

IN THE HIGH COURT OF JHARKHAND, RANCHI

M.A. No. 19 of 2023

1. Balmiki Singh @ Valmiki Singh, aged about 46 years son of late Mahendra Singh resident of Village Nayanagar Ranidiyara, PO Ranidiyara, PS Kahalgaon District Bhagalpur, State Bihar

2. Pratima Devi aged about 35 years wife of Balmiki Singh @ Valmiki Singh resident of Nayanagar Ranidiyara, PO Ranidiyara, PS Kahalgaon District Bhagalpur Appellant(s). P.O.No.1.

-- Versus --

Union of India through General Manager, Eastern Railway Kolkata having Office at 17, Netaji Subhas Road, Fairlie Place, PO and PS Kolkata, District Kolkata, West Bengal Applicant/Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellants(s) :- Mr. Ranjan Kumar, Advocate

For the Respondent(s)/UOI:- Mr. Anil Kumar, A.S.G.I

Mrs. Nitu Sinha, C.G.C.

10/02.04.2025 Heard the learned counsel for the appellants as well as Mr. Anil Kumar, the learned A.S.G.I and Mrs. Nitu Sinha, learned counsel for the respondent Eastern Railways.

2. I.A. No. 7659 of 2023 has been filed for condoning the delay of 486 days in filing the instant appeal.

3. It has been pointed out that the appellant is the father of the deceased and in preparation of preferring the instant appeal such delay has occurred and as such, the said delay may kindly be condoned.

4. Mr. Anil Kumar, the learned counsel appearing for the respondent Railway opposed the prayer on the ground that sufficient cause has not been made out to condone the said delay and in view of that the prayer for condonation of

delay may kindly be rejected.

5. Considering that the claim of the appellant has been rejected by the learned Railway Claims Tribunal and in preparation of preferring the instant appeal such delay has occurred, this Court finds that sufficient ground has been made out to condone the said delay, and as such, the aforesaid delay in preferring the instant appeal is, hereby, condoned and consequently, the instant I.A filed for condonation of such delay is allowed and disposed of.

6. This appeal has been preferred against the Award dated 19.06.2019 passed in Case No.O.A. (IIU)/RNC/ 67/2018 passed by learned Railway Claims Tribunal, Ranchi whereby the claim of the appellants has been rejected by the learned Tribunal under the proviso of Section 124-A of the Railway (Amendment) Act, 1994.

7. The learned counsel for the appellants submits that the appellant being father of the deceased namely Vishranjan Singh has filed the said case for compensation amount of Rs.8 lacs on account of death of his son for the injuries sustained by him in an accident that was caused due to negligence of the driver. He submits that the deceased was travelling as bonafide passenger on 08.11.2016 by boarding in Dhuriyan passenger train No.53038 DN along with his maternal cousin namely Pankaj Kumar (co-passenger) having valid ordinary ticket from Shivnarayanpur Station to Karmatola Station bearing Ticket no.99967 and cousin brother was going to Sahibganj station and having separate 2nd class ordinary ticket vide ticket no.24991 from Shivanarayanpur Station to Sahebganj Station. He submits that due to rush the deceased was standing near toilet and due to jostling one another he fell down from the train and pursuant to that the said accident has taken place. He submits that even the railway tickets have been produced and in the form the correct ticket number is disclosed and the learned court only on the ground of producing the tickets at the time of hearing has not relied and has doubted the same and

dismissed the claim application. He submits that there are other materials on record to suggest that the accident took place while travelling in the train and in view of that the said finding is not correct.

8. Mr. Anil Kumar, the learned counsel appearing on behalf of the Respondent Eastern Railways has opposed the prayer and submits that in the FIR lodged by the brother a U.D case has been registered on statement of a person wherein it has been disclosed that the train was coming from the opposite side and they were present in the track and in view of that the accident took place. He submits that it is not a case of falling from the train and in view of that the learned court has rightly doubted the ticket which was produced later on. He submits that in light of Section 124-A of the Indian Railways Act it is not a case of untowards incident and as such the learned court has rightly passed the order. He relied in the case of ***Union of India v. Rina Devi*** reported in ***(2019) 3 SCC 572*** and referred to paragraph 17 of the said judgment, which is as under:

"17. Learned ASG for the appellant submitted that view in Rath Menon (supra) stands watered down by subsequent decisions especially in Thazhathe Purayil Sarabi (supra), Mohamadi (supra) and Kalandi Charan Sahoo (supra). Rath Menon (supra) was premised on the basis that there was no law for interest and there will be injustice if compensation was paid at money value which had got reduced by the time the compensation was paid. Factually interest was awarded in Rath Menon (Supra). It was on that basis that judgments in Workmen Compensation cases were held to be distinguishable though the said judgments are of larger Benches³¹. Subsequently in Thazhathe Purayil Sarabi (supra) it has been held by this Court, after referring to 30 (1998) 9 SCC 134 31 Para 33 of the judgment Rath Menon (supra), that right to claim compensation accrued on the date of the incident though compensation is computed on the date of the award of the Tribunal. To compensate for loss of money value on account of lapse of time and for the denial of right to utilize the money when due, interest was required to be paid ³². Accordingly, this Court directed payment of interest on the awarded sum from the date of application till the date of recovery. This view was followed in Mohamadi (supra). In Kalandi Charan Sahoo (supra), without any specific discussion on the legal issue involved, direction was issued

for payment of compensation which was applicable at the material time and the same was assumed to be of Rs.4 lakhs. In that case, the accident took place in the year 2005 and the award of the Tribunal was in 2009 i.e. prior to 1st January, 2017.”

9. On these grounds, he submits that this appeal is fit to be dismissed.

10. In view of above, it transpires from the record that three persons have died due to said accident and the deceased namely, Vishwaranjan Singh was the son of this appellant who is the father of the deceased. So far U.D case is concerned it was not on the statement of any of the family members as has been disclosed and it was on the statement of one Mithun Kumar and he has stated like that what has been argued by the learned counsel appearing on behalf of the Railways. In the trial court records, in the form of such compensation the ticket number is correctly disclosed as 99967 and the same ticket was produced before the learned court that may be at the time of argument and this ticket is also on the record which clearly suggest that the ticket number was disclosed at the time of filing of the form for such compensation case itself. Merely because it has been produced later on that cannot be a ground of not accepting the said ticket.

11. The only issue required to be answered is as to whether the deceased in the facts fell from the train or not and whether he is entitled to compensation in light of section 124-A of the Railways Act, 1989 or not.

12. AW-2 Pankaj Kumar who was the co-passenger and AW-1 has furnished the relevant document. Pankaj Kumar who was examined as AW-2 and he has stated that on 08.11.2016 the deceased was the cousin brother aged about 12 years who also insisted to go along with him who is maternal uncle and reached near Shivnarayan Railway Station and has purchased two tickets and in the same line AW-1 has also stated.

13. The respondent Railways has filed the written statement and in paragraph no.8 has denied the fact of valid journey tickets and the deceased

was a bonafide passenger of any train whatsoever and it was also denied that the deceased has accidentally been fallen down from the running train due to jostling of the passenger. The post mortem is on the record and the reason of death is said to be accident due to falling from the train. In the Final Form it has been disclosed that on enquiry it was found that the accident is taken place and due to falling from the train the said accident has occurred. Thus, the accident in light of the said document and the statement are proved and further the tickets cannot be said to be doubted as in the form the ticket number is correctly disclosed.

13. The Hon'ble Supreme Court in the case of ***Union of India v. Prabhakaran Vijaya Kumar and Others***, reported in ***(2008) 9 SCC 527*** held that since the provision for compensation in the Railway Act is a beneficial piece of legislation it should receive a liberal and wider interpretation and not a narrow and technical one.

14. Sub-Section 29 of Section 2 of the Act defines "passenger" to mean a person travelling with a valid pass or ticket. Section 123 (C) of the Act defines "untoward incident" to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Act states as under:-

*"124A. Compensation on account of untoward incident.-
When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:
Provided that no compensation shall be payable under this*

section by the railway administration if the passenger dies or suffers injury -7- M.A. No. 114 of 2014 due to –

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Explanation - For the purposes of this section, "passenger" includes –

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

15. In view of above provision of Section 124-A of the said Act, it is crystal clear that the accident did not occur because of any of the reasons mentioned in the clauses (a) to (e) of the proviso of Section 124-A of the said Act. It is very much clear that the case in hand is covered by the main body of section 124-A of the said Act.

16. In view of above, Section 124-A of the said Act lays down a strict liability or no fault liability in a case of railway accidents. If a case falls in the main body of the section, it is wholly irrelevant as to who was at fault. Standing at the open doors of a compartment in a running train, may be a negligent act, even a rash act but without anything else, it is certainly not a criminal act which has been held by the Hon'ble Supreme Court in the case of ***Jameela v. Union of India***, reported in ***(2010) 12 SCC 443*** wherein at paragraph no.12, it has been held as under:

"12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as

negligence. Now negligence of this kind which is not very uncommon on Indian Trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.”

17. In view of above and considering the balance of probabilities, as per which, civil cases have to be decided, the deceased, in fact quite clearly had died on account of a fall from the train in view of the documents of the respondents Railways itself in light of the tickets as well as the post mortem report and final form and the enquiry by the police. The factum of the accident is very much there which has occurred on the railway track and it is neither near the residence nor the work place of the deceased for the accident to be of any form of criminal negligence/self-inflicted injury of wrongly standing on the railway tracks or crossing of the railway tracks.

18. The judgment relied by Mr. Anil Kumar, the learned counsel appearing on behalf of the respondent-Railways in the case of ***Union of India v. Rina Devi*** reported in ***(2019) 3 SCC 572*** is not in dispute and that judgment is still holds the field. Section 124-A of the said Act was also considered in the said judgment. In paragraph no.29 of the said judgment, it has been held that mere absence of tickets of the injured or a deceased will not negate the claim that he was not a bona-fide passenger and what has been discussed hereinabove, it has been proved that the accident has taken place due to fall from the train.

19. As such, the said judgment is very clear on the law point on which reliance has been placed by the learned counsel appearing for the respondent-Railways. In view of the aforesaid facts, reasons and the analysis, the Court finds that the learned court's finding is perverse, and as such, the Award dated

19.06.2019 passed in Case No.O.A. (IIU)/RNC/ 67/2018 passed by learned Railway Claims Tribunal, Ranchi is hereby set aside.

20. The appellants shall be entitled for a sum of Rs.8 lacs as compensation in view of subsequent amendment in the Rules.

21. In light of Rule 4 of Railway Accident and Untoward Incident Compensation Rules, 1990 which was amended in the year 2017 and in light of ratio laid down by the Hon'ble Supreme Court in the case of ***Union of India v. Rina Devi(supra)***, the said compensation will be provided by the respondent-Railway within six weeks from the date of receipt/ production of a copy of this order.

22. This appeal is allowed in the above terms and disposed of.

23. Let the trial court records be sent back to the learned court concerned forthwith.

(Sanjay Kumar Dwivedi, J.)

SI/
A.F.R.