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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 26th March, 2025**

+ **FAO 160/2022**

MAMTA KASHYAP & ORS.Appellants
Through: **Mr. Sanchit Vashistha and Mr. Shobhit Sharma, Advs.**

versus

UNION OF INDIARespondent
Through: **Mr. Syed Abdul Haseeb, CGSC**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The appellants, who are the wife and two children of the deceased Raghuvir @ Ragubir Prasad Kashyap, have preferred the present appeal under Section 23 of the Railways Claims Tribunal Act, 1987 ["**Act**"], assailing the impugned order dated 24.12.2019 passed by the learned Presiding Officer, Railway Claims Tribunal, Delhi ["**RCT**"], whereby the claim petition filed by the appellants seeking statutory compensation of Rs. 8 lakhs for the death of Raghuvir in a railway accident was dismissed.

2. In a nutshell, it is the case of the claimants/appellants that on 10.08.2017, the deceased was travelling from Bharatpur to Agra Junction by train No. 12988 (Ajmer-Sealdah Express) on a valid second-class journey ticket, which was lost in the incident. It is claimed that the deceased accidentally fell from the running train at Idgah (Agra) Railway Station and succumbed to his injuries. Further, it is stated that the deceased was seen off at while boarding the train at Bharatpur Railway



Station by his colleague, namely Lukman, who was examined as AW-2.

3. Suffice to state that the respondent contested the claim petition and relying on the DRM enquiry, it was stated that the deceased tried to deboard/alight from a running train No. 12988 on 10.08.2017 at 20:00 hrs. at Idgah (Agra) Railway Station and it was denied that he accidentally fell down from a running train due to over-crowding. It was also submitted that a Railway Ticket No. 19984853 was recovered in the Panchanama for journey from Bayana to Agra Fort, whereas the deceased was claimed to be in journey from Bharatpur to Agra Junction.

4. Learned RCT based on the pleadings of the parties framed the following issues:- :

- (1) Whether the deceased was a Bonafide passenger in the train in question at the time of incident?
- (2) Whether the deceased had died in an untoward incident while travelling in the train within the meaning of Section 123(c) of Railways Act, 1989?
- (3) Whether the applicants are the dependants of the deceased?
- (4) Whether the applicants are entitled for any relief and interest as prayed for in the application?
- (5) Relief, if any?

5. The Issues No. 1 and 2 were decided against the claimants, and therefore, the claim petition was dismissed, which decision is assailed in the present appeal.

ANALYSIS AND DECISION:

6. Having heard the learned counsels for the parties and on perusal of the record, it would be expedient to reproduce the findings recorded by the learned RCT while deciding Issues No.1 and 2, which go as under:-



“Issue No.01 & 02

Both the issues being interconnected are taken together for disposal. This case is filed for the death of Sh. Raghuvir @ Raghubir Prasad Kashyap “hereinafter referred as deceased”. As per claim application, on 10.08.2017, the deceased was traveling from Bharatpur to Agra, by Train No.12988 Ajmer-Sealdah Express train on the strength of a second class valid journey ticket, which is lost in the incident; he accidentally fell down from the train at Idgah Railway Station, and died. It is further averred by the applicant that the deceased was seen off at Bharatpur Railway Station by his colleague namely Lukman.

In respect of bonafideness of the deceased, it is stated in the claim application that the journey ticket was lost at the time of incident alongwith other belongings of the deceased. Applicant No. 01 Smt. Mamta Kashyap filed her affidavit and affidavit of Shri Lukman and both were cross examined as AW-1 and AW-2 respectively. Aw-1 is not an eyewitness of the incident as she was not travelling with the deceased. She has admitted in her cross examination that one watch, one handkerchief and a spectacle were recovered from the deceased but no railway ticket was recovered. As per Panchanama, during the physical search one railway ticket bearing No. 19984853 ex. Bayana to Agra Fort was recovered from the deceased but the same is not valid for the journey as claimed by the applicant in claim application. Respondent has also admitted the recovery of said ticket but stated that the ticket was not valid for the alleged journey of the deceased and the train by which the deceased is said to have travelled does not go through this route. The statement given by AW-2 is also contradictory about purchase of the ticket for undertaking journey by the deceased. No reference has been made by AW-1 in her statement regarding the see off of the deceased at Bharatpur Railway Station by Lukman. There is no cogent evidence which prove that the deceased had purchased a ticket for his alleged journey from Bharatpur to Agra. Moreover, recovery of other belongings except the ticket for particular journey from the deceased shows that the deceased never purchased a ticket for his alleged journey.

True, may be in certain cases the ticket of Bonafide passenger is lost, snatched or taken away by some criminal and unscrupulous person but there cannot be a presumption that the ticket of very deceased necessarily is taken out or it is lost or mutilated. In case ticket is not found from the body of the deceased or from its vicinity, the presumption would be that such a person was not a Bonafide traveller; evidence can be led to prove otherwise. If any untoward incident takes place within the meaning



of Section 124-A of the Railways Act, initially burden lies on the Railways to prove that the passenger was not a Bonafide passenger, but the same having been discharged, onus shifts on the person claiming compensation, to establish by some believable evidence, that such a passenger was a bonafide passenger but in the present case applicants have failed to produce any cogent evidence to prove that the deceased was a bonafide passenger.

As far as happening of untoward incident is concerned, As per Memo, the first information was given by on duty staff Shri Sohan Singh & GRP/RPF that at Platform No.02, one person is cut. Nothing is stated in the Memo about the fall of the deceased from any train. In the Panchanama all the pancha's have opined that the deceased got hit by the train, sustained brushed injuries and subsequently died. Pancha's have also not opined about the fall of deceased from the train. There is no eye witness that deceased has boarded the said train and purchased ticket for journey undertaken from Bharatpur to Agra. No evidence of falling of deceased from the train was produced.

Respondent in the gist of DRM report has stated that the deceased died due to injuries sustained while trying to alight from running train at Idgah Railway Station. Respondent has further stated that at the time of incident the applicant Smt. Mamta was at Shulabhpuram, P.S. Sikandra, Agra which is near to the place of incident and from where convenient transport is also available to reach at the place of applicant and for this reason the deceased had tried to deboard the running train as the deceased had to go to meet his family who were present at Shulabhpuram, Agra. Hence, this case comes under the definition of self inflicted injuries as defined under the exception clause of Section 124-A of Railways Act, 1989. In the present case, as per circumstantial evidence the deceased committed a **"Dare Devil Act", very well knowing the consequences of the same. The act of the deceased cannot be termed to be a simple act of negligence on the part of the deceased, since he knew that he may suffer major injuries or may die, if he deboarded a running train.** In my opinion the conclusion of the DRM report cannot be simply brushed aside in the absence of any evidence on the part of applicant to discard the contents of DRM reports.

Respondent counsel relied on Section 191 of Railway Act, 1989. As per Section 191 of Railways Act, 1989, proof of entries in records and documents: Entries made in the records or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration and all such entries may proved either by the production of the records or other documents of the railway administration



containing such entries or by the production of a copy of entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession. In the present case, applicant has not filed any cogent evidence to disprove the contents recorded in the record of respondent.

In the absence of any evidence of understanding travelling, purchasing ticket and in view of the case decided by the Hon'ble Supreme Court in the case of Union of India versus Reena Devi, initial burden to prove travelling as well as purchasing of ticket lies on the claimants but in the present case applicant has failed to prove travelling as well as purchasing of ticket by the deceased while so-called travelling.

In view of my findings on Issue No.01 & 02, I have no hesitation in holding that the applicants have miserably failed to prove that the deceased suffered an untoward incident as defined within the meaning of Section 123(2) (C) of Railways Act, 1989. Accordingly the claim application deserves to be dismissal."

7. At the outset, upon a careful perusal of the aforesaid reasoning, it is evident that although a railway ticket for a journey from Bayana to Agra Fort was recovered, no railway ticket was found on the body of the deceased to substantiate that he was travelling from Bharatpur to Agra as a *bona-fide* passenger. Secondly, neither AW-1 nor AW-2 were eye-witnesses to the accident. Lastly, both the Panchanama report and even the DRM inquiry report categorically state that the deceased did not fall from a running train but instead attempted to alight/deboard a moving train at Idgah Railway Station, where the train was not scheduled to halt.

8. In view of the foregoing, the respondents are clearly protected under Section 124(A) of the Railways Act, 1989¹, since the injuries sustained

¹ 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



were self-inflicted due to the deceased's rash and negligent act of attempting to disembark a moving train.

9. Merely because the deceased's death involved the railway does not automatically lead to the inference that it resulted from an untoward incident within the meaning of the Act.

10. In the aforesaid view the matter, the present appeal is dismissed.

DHARMESH SHARMA, J.

MARCH 26, 2025/SP

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.