

Court No. - 8

Case :- FIRST APPEAL FROM ORDER No. - 85 of 2025

Appellant :- Uma Shankar Srivastava And Another

Respondent :- Union Of India Thru. General Manager North Central Railway, Prayagraj

Counsel for Appellant :- Arun Chand Pandey, Anil Kumar Mishra

Counsel for Respondent :- Mahendra Kumar Misra

Hon'ble Jaspreet Singh, J.

Heard Sri Anil Kumar Mishra learned counsel for the appellants and Sri Mahendra Kumar Misra learned counsel for the respondent.

By means of the instant appeal preferred under Section 23 of the Railways Claims Tribunal Act 1989, the appellants who are the claimants have assailed the award dated 06.01.2025 whereby the Railway Claims Tribunal, Lucknow has rejected the claim petition preferred by the appellants.

Submission of learned counsel for the appellants is that the Tribunal has erred in appreciating the controversy as well as the evidence available on record. It was a clear case where the evidence clearly indicated that the deceased was traveling with a genuine ticket and was a bona fide passenger of the train. There was no reason that the deceased to have alighted from the train and dash himself against some other train, this is the reasoning upon which the claim petition has been rejected.

It is also pointed out that there was an inquiry report made by the D.R.M which also corroborates the facts as indicated by the claimants and merely on the basis of the statement given by a loco pilot Avinish Tiwari, whose cross examination was not appropriately considered and the claim petition has been dismissed which is against the principles as laid down by the Apex Court in **Union of India v. Prabhakaran Vijaya Kumar; (2008) 9 SCC 527** and **Union of India v Rina Devi; (2019) 3 SCC 572**.

Sri Mahendra Kumar Misra learned counsel for the respondent has urged that there was a clear statement of loco pilot who was eye witness who stated that the deceased had dashed against his train and in such circumstances, it being a case of run over, the deceased could not be treated to be a bona fide passenger nor it was the case of accidental falling, hence, in the aforesaid circumstances inference drawn and the findings recorded by the Tribunal are just and appropriate which does not require interference, accordingly, the appeal deserves to be dismissed.

The Court has considered the rival submissions and also perused the material on record.

Briefly the fact giving rise to the instant appeal are being frustrated. **One Ghyanesh Srivastava**, son of the appellants had gone to the Aligarh Muslim University for an examination and he was returning from New Delhi to Kanpur Central Railway Station by Prayagraj Express for which he had purchased a second class train journey ticket bearing no.D15101841. It was further stated that on 24.05.2017 when the said train was near Panki Railway Station, at that time the deceased is said to have accidentally fallen from the train and received grievous injuries and died on the spot. It is in this context that the claim petition came to be filed.

This was contested by the Railways by filing written statement and a specific plea was taken by the defendant that it was not a case of accidental fall rather the deceased was run over by train no.12582 at the speed of 1031/2006 kms near Panki Railway station and in this context the FIR bearing no.337 of 2017 was lodged under Section 302 IPC in P.S-Sachendi. It is on the strength of the aforesaid that the claim was contested that it was not a case of accidental fall nor the deceased was a bona fide passenger.

The Tribunal had framed issue in this regard and after considering the evidence, it relied upon the statement of the loco pilot namely Avnish Tiwari and recorded a finding that if the deceased was travelling vide Prayagraj Express then how did he dash against the train no.12582 and died on spot, accordingly, it found that the statement of loco pilot was reliable and since there was discrepancies in the statement of the appellants, consequently, the claim petition was dismissed by means of award dated 06.01.2025.

In the aforesaid backdrop, at the outset it will be relevant to notice the scope of Section 123-A of the Railways Act, 1989 which has been considered by the Apex Court in **Union of India v. Prabhakaran Vijaya Kumar (supra)**. The relevant portion reads as under:-

"14. In our opinion, if we adopt a restrictive meaning to the expression "accidental falling of a passenger from a train carrying passengers" in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression "accidental falling of a passenger from a train carrying passengers" includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down

during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

15. Section 2(29) of the Railways Act defines "passenger" to mean a person travelling with a valid pass or ticket. Section 123(c) of the Railways Act defines "untoward incident" to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act with which we are concerned states:

"124-A. 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 for 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 purposes 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."

(emphasis supplied)

16. The accident in which Smt Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault.

The relevant portion of the judgment passed in **Union of India v Rina Devi (supra)** reads as under:-

"21. Coming to the proviso to Section 124-A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression "self-inflicted injury" in the proviso. In some decisions, it has been held that injury or death because of negligence of the victim was on a par with self-inflicted injury. We may refer to the decisions of the High Courts of Kerala in *Joseph P.T. [Joseph P.T. v. Union of India, 2013 SCC OnLine Ker 24151 : AIR 2014 Ker 12]* , Bombay in *Pushpa [Pushpa v. Union of India, 2017 SCC OnLine Bom 8117 : (2017) 3 ACC 799]* and Delhi in *Shyam Narayan [Shyam Narayan v. Union of India, 2017 SCC OnLine Del 8734 : 2018 ACJ 702]* on this point.

22. In *Joseph P.T. [Joseph P.T. v. Union of India, 2013 SCC OnLine Ker 24151 : AIR 2014 Ker 12]* , the victim received injuries in the course of entering a train which started moving. Question was whether his claim that he had suffered injuries in an "untoward incident" as defined under Section 123(c) could be upheld or whether he was covered by proviso to Section 124-A clause (b). The High Court held that while in the case of suicide or attempt to commit suicide, intentional act is essential. Since the concept of "self-inflicted injury" is distinct from an attempted suicide, such intention is not required and even without such intention if a person acts negligently, injuries suffered in such an accident will amount to "self-inflicted injury". Relevant observations are : (SCC OnLine Ker para 24)

"24. Therefore, the two limbs of the proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term "self-inflicted injury" not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term "self-inflicted injury" used in the statute can be deduced as one which a person suffers on account of one's own action, which is something more than a rash or negligent act. But it shall not be an intentional act of attempted suicide. While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless of his age, circumstances, etc. act to his detriment. Facts of this case show that the appellant attempted to board a moving train from the offside unmindful of his age and fully aware of the positional disadvantage and dangers of boarding a train from a level lower than the footboard of the train. It is common knowledge that the footboard and handrails at the doors of the compartment are designed to suit the convenience of the passengers for boarding from and alighting to the platform. And at the same time, when a person is trying to board the train from the non-platform side, he will be standing on the heap of rubbles kept beneath the track and that too at a lower level. Furthermore, he will have to stretch himself to catch the handrails and struggle to climb up through the footboard hanging beneath the bogie. The probability of danger is increased in arithmetic progression when the train is moving. Visualising all these things in mind, it can only be held that the act of the appellant was the height of carelessness, imprudence and foolhardiness. It is indisputable that the purpose of Section 124-A of the Act is to provide a speedy remedy to an injured passenger or to the dependants of a deceased passenger involved in an untoward incident. Section 124-A of the Act provides for compensation to

a passenger or his dependants who suffers injury or death, as the case may be, in an untoward incident even where the untoward incident is not the consequence of any wrongful act, neglect or default on the part of the Railway Administration. To this extent, it can be said to be a no-fault liability. Even though the provisions relating to payment of compensation in the Act can be said to be a piece of beneficial legislation, it cannot be stretched too much to reward a person who acts callously, unwisely or imprudently. There is no provision of law brought to our notice permitting the passengers to entrain from the non-platform side of the railway track. However, the counsel for the respondent did not show any provision of law prohibiting the same. The question whether an act by which a passenger sustains injury while boarding a train through the offside, is a self-inflicted injury or not depends on the facts of each case. Merely because a person suffered injury in the process of getting into the train through the offside, it may not be sufficient to term it as a self-inflicted injury, unless the facts and circumstances show that his act was totally imprudent, irrational, callous and unmindful of the consequences. All the facts and circumstances established in this case would show that the act of the appellant was with full knowledge of the imminent possibility of endangering his life or limb and, therefore, it squarely comes within the term "self-inflicted injury" defined in Section 124-A proviso (b) of the Act."

(emphasis supplied)

23. In Pushpa [Pushpa v. Union of India, 2017 SCC OnLine Bom 8117 : (2017) 3 ACC 799] a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of "self-inflicted injury". The relevant observations are : (SCC OnLine Bom para 14)

"14. Such an attempt by a hawker has been viewed by the trial court as something amounting to criminal negligence on his part and also an effort to inflict injuries to himself. The trial court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed."

24. In Shyam Narayan [Shyam Narayan v. Union of India, 2017 SCC OnLine Del 8734 : 2018 ACJ 702] , same view was taken which is as follows : (SCC OnLine Del para 7)

"7. I cannot agree with the arguments urged on behalf of the appellant applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self-inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity."

25. We are unable to uphold the above view as the concept of "self-inflicted injury" would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on "no fault theory". We may in this connection refer to the judgment of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar* [*United India Insurance Co. Ltd. v. Sunil Kumar*, (2019) 12 SCC 398 : 2017 SCC OnLine SC 1443 : (2017) 13 Scale 652] laying down that plea of negligence of the victim cannot be allowed in claim based on "no fault theory" under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an "untoward incident" entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor."

Applying the aforesaid principles to the fact of the instant case, it would indicate that the deceased was travelling in Prayagraj Express from New Delhi to Kanpur Central Railway Station. There is no dispute of the fact that the accident occurred wherein the deceased was found dead. It is the case of the appellants that he died as a bonafide passenger whereas the case of the respondent was that he had dashed against train no.12582.

The record would indicate that admittedly when the Panchnama was done, the railway ticket was recovered from the body of the deceased. It is not the case of the respondent railways that the said ticket was either planted or it was fake. Rather any inquiry made by the D.R.M, also expressed his opinion that the deceased was bona fide passenger.

The question that first needs to be answered by the respondent that in case if the ticket was genuine which was issued from New Delhi and was found on the body of the deceased near Panki railway station and if the version of the respondent was to be believed it would be quite strange and erroneous to reconcile the fact that the deceased had boarded the Prayagraj Express at New Delhi and the next morning the train reached near Panki Railway Station he alighted from the said train and then he had waited for another train to dash against it. This appears to be more unpalusible. At this stage, it will also be relevant to notice that the claim petition is not to be decided on the strict principles of procedure and evidence, where the incident is to be proved beyond reasonable doubt rather it is preponderance of probabilities test which is to be applied.

Another aspect of the matter is that the statement of the loco pilot also appears to be doubtful where he stated that he was running his train at the speed of 100 kms. Apparently, where the train was approaching a railway station which admittedly was near Panki, it is most doubtful that any train would run at the

speed of 100 kms and if so then there must have been some reason but no such averment or evidence was placed by the Railways.

It will also be relevant to notice that the alleged FIR which is said to be lodged under Section 302 IPC, if seen would also corroborate atleast one fact that it was stated in the said FIR by the father of the deceased that his son had gone for examination at the Aligarh Muslim University and boarded the train from New Delhi to Kanpur Central Railway Station and it was the suspicion that his son was accosted, looted and thereafter thrown out of the train. This is atleast corroborated from the fact that the deceased had to go to Aligarh Muslim University and was traveling from the train and the mere fact that it was lodged under Section 302 pales into insignificance as final report was placed indicating that the presence of the deceased was found near site of the accident.

Even in his cross examination, Sri Avnish Tiwari merely stated that he saw a person who dashed against his train but had that been so then it was his duty to stop the train there but he did not. This statement runs contrary from the material which was collected during investigation made under the orders of D.R.M and is part of D.R.M inquiry report. It also could not be explained that once the ticket was found with the body of the deceased how he could not be treated as a bona fide passenger, accordingly, this Court having taken note of the principles as laid down by the Apex Court in **Union of India v. Prabhakaran Vijaya Kumar** and **Union of India v Rina Devi (supra)** is of the clear view that the claims tribunal has exceeded his jurisdiction on hyper technical view without considering the preponderance of probabilities has rejected the claim petition which is apparently erroneous, accordingly, the award dated 06.01.2025 is bad in the eyes of law and is accordingly, set aside.

For the reasons that the deceased had the ticket and was traveling on the train, accordingly, he is held to be bona fide passenger between the place accident occurred. The claimants are entitled to the compensation as prayed along with interest @ 7.5.% p.a from the date of the application from the date actual payment.

Accordingly, the appeal is **allowed**.

The record be sent to Railway Claims Tribunal.

Order Date :- 9.7.2025/Harshita