

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

% **Judgment reserved on : 24 March 2025**
Judgment pronounced on: 27 March 2025

+ **FAO 99/2018**

BIR SINGH & ANRAppellants
Through: Mr. Rajan Sood, Ms. Ashima
Sood and Ms. Megha Sood,
Advs.
versus

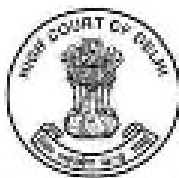
UNION OF INDIARespondent
Through: Mr. Mohit Sharma, SPC.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellants, who are the father and the sister of the deceased/Deepak, have preferred the present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 [**'RCT Act'**], thereby assailing the impugned judgment dated 23.02.2017 passed by the learned Presiding Officer, Railway Claims Tribunal, Principal Bench, Delhi [**'RCT'**], whereby their claim for compensation for death of the deceased/Deepak in a railway accident was dismissed.

2. Briefly stated, it is the case of the appellants/claimants that the deceased/Deepak, in the intervening night of 03rd and 04th October 2014, boarded a train at New Town Faridabad Railway Station for Okhla Railway Station to go to Kalkaji Temple and attend the morning prayer with his friend Sh. Ashish Rawat. It was claimed that there was a huge rush inside the train compartment and as a result of a

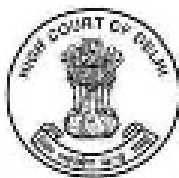


sudden and heavy jolt and jerk besides lot of pushing around by the passengers, the deceased/Deepak fell down from the moving/running train near Tughlakabad Railway Station, sustaining grievous injuries and eventually, succumbing to the same. It was stated that he bought the railway ticket, but it was lost in transit within the railway premises.

3. The respondent contested the claim petition and came out with the defense that the deceased/Deepak, as per the DRM's Report, died due to his own negligence when he fell down from the running train. The learned RCT based on the pleadings of the parties, framed the following issues:-

1. Whether the deceased as a bona fide passenger of a train as on 03.10.2014 from Faridabad to Okhla New Delhi?
2. Whether the death of the deceased was on account of an accidental fall from the train in question amounting to an untoward incident as defined under Section 123 (c) read with Section 124-A of the Railways Act, 1989?
3. Whether the applicants are the legal heirs and dependents of the deceased withing the meaning of Section 123 (b) of the Railways Act, 1989?

4. Suffice it to state that the learned RCT found that the appellants/claimants had failed to prove that the deceased was a *bona fide* passenger of the train and although it was the case of an 'untoward incident' as defined under Section 123(c) of the Railways Act, 1989, the deceased was himself responsible for his own death, thereby the Railways stood exonerated as per Section 124A of the Railways Act, 1989.



5. Having heard the learned counsel for the parties and on perusal of the record, it would be expedient to reproduce the findings recorded by the learned RCT on issue nos.1 and 2 which goes as under:-

“Issue 1

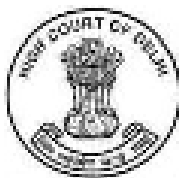
1. Whether the deceased as a bona fide passenger of a train as on 03.10.2014 from Faridabad to Okhla New Delhi?

On the issue of whether the deceased was a passenger admittedly no ticket was recovered from the body of the deceased although cash was still on the body of the person was recovered. The contention was that a co-passenger was said to have called the deceased and finding that there was no response he informed his parents and left for his house. This was said to have happened on 03.10.2014 at mid night. It is most artificial that the co-passenger did not know the deceased falling from the train. Assuming that he had left and made a call and found no response the natural conduct would have been to stay with the body or call for some assistance to remove the body, especially when he was a friend and it is most unlikely a person could have walked away by merely informing the parents of the deceased. I asked counsel if the alleged co-passenger had made phone call, the call detail from his phone could really reveal the truth of the contention. The counsel who took time for more than three weeks is before me to say that neither phone number nor the number of the deceased is available and that phone details are also therefore not capable being produced. I will reckon this to be unwillingness to produce the available information which if produced, will be adverse to the assertion made by AW-2 to support the applicant's case. I hold them the deceased was not a passenger of the train. The issues are answered accordingly.

Issue 2

2. Whether the death of the deceased was on account of an accidental fall from the train in question amounting to an untoward incident as defined under Section 123 (c) read with Section 124-A of the Railways Act, 1989?

The deceased was said to have fallen from the train while going from Faridabad to Okhla near Tughlakabad Railway Station. A fall from the train is admitted that he died by falling from the and hit by the pole as brought from the DRM'S report that he was hanging out of the train, throwing to winds all norms of safety, I will find no aspect of negligence could be factored as relevant in the scheme of low of strict liability under section 124 (A) of RCT, Act. The said provision contemplates an intended harm on self implication and not negligent Act. I hold this to be an untoward incident.”



6. Interestingly, it is the testimony of AW-2 Ashish Rawat that the deceased/Deepak had called him at about 8.00 p.m. asking him to go to Kalaji Temple with him. Accordingly, AW-2 reached the house of the deceased at about 8.30 p.m where they had some tea and thereafter, they left his house at 9/9.30 p.m. hired an auto to reach Bata Station and at about 10.00 p.m. reached the Railway Station. He deposed that his friend Deepak also purchased tickets for travelling up to Okhla Railway Station and kept the tickets in his pocket. He then testified that after some time, train arrived at the platform and due to heavy rush, he and his friend boarded different compartments and yet he had stated that his friend, due to a sudden jerk, lost his balance and fell out of the running train.

7. If that were the case, it remains unclear as to why AW-2 Ashish Rawat did not come immediately to render assistance to the deceased. Moreover, he did not even make an effort to inform any family members of the deceased. He was also unable to produce any railway ticket so as to show that he was also travelling along with the deceased. While on the other hand, it is brought out in the DRM's Report that the deceased was hanging out of the train, throwing all the norms of safety to the winds and it appears that he was struck by a pole and therefore, such act of the deceased amounted to gross negligence on his part, thereby exonerating the Railways from any liability in terms of Section 124-A of the Railways Act, 1989.

8. In view of the aforesaid, the findings recorded by the learned RCT *vide* impugned judgment dated 23.02.2017 cannot be said to



suffer from any patent illegality, perversity, or incorrect approach in law.

9. Accordingly, the present appeal is dismissed.

DHARMESH SHARMA, J.

MARCH 27, 2025
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