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

% **Judgment reserved on: 24 April 2025**  
**Judgment pronounced on: 30 April 2025**

+ **FAO 370/2024 & CM APPL. 70016/2024**

**MADHUBALA YADAV AND ANOTHER** .....Appellants  
Through: **Mr. Faiz Imam, Adv.**

versus

**UNION OF INDIA** .....Respondent  
Through: **Mr. Avnish Singh, SPC with**  
**Mr. Kapil Dev Yadav, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**DHARMESH SHARMA, J. (ORAL)**

1. The appellants, who are the wife and minor child of the deceased/Lt. Sh. Krishan Kumar, have preferred the present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ('**RCT Act**') for setting aside the impugned order cum award dated 01.09.2023, passed by the learned Presiding Officer, RCT whereby their claim for compensation on account of death of the deceased/Lt. Sh. Krishan Kumar in a railway accident was declined.

2. In a nutshell, it was the case of the appellants that the deceased was in service of the Border Security Force and after taking leave, he had come to his native place, Alwar, and that on 09.05.2019, he commenced his journey from Harsauli to Howrah Junction *via* Delhi in order to join his duty. It was claimed that due to heavy rush in the



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train and sudden brakes applied by the train driver, Krishan Kumar fell down from the train near Harsauli and died at the spot.

3. The respondent/Railways contested the claim petition relying upon the DRM Report exhibit R-1 to the effect that the deceased had died at the crossing of the *railway phatak* at Harsauli and regarding which, an FIR was lodged at the behest of his uncle Sh. Thabbar Singh.

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

- “1. Whether the Deceased was a bona-fide passenger of the train in question?
2. Whether incident of death of deceased falls under the ambit of an untoward incident as defined U/S Section 123(c) read with Section 124-A of the Rlys. Act, 1989?
3. Whether the applicant is only dependant of the deceased?
4. To what Relief?”

5. The appellant no.1/Smt. Madhubala Yadav came in the witness box and was examined as AW-1. No witnesses were examined on behalf of the respondent.

6. Suffice it to state that the learned RCT held issue no.1 against the appellants, holding that he was not a *bona fide* passenger as no rail ticket was found on the person of the deceased. The issue no.2 was also decided against the appellants, holding that the deceased was trying to cross the railway tracks/lines in an unauthorized manner and was killed and therefore, he was not involved in any ‘untoward incident’.

7. Hence, this appeal.

### **ANALYSIS & DECISION**



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8. Having heard the learned counsel for the parties and on perusal of the record, this Cour has no hesitation in finding that the present appeal is devoid of any merit.

9. It would be apposite to reproduce the reasons that prevailed in the mind of the learned RCT while deciding the claim petition *vide* impugned order cum award dated 01.09.2023 and the same read as under: -

“7. We take up Issue No. 1 first to determine whether the deceased was a bonafide passenger and applicants have been able to discharge the burden cast upon them. We requested Sh. S.K. Bharti, to read the affidavit of Madhubala Yadav tendered towards examination-in-chief as AW-1. He has read the affidavit of Madhubala Yadav dated 13.01.2023, twice. It is an admitted fact that in the present case no journey ticket was recovered from the person of the deceased. In *Union of India Vs Rina Devi* (2018 ACJ 1441) it is held that if the dead body is found near the railway track there is an initial burden on the claimants to swear on affidavit that the deceased was a bonafide passenger or he had purchased a Journey ticket for undertaking the Journey in question. In the affidavit, which contains 8 Paras, there is not even an iota of word to bestow status of bonafide passenger upon the deceased. We reproduce here under the entire affidavit tendered towards examination-in-chief, by witness Madhubala Yadav, AW-1 so that it is apparent that there is no affirmation or in deposition by the deponent to say that the deceased was a bonafide passenger at the relevant time of the incident:-

*“1. I am one of the petitioner/applicant and wife of deceased namely Krishna Kumar and am well conversant with the fact and circumstances of the case/application and competent to swear this affidavit.*

*2. That on 09.05.2019, my husband was traveling from Harsoli to Howrah via Delhi to join his duty, my said husband left my village on 08.05.2019, and said that" I am going to firstly my sister house and thereafter I will departed to Hawrah via Delhi and thereafter he gone to his sister house and after meeting he also said her that I am going to Hawrah via Delhi for join mv duty and on 09.05.2019 I came to know from Thawar Singh (Uncle of my husband) that my*



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*husband met with train accident while traveling Harsauli village near Patak No. 88, and due to heavy rush in train and sudden break by the driver of train resulting falling down train and died on the spot.*

*3. That after information by along with Thawar Singh (Uncle of my husband) and Udaiveer Singh went to the spot and Thawar Singh (Uncle of my husband) lodged the report/complaint vide No. 10/119 in PS Khairthel Distt. Alwar and I and Thawar Singh (Uncle of my husband), Udaiveer Singh and others near by villager given the statement before police.*

*4. That after postmortem conducted by the doctor of Medical Health Department Harsauli Rajasthan Dead body of my husband identified and received by Thawar Singh (Uncle of my husband).*

*5. I, my son. (Ansh Yadav) (Applicant No.2) fully depend upon my deceased husband.*

*6. I, am submitting my Aadhar Card, Pan Card, Ration Card, Passbook, Death Certificate of my husband postmortem report, complaint/final report Addhar Card of my son (Ansh Yadav) certificate issued by Gram Panchayat Mainpur Mundawar Rajasthan which are exhibited has Ex-Aw/I to Ex-Aw. Respectively, copy of application filed by us as Ex-Aw/A.*

*7. That content of affidavit/evidence have been drafted by my counsel under my instruction and some is explained to me in my Vernacular which are ture and correct best of my knowledge.*

*8. That all the statement are true and correct.” (reproduced in verbatim)*

8. The matter will not end here. In cross examination, Smt, Madhubala Yadav stated that she had neither seen her husband purchasing the ticket nor boarding the train nor falling from the train. She stated that her husband had left the house on 08.05.2019. In cross examination, to the pointed question, her reply was मेरे पति ने टिकट खरीदा या नहीं खरीदा इसकी जानकारी मुझको नहीं दी थी।

9. Thus, in the affidavit filed before the Court, nothing is stated therein that the deceased had purchased a ticket or was a bonafide passenger. Sh. S.K. Bharti, counsel for the applicant also did not point out any averment made in the claim application that the deceased had purchased a ticket and the same was lost during the incident. Therefore, for lack of averment and there being no evidence before us to this effect, we cannot hold that the deceased



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as a bonafide passenger of the incident in question. Thus, Issue no.1 is decided against the applicants and in favour of the respondent.

10. Now, we shall take up Issue no.2 to adjudicate whether the death of the deceased was the result of an untoward incident or not. Sh. Thawar Singh on 09.05.2019 lodged a report before the police. The said report is at page 28 of the report of DRM, exhibit R-1. The same reads as under:-

महोदय मन्त्र निवेदन है कि मेरा भतीजा कृष्ण कुमार श्री श्योचंद जाति अहीर निवासी सियारवोह को रहने वाला है। कल शाम 05:30 मिनट पर घर से बहन से मिलने चंद्रपुरा की बता कर कह कर गया था जो आज दिनांक 09.05.2019 को बसौली के 88 नंबर फाटक के पास रेल की चपेट में आकर प्रत्यु मौके पर ही हो गयी इसकी सूचना हमारे ग्रामवासीयों ने दी कृष्ण कुमार की मौत का हमें कोई सक सभा नहीं है। रिपोर्ट देता हूँ कानूनी कार्यवाही की जाने। (reproduced in verbatim)

11. Thus, in the initial version given on 09.05.2019, it is a case of the applicants that the deceased near the railway phatak no.88 and died due to ट्रेन की चपेट में, which in common parlance, means run over by the train. However, we may also notice that in the above said FIR, final report was filed on 04.09.2019, almost 9 months after the occurrence, in which, having noted the contents of the reported lodge by Thawar Singh (uncle of the deceased), it was concluded that the deceased fell from the train. We shall rely upon the spontaneous version given on 09.05.2019 that the deceased had died as a result of the run over by the train, 'ट्रेन की चपेट में' The conclusion of the investigation that the deceased fell from the train, cannot be relied as no particulars have been given as to in which train the deceased was travelling and at what time he fell from the alleged train. We cannot become oblivious of the fact that in the present case, the occurrence has taken place near the railway Phatak and thus, we cannot summarily reject Para 1 of the preliminary objections of the written statement. We thus can safely infer that the deceased was run over by the train while crossing the railway gate. Thus, taking the totality of circumstance we cannot even hold that the deceased as a result of an untoward incident. Hence, Issue no.2 is also decided against the applicants and in favour of the respondent."

10. A careful perusal of the aforesaid reasons would show that though the Investigating Officer in his report under Section 174 of the



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Code of Criminal Procedure, 1973 arrived at a conclusion that the deceased had died after falling down from a train, the fact that in the FIR it was recorded at the instance of uncle of the deceased Sh. Thabbar Singh that the deceased had been run over at the railway crossing/*phatak* remains uncontroverted.

11. The DRM Report Ex. R-1 also concluded that the deceased had been struck by a train near Harsauli at railway gate/barrier no. 88 and died at the spot. The report of the Investigating Officer, which was filed after four months of the incident, is based on clear surmises and conjectures and there is no explanation afforded as to why the initial statement by Sh. Thabbar Singh, which was made soon after the incident as to the cause of the death of the deceased, was found to be wrong and not reliable. There is no other evidence on the record so as to substantiate the case of the appellants that the deceased had died on falling from a running train. Hence, it is difficult to discern that the deceased died due to an 'untoward incident'. Moreover, since no railway ticket was recovered from the deceased, therefore, it is difficult to discern that he was a *bonafide* passenger either.

12. In view of the foregoing discussion, the present appeal is dismissed. All pending applications also stand disposed of accordingly.

**DHARMESH SHARMA, J.**

**APRIL 30, 2025**

**Ch**