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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 7th May, 2025**+ **FAO 63/2020 & CM APPL. 4672/2020****SUHAVNI DEVI**

.....Appellant

Through: **Mr. Rajan Sood & Ms Ashima
Sood, Advs.**

versus

UNION OF INDIA

.....Respondent

Through: **Mr. Sandeep Kumar Mahapatra
& Mr. Tribhuvam, Advs.****CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)**

1. The appellant has filed the instant appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ('**RCT Act**') assailing the impugned judgment dated 21.05.2018 passed by the learned Presiding Officer, Railway Claims Tribunal ('**RCT**'), Principal Bench Delhi, whereby her application seeking statutory compensation on account of death of her son Sh. Santosh Singh in a railway accident was dismissed.

2. Briefly stated, it was the case of the appellant that on 28.11.2016 her son was travelling from Mathura Junction to Hazrat Nizammuddin Junction by some train with a valid ticket bearing No.48885865. It was claimed that when the train reached near Okhla Railway Station, there was a sudden jerk and due to which, the deceased accidentally fell down from the moving train and sustained grievous injuries and eventually succumbed to the same.

3. The respondent/Railways contested the claim of the appellant



based on the DRM's Report to the fact that the deceased did not die in an "untoward incident" involving Railways within the meaning of Section 123 (c)¹ of the Railways Act, 1989. It was further stated that the alleged incident took place due to the negligent act on the part of the deceased for which the Railways was not liable to pay any compensation.

4. Based on the pleadings of the parties, the learned RCT framed the following issues:-

- "1) Whether the deceased was a bona fide passenger on board the train in question at the relevant time of the incident?
- 2) Whether the death of the deceased was on account of an accidental fall amounting to an untoward incident, as claimed in the claim application?
- 3) Whether the applicants are the dependants of the deceased within the meaning of Section 123(b) of the Railways Act, 1989
- 4) To what amount of compensation, if any, are the applicants entitled?
- 5) Relief, if any?"

5. Suffice to state that the learned RCT *vide* impugned judgment cum award dated 21.05.2018, based on the appreciation of the records, came to the conclusion that the deceased was not a "bonafide passenger" since the railway ticket was probably planted in the Jamatalashi of the deceased at the behest of the Investigating Officer ASI Harpal Singh of GRP. It was further held that no evidence was led as to in which train the deceased was travelling. It was observed

¹ 123 [(c) "untoward incident" means—

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
(ii) the making of a violent attack or the commission of robbery or dacoity; or
(iii) the indulging in rioting, shoot-out or arson,
by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
(2) the accidental falling of any passenger from a train carrying passengers.]



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that there were two trains which were running on the day in question viz. train no.12807 Vishakapatnam-Nizammuddin Samta Express, super-fast train, which was running from Mathura Junction at 14:35 hrs. and reaching Hazrat Nizammuddin at 16:45 hrs.; and train no.12645 Ernakulam-Nizammuddin Express which was available at a close margin and which was supposed to leave the Mathura Junction at 15:00 hrs. and scheduled to arrive at Hazrat Nizammuddin at 17:10 hrs. Holding that the dead body of the deceased was found at about 6.30 p.m., it was held that the deceased did not die in an “untoward incident” involving the Railways.

6. Hence, the appellant has preferred the instant appeal.

ANALYSIS & DECISION

7. Having heard the learned counsel for the parties in some detail and on going through the relevant record of the case, at the outset, the impugned judgment cum award dated 21.05.2018 passed by the learned RCT is not only unconscionable but also absolutely perverse and thus, cannot be sustained in law.

8. The reasons for such decision are not far to seek. In order to appreciate the issues raised in the present appeal, it would be apposite to reproduce the findings recorded by the learned RCT while jointly deciding issue nos.1&2 which go as under:-

“1. Both these issues, being inter-connected, are taken up together. On 28.11.2016, the deceased was said to be travelling from Mathura Jn. to Hazrat Nizamuddin by a train (name of the train or its number or time of boarding the train is not mentioned) with a valid journey ticket bearing No.48885865. It has also been contended that as per the information received (by whom and when is not mentioned), there was a heavy crowd in the train and that when this train reached near Okhla Railway Station, it took a strong, jerk, due to which and jostling of passengers, the deceased



fell down from the moving train and sustained severe injuries, including head injuries and unfortunately died. A copy of the journey ticket bearing No.48885865, purchased at 13.30 hrs. of 28.11.2016 for the journey from Mathura Jn. to Hazrat Nizamuddin in the second ordinary class of superfast train, has been filed.

2. Vide D.D.N0.23-A dated 28.11.2016 (*Ex.A-5*), a recovery memo has been prepared, according to which a black colour purse, containing one Aadhaar Card, Voter Identity Card, some papers and a railway journey ticket bearing No.UCA-48885865 were recovered from the dead body of the deceased. The said recovery memo was signed by one Shri Anil Kumar as a witness, who is Head Constable of GRP, working under ASI Shri Harpal Singh of Police Station Hazrat Nizamuddin, the Investigating Officer of the case. Strangely, in this memo, the name of Constable Shri Sunil of RPF Post/Hazrat Nizamuddin, is mentioned, but no signatures were obtained from him. The said Constable Shri Sunil, in his statement given on 28.11.2016 to the officer conducting the enquiry on behalf of the railways, has mentioned that he was the first to reach at the site of the incident at Okhla Railway Station on receipt of the information from the RPF Control and that Shri Harpal Singh, ASI/GRP and also the Investigating Officer, arrived subsequently to carry on the inquest and other proceedings of *jamatalashi* of the deceased. As per the statement of Shri Sunil, no railway journey ticket whatsoever was recovered in *jamatalashi*. It was pointed out to him (Shri Sunil) that in his statement given by him to the ASI/GRP, it has been mentioned that a railway journey ticket bearing No.UCA-48885865 was also recovered from the dead body of the deceased. He categorically denied and said that when he signed his statement before the GRP, no mention was made of recovery of any railway journey ticket at that time. We looked at the statement of Constable Shri Sunil (*Ex.A-1*), given to the GRP, and find that there are two different styles of writing in this statement. The first 10 lines have been written with adequate and normal space, whereas the last 4 lines appear to have been written in a cramped manner and it is these 4 lines, which describe the articles recovered during *jamatalashi* and mentions a railway journey ticket bearing No.UCA-48885865 also. Even the reading of the language, in which this statement has been made, shows that there is a sudden interruption of the flow of thoughts from line number 9 onwards, which doses in a cramped manner with the last line being “..... आपने मेरा ब्यान लिखा पढ़ लिया ठीक है । The contention of the aforesaid Constable Shri Sunil, who was the first to reach to the site of the incident and in whose presence the *jamatalashi* was done by Shri Harpal Singh, ASI/GRP, and the apparent manipulation in the statement of Constable Shri Sunil to show that the railway journey ticket was recovered, leads us to infer that the aforesaid railway journey ticket, filed by the



applicant, is not the genuine ticket used by the deceased for his journey from Mathura Jn. to Hazrat Nizamuddin, but a planted ticket. This belief becomes further stronger when we notice that the aforesaid railway journey ticket was purchased at 13.30 hrs. of 28.11.2016 for a superfast train and that Train No.12807 (Vishakhapatnam - Nizamuddin Samta Express, Superfast Train) was available from Mathura Jn. at 14.35 hrs., which would arrive Hazrat Nizamuddin at 16.45 hrs. of the same day. There was yet another Train No.12645 (Ernakulam - Nizamuddin Express), available at a close margin, which would leave Mathura Jn. at 15.00 hrs. and would arrive Hazrat Nizamuddin at 17.10 hrs. In the evening hours, Okhla Railway Station is a busy station, due to heavy movement of EMU and other Mail/Express Trains. If the deceased was in possession of the aforesaid journey ticket, which is filed, certainly it was expected that he would have picked up one of the abovestated two trains and then the incident would have happened between 16.45 to 17.10 hrs. and would have been reported shortly thereafter. It is, however, seen that the first information was received well past 18.30 hrs., as per the statement of Shri Sunil, Constable/RPF. Thus, the time margin between when the body of the deceased could have been found out, had the deceased travelled on the strength of the aforesaid journey ticket, and when it was actually noticed and informed, is quite large and leads to an inference that the alleged journey ticket, bought at 13.30 hrs. at Mathura Jn. and filed, is not the one used by the deceased for his journey from Mathura Jn. to Hazrat Nizamuddin, but subsequently, illegally planted by the police at the time of *jamatalashi*. Perhaps this could also be one of reasons why the applicants did not mention the exact train number/name by which the deceased had travelled or even the time of boarding of any train from Mathura Jn. We, therefore, do not believe that the deceased was travelling by any train, as alleged by the applicant, but contrarily had met with the tragic end under the circumstances and conditions other than falling from a moving train. We, therefore, hold that the deceased had not fallen down from the running train and the incident cannot be categorized as an "untoward Incident".

4. Applicant is the mother of the deceased. To prove her status and identity, the applicant has filed a copy of her Aadhaar Card (*Ex.A-7*). Hence, we hold that the applicant was the dependants of the deceased within the definition of the Act. Issue No.3 is answered accordingly."

9. A careful perusal of the aforesaid reasons would show that the learned RCT was of the view that DD No.23A dated 28.11.2016 and the recovery memo, suggested that the railway/general ticket was found inside a black colour purse, which also contained an aadhaar



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card, voter card and some papers. However, it was probably fabricated since the same had not been signed by Ct. Sunil of RPF Post HNZ Railway Station. Reliance in this regard was placed on the statement (A-1) given by Ct. Sunil to the Officer conducting inquiry on behalf of the Railways who stated that no railway journey ticket was found from the jamatalashi. In light of his statement and assuming that he was the first one to reach the place of occurrence, it was held that the railway/general ticket was allegedly found from the body of the deceased was not a genuine ticket.

10. Insofar as the above said observations are concerned, it is pertinent to mention here that after dismissing the claim of the appellant *vide* impugned judgment cum award dated 21.05.2018 *suo motu* proceedings were initiated by the RCT under Section 340 of the Cr.P.C.² for allegedly committing forgery and fabrication of record and notice was issued to the contemnor ASI Harpal Singh.

11. It appears that an application under Section 44 of the RCT Procedural Rules, 1989 read with Section 151 of the CPC³ was filed by ASI Harpal Singh wherein, *inter alia*, it was clarified that on the date of incident i.e. 28.11.2016, Ct. Sunil Kumar Singh was on duty from 8.00 a.m. to 8.00 p.m. in whose presence the recovery of articles was made during the investigation at the spot, who however, left without intimation due to off duty hours, and thereafter, another Constable by the same name i.e. Sunil Kumar from RPF reached the spot at about 8.10 p.m. and it is in the said circumstances that the jamatalashi of the items recovered from the deceased were prepared and signed by him and also by Head Constable Anil Kumar but it was

² Code of Criminal Procedure, 1973

³ Code of Civil Procedure, 1908



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not signed by Ct. Sunil Kumar since he had joined duty at 8.10 p.m. The applicant ASI Harpal Singh, *inter alia*, requested that before taking any adverse action against him, the learned RCT may examine the following witnesses:-

- “(i) Ct. Sunil Kumar Singh RPF, P.S.-Hazrat Nizamuddin Rly. Station.
- (i) HC. Anil Kumar GRP, P.S.-Hazrat Nizamuddin Rly. Station.
- (ii) Sh. Vipin Kumar s/o Sh. Ramesh Chand r/o H.No.M-106, Saurabh Vihar, Jaitpur, New Delhi-110044.”

12. To cut the long story short, on examination of aforesaid witnesses during the inquiry proceedings under Section 340 of the Cr.P.C., the learned RCT was unconvinced and held that ASI Harpal Singh had deliberately created false evidence to show recovery of a ticket from the body of the deceased with a view to provide undue favour to the applicant/Smt. Suhavni Devi and also misguided the RCT by inserting few lines in the statement of Sh. Sunil Kumar dated 28.11.2016 showing the recovery of the railway ticket. Resultantly, a complaint was directed to be lodged against the ASI Harpal Singh before the Chief Judicial Magistrate Tis Hazari Courts, Delhi for offence of forgery under Section 191, 192 and 193 of the IPC read with Section 340 of Cr.P.C. through the Additional Registrar. However, that is not the end of the story.

13. It appears that a review application was filed by ASI Harpal Singh, *inter alia*, bringing to the fore that the learned RCT failed to appreciate that on the date of incident, Samta Express had arrived late as substantiated by the TSR⁴ of Okhla and Hazrat Nizamuddin Railway Stations. This time the learned RCT found merit in the submissions of ASI Harpal Singh and the following order dated 27.02.2019 was passed which reads as under: -

⁴ Train Signal Register



The application for review of the order passed by us on the notice issued under Section 340 CrPC is based on the ground that the order contains a fundamental mistake in assuming that the inquest report had been despatched to the Magistrate on 04.01.2017 and the assumption that there was no scope for the Investigating Officer to record a statement from Sh. Sunil Kumar Singh on 10.01.2017. This had been taken to be the central point for the observation that there had been a deliberate attempt to fabricate it.

The counsel for the applicant points out to us that on that day the SHO had recorded that after the body was identified the official report of inquest was made on 05.05.2017 and forwarded to the SDM on 17.08.2017. We have also noted, as pointed out by the counsel for the applicant, the contention that Samta Express was the first train to arrive at Mathura after the purchase of ticket at 13.30 hrs and it was possible that the deceased had been a victim of the untoward incident only by fall from such train.

We will not re-examine the issue of the truth of the contentions regarding the bonafides of ticket and the alleged untoward incident. For the purpose of this enquiry, it will be sufficient if there was some material on record which was not read correctly by us in the proceedings initiated under Section 340. We notice that our observation that the inquest report had been despatched to the Magistrate on 04.01.2017 was not correct and our conclusion that the statement of Sh. Sunil Kumar Singh could not be taken on 10.01.2017 after the dispatch of inquest report was not correct. We will take this illustration of the mistake alone to be sufficient to hold that the matter be best left at where we concluded the order in the main application and that notice that we have issued under Section 340 need not be escalated to prosecution of the Investigating Officer.

The order passed directing a complaint be lodged on 03.12.2018 is recalled.

The application is allowed.”

14. The sum and substance of the aforesaid discussion is that, although *vide* impugned judgment cum award dated 21.05.2018 it was held that the railway/general ticket was planted on the body of the deceased by ASI Harpal Singh to unduly benefit the appellant, a subsequent review dated 27.02.2019 found this conclusion to be incorrect. Nevertheless, the learned RCT rightly recorded that it lacked the authority was powerless to review its earlier judgment cum award dated 21.05.2018.



15. The position that emerges is that the learned RCT itself has given an opinion that its finding that the railway/general ticket was planted upon the body of the deceased was not correct. That being the case without any further discussion and writing a long thesis, it can be safely said since the validity of the ticket was not otherwise challenged, the deceased was a “bonafide passenger.”

16. That brings us to the second limb of the impugned judgment cum award dated 21.05.2018 whereby doubts were expressed that the deceased could not have travelled by any of the two trains which departed from the Mathura Junction to reach Hazrat Nizammuddin Railway Station.

17. Learned counsel for the appellant rightly urged that the appellant, hailing from the impoverished background and lacking awareness of her legal rights, was probably handicapped in giving exact details of the train number by which the deceased was travelling but in all probability he was travelling from Samta Express and in this regard, he referred to the TSR of Okhla and Hazrat Nizammuddin Railway Stations (Annexure-N) that goes to clearly indicate that the train no.12807 had arrived at Hazrat Nizammuddin Railway Station at 18:16 hrs. and had left at 18:30 hrs. As per the DD No.22A (Annexure-O), the dead body of the deceased was discovered immediately thereafter at 6.30 p.m.

18. Having regard to the grievous injuries sustained by the deceased on his head and left side of the body indicated in the Post Mortem Report (Annexure-K), it can be safely assumed that the deceased must have fallen from the running/moving train and sustained such injuries resulting in his instantaneous death. The deceased, therefore, in all probability died in an “untoward incident.” The DRM Report



suggesting that the deceased was himself negligent in the happening of the incident cannot be sustained in law. The injury cannot be said to be self-sustained or an intentional injury and the version of the claimant that her husband accidentally fell from the running train commensurate with the facts and circumstances brought on the record. The respondent/Railways, therefore, cannot avoid its liability under Section 124A⁵ of the Railways Act, 1989.

19. In view of the foregoing discussion, the present appeal is allowed. The impugned judgment dated 21.05.2018 is set aside. The appellant is hereby granted statutory compensation of ₹8 lakhs which shall be payable by the respondent with the interest at the rate of 12% per annum from the date of accident i.e. 28.11.2016. All pending applications are also disposed of.

DHARMESH SHARMA, J

MAY 7, 2025

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⁵ **124A. Compensation on account of untoward incidents.**—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 of 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 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 purpose 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.]