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

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 # CNR No.DLHC011552332018

+ FAO 341/2018

BAIJANTI DEVI & ORS .....Appellants
Through: Mr.Ritik Singh, Advocate

versus

UNION OF INDIA .....Respondent
Through: Mr. Ramjee Pandey, SPC for UOI

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment dated 22.03.2018 passed by the Railway Claims Tribunal, Principal Bench, *Delhi* (hereinafter referred to as the "Tribunal") in Claim Application No. OA/II(u)/170/2017,whereby the claim application filed by the appellants seeking compensation on account of the death of one *Shri Pratap Singh Gurjar* (hereinafter referred to as the "deceased") was dismissed.

2. The case set up by the appellants before the Tribunal was that the deceased was returning to his village in *Bayana*, *Rajasthan*, along

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with his three companions, namely, *Ajay Pal*, *Suraj* and *Bhagchand*, to celebrate *Holi*. On 11.03.2017, *Ajay Pal* purchased a combined journey ticket bearing No. A-18471055 for all four persons from *Hazrat Nizamuddin* to *Bayana* for a sum of Rs.360/-. The four of them boarded the general compartment of *Dehradun* Express and it was pleaded that, owing to heavy rush inside the compartment, the deceased got separated from his companions and, while the train was passing through *Faridabad* New Town Railway Station, he accidentally fell from the moving train on 12.03.2017 and sustained fatal injuries. The other three companions came to know that the deceased was missing only after reaching *Bayana*.

3. Vide the impugned judgment, the Tribunal held that the appellants had failed to establish that the deceased was a *bona fide* passenger. It principally relied upon the non-recovery of a ticket during the inquest proceedings and the discrepancy in the evidence regarding the person who had handed over the ticket to the police. On the question of "untoward incident", the Tribunal disbelieved the account of *Ajay Pal* on the ground that his statement before the police and his deposition before the Tribunal differed regarding the compartment in which the deceased was travelling. It also drew an adverse inference from the time at which the body was reported, its location as depicted in the site plan and the time at which *Dehradun* Express was scheduled to pass through *Faridabad* New Town

4. Learned counsel for the appellants contended that the combined journey ticket, bearing the date and particulars of the journey, had been produced on record and that the statement of *Ajay Pal*, who had

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purchased the ticket for the group, was sufficient to establish the deceased's status as a *bona fide* passenger. It was further submitted that the Tribunal had attached undue significance to the fact that the ticket was not recovered from the person of the deceased, without appreciating the explanation furnished by *Pappu Singh* regarding its subsequent production. On the question of "untoward incident", it was urged that the Tribunal had drawn conclusions from the location of the body and the time of its discovery without any technical or other evidence establishing that the deceased could not have fallen from the train.

5. *Per contra*, learned counsel for the respondent submitted that the ticket was not recovered during the personal search of the deceased and was produced only after the alleged incident. It was further contended that the testimony of *Ajay Pal* was not reliable, particularly in view of the difference between his statement recorded by the police on 15.03.2017 and his deposition before the Tribunal on 04.12.2017.

6. This Court has heard learned counsel for the parties and perused the record.

7. The first question which arises for consideration is whether the deceased was travelling as a *bona fide* passenger on *Dehradun* Express at the relevant time. The Tribunal rejected the claim substantially on the ground that no journey ticket was recovered from the person of the deceased during the inquest proceedings.

8. The ticket bearing No. A-18471055 is on record. It is a combined journey ticket from *Hazrat Nizamuddin* to *Bayana*, dated 11.03.2017, for a fare of Rs.360/-. The time of its issue, as reflected on

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the ticket, is 21:19 hours. The case of the appellants throughout has been that *Ajay Pal*/AW-2 purchased this ticket for the four persons travelling together and he also,in his affidavit filed before the Tribunal, reiterated the same.The record further shows that, in his statement recorded by the GRP on 12.03.2017, *Pappu Singh* stated that the journey ticket would be produced subsequently and the ticket was thereafter shown to have been produced before the GRP on 15.03.2017 by *Ajay Pal* in the presence of *Pappu Singh* and *Mukh Ram*. Thus, the fact that the ticket was not available with the police on the date of the inquest proceedings is not inconsistent with Pappu Singh's contemporaneous statement that it would be produced later.

9. In "*Union of India v. Rina Devi*"[1], the Supreme Court held that the initial burden of establishing that the deceased was a *bona fide* passenger rests upon the claimant. Such burden may be discharged by placing on record an affidavit setting out the relevant facts, whereafter the burden shifts to the Railways to rebut the claim on the basis of the evidence and attending circumstances. The Court also clarified that mere absence of a ticket from the person of the deceased does notnegative the claim of *bona fide* travel. This position has been reiterated in "*Lata v. Union of India*"[2].

Applying the aforesaid principles to the evidence in the present case, the appellants have discharged the initial burden. The combined ticket was produced on record, *Ajay Pal*/AW-2 deposed that he had purchased it for the four members of the groupand the statement of

[1](2019) 3 SCC 572
[2]026 SCC OnLine SC 1350

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Pappu Singh recorded on the very date of the incident supports the explanation that the ticket was to be produced subsequently. The discrepancies regarding its physical delivery to the police do not render the ticket itself doubtful or establish that it was unrelated to the journey claimed. The Tribunal, therefore, erred in rejecting the *bona fide* passenger status of the deceased.

10. The next question is whether the death of the deceased occurred as a consequence of an accidental fall from a train carrying passengers, thereby constituting an "untoward incident" within the meaning of Section 123(c)(2) of the Railways Act, 1989 (hereinafter referredto as the "Act").

11. The Tribunal drew an adverse inference from the conduct of the three companions after reaching *Bayana*. It questioned why they did not immediately search for the deceased, why they went to the residence of *Pappu Singh* and why *Ajay Pal*'s presence at *Faridabad* on 12.03.2017 was not reflected in the police record. These circumstances do not establish that the deceased had not been travelling in the train or that he had not fallen from it. The record shows that *Pappu Singh* received information of the death from the GRP in the morning and that his statement was recorded on 12.03.2017. The absence of *Ajay Pal*'s name from the documents relating to identification and receipt of the body cannot be treated as proof that he had not travelled back or that the account of the journey was fabricated.

12. The Tribunal has further relied upon the scheduled timing of *Dehradun* Express. The ticket was issued at 21:19 hours on

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11.03.2017. AW-2 stated that the train departed from *Hazrat Nizamuddin* shortly after they boarded it, at around 21:30 hours. The Tribunal observed that the scheduled departure of the train was 21:50 hours and proceeded on the basis that it would have passed *Faridabad* Railway Station at around 22:34 hours and *Faridabad* New Town at around 22:40 hours. On that basis, it reasoned that if the deceased had fallen near *Faridabad* New Town, his body ought to have been noticed much earlier than 04:30 hours, when the information was recorded.The said reasoning proceeds on an assumption that the scheduled passage of the train necessarily represents its actual movement on the date in question and that the body, if lying at the place shown in the site plan, would necessarily have been noticed by railway staff or by the crew of every train passing thereafter. The record does not contain material establishing the actual time at which *Dehradun* Express passed *Faridabad* New Town on that night. Nor does the time at which the body was reported establish the time at which the deceased sustained the injuries or fell from the train. The Station Master's memo and the GRP record establish that information regarding the body was received at about 04:30 hours on 12.03.2017. The interval between the scheduled passage of the train and the reporting of the body, therefore, could not have been treated as proof that the alleged fall had not taken place.

13. In "*Guruvachan Singh v. Union of India*"[3], this Court considered a similar issue where the Tribunal had doubted an accidental fall on the ground that the body was found between railway

[3]2026 SCC OnLine Del 2351

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lines. It was held that the mere place where the body is found cannot, by itself, lead to the conclusion that the deceased was not travelling by the train or that the occurrence did not constitute an untoward incident. The Court noticed that a person who falls from a moving train may retain sufficient strength to move away from the track before succumbing to the injuries. The same approach was followed in "*Sukhmander Singh v. Union of India*"[4], wherein it was held that the location of the body and its position, in the absence of other cogent material, cannot conclusively determine the precise manner in which the accident occurred. The site plan in the present case, therefore, cannot be read in isolation or treated as conclusive proof against the appellants.

14. The statutory liability under Section 124-A of the Act is one of no-fault liability. In "*Union of India v. Prabhakaran Vijaya Kumar*"[5], the Supreme Court held that the provision is intended to provide compensation for untoward incidents irrespective of any wrongful act, neglect or default on the part of the Railways. The same principle has been reiterated in "*Rina Devi*"*(supra)*. Thus, once the accidental fall of a bona fide passenger is established, the question whether the deceased was standing near the gate or was otherwise negligent in his conduct does not, by itself, defeat the claim. None of the statutory exceptions under the proviso to Section 124-A has been established in the present case.

[4]2026 SCC OnLine Del 7298
[5](2008) 9 SCC 527

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15. In view of the above, the impugned judgment is set aside and the matter is remanded back to the Tribunal, which is requested to assess the amount of compensation payable to the appellant in accordance with law and direct the authorities concerned to disburse the same within two months from the receipt of a copy of this order. For this purpose, the matter be listed before the Tribunal at the first instance on 17.12.2026.

16. The appeal is allowed and disposed of in the above terms.

17. A copy of this judgment be communicated to the learned Tribunal.

(MANOJ KUMAR OHRI)
JUDGE

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