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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 474/2017

BABITA & ORS

.....Appellants

Through: Mr. S.K. Vashisth, Adv.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Jitesh Vikram Srivastava,
SPC with Mr. Prajesh Vikram
Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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03.04.2025

1. The appellants, who are the widow and two minor children at the time of filing the present appeal, have preferred the present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 [**the Act**] assailing the impugned judgment/award dated 07.07.2017 passed by the learned Presiding Officer, Railway Claims Tribunal, Principal Bench, Delhi [**RCT**] whereby their claim for statutory compensation along with interest on account of death of Sh. Alakh Dev Pandit in a railway accident was rejected.

2. Briefly stated, it was claimed by the appellants/claimants that the deceased Lt. Sh. Alakh Dev Pandit on 18/19.10.2016 was travelling to Delhi from Sahibabad by train with a valid MST³. It was claimed that he was standing near the door of the compartment and when the train was approaching the Sahibabad Railway Station in the intervening night, due to a sudden jerk and heavy push of passengers from inside the compartment, he accidentally fell down from the running train and sustained fatal injuries, consequently dying on the



spot.

3. Suffice it to state that the respondent/Railways contested the claim and referred to the DRM Report to the effect that the incident occurred due to the negligent act on the part of the deceased and therefore, they were not liable in any manner to compensate the claimants.

4. The learned RCT framed the following issues for consideration:

- “1) Whether the deceased was a bona fide passenger on 18.10.2016, board the train in question at the relevant time of the incident?
- 2) Whether the death of the deceased was on the 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?”

5. Suffice it to state that the learned RCT although found that the deceased was a *bona fide* passenger, however, based on the report of the DRM and upon finding that the deceased had probably attempted to alight from a running train at Sahibabad Railway Station which did not have a scheduled halt or in the alternative, the deceased was run over by a train while he was crossing the railway lines unauthorisedly held that the accident was not covered under the definition of ‘untoward incident’ as contained in Section 123(c) of the Railways Act, 1989 and accordingly, issues No.(1) and (2) were decided against the claimants.

6. Thus, the said decision is assailed in the present petition.

ANALYSIS & DECISION

7. Having heard the learned counsels for the parties and on perusal

³ Monthly Season Ticket



of the record, first thing first, it would be apposite to reproduce the findings recorded by the learned RCT which go as under: -

“Both these Issues, being inter-connected, are taken up together. The contention of the applicants is that the deceased was travelling from Delhi to Sahibabad in the intervening night of 18/19.10.2016 with a valid MST bearing No.44786555, issued from Sahibabad Railway Station. When the said train was approaching Sahibabad Railway Station, the deceased, who was standing near the door of the compartment, could not control himself due to sudden jerk and heavy push of passengers inside the compartment, as a result of which he fell down from the running train and unfortunately died. The Presenting Officer on behalf of respondent points out that whereas the possession and validity of the aforesaid MST are not disputed, however, the alleged fall from the train by which the deceased was travelling from Delhi to Sahibabad was a matter of dispute. In support of his argument, he has filed a copy of the Train Signal Register (*TSR in short*) of Sahibabad Railway Station of the date and shift in question, wherein it is recorded that an EMU Train No.64034, by which the deceased could have most likely travelled from Delhi to Sahibabad on completion of his duty hours at Delhi, arrived Sahibabad Railway Station at 22.02 hrs. and departed from there at 22.03 hrs. towards Ghaziabad, after having stoppage of one minute at Sahibabad. This train was received at Platform No.2. The first information memo was issued by the concerned Station Master/Sahibabad at 00.30 hrs. on 19.10.2016, giving information about the incident to GRP & RPF/Sahibabad, which is more than two hours later to the arrival of the aforesaid EMU train at Sahibabad Railway Station. Sahibabad Railway Station, being a busy station, it would be unlikely that a dead body found on the track and very close to Platform No.2 would not be noticed for more than two hours. Moreover, as many as 7 other Mail/ Express Trains had also ran through Sahibabad Railway Station between 22.06 hrs. and 22.55 hrs. Out of these 7 Mail/Express Trains, 2 trains, viz. Train No.13484 (passed through 22.17 hrs.) and Train No. 14218 (passed through 22.30 hrs.), ran through from Platform No.2 itself. It would be certain for the Loco Pilots of these two passing Mail/Express Trains to spot the dead body, if it was there and reported the matter to Station Master much earlier. Non-receipt of the information of this kind from the Loco Pilots is indicative of the fact that there was no such case of fall of any passenger at least from Train No.64034.

Respondent further stated that since in the present case, the head of the dead body of the deceased was completely severed and was lying between the tracks, whereas rest of the body was outside the track, this also is a pointer to the fact that it was a case of deceased



being run over while crossing the railway tracks unauthorisedly rather than the death being due to a fall from the train. He further mentioned that within a few minutes of the issuance of memo from the concerned Station Master/Sahibabad, the GRP personnel had arrived on the spot and conducted the inquest proceedings. The Inquest Report, Ex.A-2, clearly shows that the enquiry started at 00.35 hrs. and as per the document, the identification of the body could be done by a person from amongst the crowd, who was present and claimed himself to be the landlord of the building in which the deceased was staying. According to the respondent, it would be too much of co-incidence to expect that the landlord of the building would have an occasion to be present at Platform No.2 within minutes of the alleged fall of the deceased from the train by which he was travelling unless it was a case when two were travelling together and in such a case, the landlord would have been the prime witness of the applicant, which is not the case here.

Ld. Counsel for the applicants mentioned that at Sahibabad Railway Station, trains come from two different directions from Delhi and it is not known to anybody as to from which side the deceased was coming to Sahibabad Railway Station. Respondent clarified that irrespective of the directions, the TSR of the concerned station would record the movement particulars of the train across the station by which the deceased might have been travelling from Delhi to Sahibabad and hence, this is not relevant to the issue. In this regard, Ld. Counsel for the applicant said that even this is a conjecture on the part of the respondent to say that the deceased would have started immediately after close of his duty and would be on board of a train within 1/2 hrs. of the close of his duty hours. He said that it was also possible that the deceased might have stayed back for some reasons before boarding the train or would have got down at some intermediate station for some work and would have picked up a subsequent train to resume his journey towards Sahibabad. However, no evidence whatsoever was produced by the applicant's side to substantiate this theory.

After hearing the arguments of both parties, we are convinced that the time of reporting of the finding of the dead body and the manner in which the dead body was found, viz. head, being completely separated from the body and found within the tracks, whereas rest of the body was found outside the track, does not suggest it to be a case of fall from the train, otherwise other parts of the body would have also been subjected to a crush injury. The documents available on record lead clearly to believe that the deceased would have arrived as usual after close of his office hours by some other train and after alighting at Sahibabad Railway Station, was run over by some train while crossing the railway lines unauthorisedly. Thus, the case in hand does not get covered



under the definition of "untoward incident", as defined under Section 123(c) of the Railways Act, 1989. Issues No.1 & 2 are answered accordingly.

Applicants are the wife and children of the deceased. The applicants have filed copy of Voter Identity Card on record to prove the status and identify of Applicant No.1. Applicants have also filed a copy of School Identity Card and a copy of Birth Certificate on record to prove the status and identity of Applicant No.2 & Applicant No.3 respectively. Hence, they are held to be the dependants of the deceased. Issue No.3 is answered accordingly.

8. *Ex facie*, this Court has no hesitation in holding that the aforesaid reasons are absolutely flawed, belying common sense and logic.

9. At the cost of repetition, the deceased was held to be a *bona fide* passenger as he was found to be in possession of a valid MST. As regards whether the accident was covered under the definition of 'untoward incident' under Section 123(c) of the Railways Act, 1989, it is pertinent to mention that a report was made to the GRP & RPF, Sahibabad at 00.30 hrs. on 19.10.2016 that the dead body of the deceased was lying near platform no.2 on the railway line no.5. As per the *Panchayatnama* prepared while conducting inquest proceedings, it was a unanimous opinion that the deceased died on losing balance while alighting from the train "संतुलन बिगड़ने के कारण ट्रेन की चपेट में आकर चोट के कारण हुई".

10. As per the DRM report, it was concluded that the deceased had died while alighting from a running train. It is evident that there are several theories which have been put forth by the respondent/Railways as to the circumstances leading to the death of the deceased. While the Inquest Report suggested that the deceased died while losing balance at the time of alighting from the train and the DRM also proceeded on



the same lines, but the learned RCT formed an opinion that the deceased probably attempted to cross the railway lines unauthorisedly.

11. There was no oral account of any person examined on behalf of the respondent/Railways that the deceased had attempted to cross the railway line unauthorisedly. No recording from the CCTV was produced. There was no evidence led to prove that none of the trains that passed through the Sahibabad Railway Station had any scheduled halt at that place. The final opinion given by the learned RCT that the deceased would have arrived as usual after the end of duty hours by some other train and after alighting at Sahibabad Railway Station, he was run over by some other train while crossing the railway lines unauthorisedly, is a sheer case of gross conjecture and surmise.

12. It is pertinent to mention that *Post Mortem* Report indicates that the head of the body of the deceased was completely severed and was lying between the tracks whereas the rest of the body was lying outside the track and he had sustained massive injuries on his chest, thereby suggesting that he had probably fallen on his chest onto the ground and then was run over by the train.

13. It is difficult to precisely hold as to which way the deceased fell down, and to hold that the deceased died due to being hit by a train while crossing the railway line unauthorisedly appears to be without any justifiable foundation. It may be indicated that as per the Train Signal Register placed on the record, the deceased might have arrived on EMU Train No.64034 which indeed had a scheduled halt at the Sahibabad Railway Station and had departed at 22.03 hrs on the relevant date. If the plea of the respondent/Railways is accepted that that it was a busy station and somebody could have seen the dead body found on the track, it is also to be seen that somebody could



have seen that the deceased was attempting to cross the railway lines unauthorisedly

14. Evidently, several trains passed through the station during that night and it cannot be held by way of a rule of thumb that the loco pilots of the Mail/Express Trains should have been able to spot a dead body on the track. It is not the case of the respondent/Railways either that there was sufficient light at the spot where the dead body was lying.

15. In view of the fact that contradictory stands have been taken by the respondent/Railways and the accident occurred at the Sahibabad Railway Station, the possibility that the deceased died while alighting from a train, losing balance and falling down, thereby becoming unconscious and thereafter, being run over by some other train, cannot be ruled out either.

16. In view of the foregoing discussion, it is difficult to discern that in such a situation the deceased was reckless or inflicted injuries upon himself. Therefore, unhesitatingly, the present case clearly falls under the definition of 'untoward incident' as provided under Section 123(c) of the Railways Act, 1989.

17. Accordingly, the present appeal is allowed and the impugned order dated 07.07.2017 is hereby set aside. The appellants/claimants are allowed statutory compensation of ₹8 lacs with interest at the rate of 9% per annum from the date of filing of the claim petition till realization. The entire amount of compensation be paid to the widow of the deceased i.e. appellant no.1/Smt. Babita.

DHARMESH SHARMA, J.

APRIL 03, 2025/Ch