:

“01. According to the applicant, Late Madhu Kataria, who died as a spinster adopted her nephew Pankaj as her son. Further, the applicant adds that the deceased is not survived by any other dependent except him.”

“03. I agree with the Ld. Counsel and also observe from the will of Smt. Madhu Kataria registered on 28.01.2014 that the deceased had never referred to the applicant as her adopted son. In fact, Pankaj who is actually her nephew is referred by her in the will as her cousin. A nephew is not a dependent of the deceased, in terms of section 123(b) of the Act. Moreover, there is no reason to believe that 37 year old applicant Pankaj was economically dependent on his aunt Madhu. The application of Shri. Pankaj Kataria, is therefore, not maintainable.”

⁵ RA



5. On the basis of the preceding observations, the learned RCT dismissed the claim application of the appellant/Pankaj Kataria in terms of Rule 16 of the Railway Claims Tribunal (Procedure) Rules, 1989.

6. The impugned order has been assailed *inter alia* on the grounds that the appellant, though nephew of the deceased, was adopted as a son and acted on her (deceased) as son/ nominee/ successor in bank and the tribunal ought to have considered the spirit of the Will instead of rejecting it. Further, the appellants allude to the aspect that there existed a strong emotional bond between the appellant and the deceased, which, the tribunal did not consider while passing the order, and therefore, it is prayed that the impugned order dismissing the claim for compensation against the appellant, be set aside.

ANALYSIS & DECISION:

7. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this court finds that the present appeal is bereft of any merits.

8. First things first, the appellant has not even lead any foundation to his case as to how come he was an adopted son of the deceased. There is no averment as to at what age, at what point of time and in what manner or what ceremonies were performed for his adoption by the deceased. There is no averment as to how the adoption was affected in terms of the **Hindu Adoption and Maintenance Act,**



1956⁶ and in particular, whether the conditions under Section 11 of the said Act were satisfied. Learned RCT rightly observed that in the Will dated 28.01.2014, the deceased testator did not make any mention of the appellant being her adopted son. Reference can be invited to the decision in **Krishnakumar G. Vs. Union of India**⁷ (Kerala High Court), wherein it was held as under:-

“9. We must notice two things straightaway. The definition is to apply “unless the context otherwise requires”. We must immediately note that the legal heirs/legal representatives of a deceased passenger are not dependents for the purpose of Section 123(b). Only the persons specified in clauses-1 to 4 of Section 123(b) can be reckoned as dependents. We emphasise that all legal heirs/legal representatives are not specified to be dependents.”

“28. We may note that while under the general law all legal heirs/legal representatives may be entitled to make an application or continue the application in the light of the declaration under Section 146, so far as a claim under Section 124A is concerned, not all the legal heirs of the deceased victim, but only the dependents can stake the claim. Section 146 CPC incorporates the principle that where a dependent can make an application, his legal heirs can also make the application.”

9. Further, reference can also be invited to the decision in **Dhyan Singh and Another vs. Union of India and Others**⁸ (Punjab And Haryana High Court), wherein it was held as under:-

“12. The matter can be examined from another angle as well. Section 123(b) of the Railways Act defines “dependent” to include minor brother if dependent partly or wholly on the deceased passenger. The word dependency is not restricted to economic dependence but dependence of love, affection, care and protection of the deceased passenger as well. The word “dependent” in clause (ii) or Section 123(b) of the Railways

⁶ Act

⁷ 2011 SCC OnLine Ker 4231

⁸ 2008 SCC OnLine P&H 1307



Act is not to be given restrictive meaning but contextual meaning keeping in view the objective of the statute so as to compensate unfortunate death of a passenger in railway accident. Such provision cannot be interpreted so as to benefit the tortfeasor which in the present case would be the Railways. Sub-section (ii) of Section 123(b) of the Railways Act deals with dependency wholly or in part, therefore, the dependence of care at protection, love and affection by the deceased on their minor brother would be dependence within the meaning of the Act. It may be noticed that the parental grand parents can be said to be dependents only if they are wholly dependent on the deceased passenger. Such dependency is in contravention to even par dependency of a minor brother under clause (ii) of Section 123(b) of the Railways Act.”

10. In view of the foregoing discussions, this Court finds that the impugned judgment-cum-award dated 17.07.2014 passed by the learned RCT, does not suffer from any illegality, perversity or incorrect approach in law. Accordingly, the appeal is dismissed.

DHARMESH SHARMA, J.

JANUARY 30, 2024

sp