

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

FAO 150/2022

Reserved on : 27.09.2022

Pronounced on: 07.10.2022

IN THE MATTER OF:

SH. PRITHVI SINGH AND ANR

..... Appellants

Through:

Mr. Rajan Sood, Ms. Ashima
Sood and Ms. Megha Sood,
Advocates

Versus

UNION OF INDIA

..... Respondent

Through:

Appearance not given

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The appellants have preferred the present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against order dated 18.01.2022 passed by Railway Claims Tribunal, Principal Bench, Delhi in Claim Application No. OA/II/u/DLI/5/2021, whereby the claim petition preferred by the appellant/claimants was dismissed.

2. Facts of the case, as summarised in the impugned order, are extracted below:

“Shri Prithvi Singh and Smt Bala Kanwar, being parents of Bhupender Singh, have filed the present claim application praying that for the death of their son in an untoward incident on 14th April 2019 between KM 34/37 Garhi Harsaru and Gurgaon railway stations, compensation be awarded. The applicants have set out a

case in the claim application that Bhupender Singh, their son (hereinafter called 'deceased') on 14th April 2019 purchased a valid journey ticket bearing number UAC-32019836 for undertaking journey from Patel Nagar to Gurgaon railway station. It is averred that the deceased on 14th April 2019 undertook journey in train number 54412 Meerut-Rewari passenger and when the train reached between Gurgaon and Garhi Harsaru Junction railway stations, the deceased, who was standing on the offside gate of the train compartment, fell down from the train and died at the spot of accident and the incident was witnessed by the Loco Pilot of train number 22985 who was manning the train going on the adjacent railway line. It is stated that Loco Pilot of train number 22985 gave a statement to GRP where he confirmed that one person travelling in train number 54412 fell down from that train and his dead body was found between Up and Dn lines. The applicants have placed implicit reliance upon the statement of Loco Pilot Tarun Kumar Sharma of train number 22985, Ex. A-20. The said statement of Loco Pilot Ex. A-20 is at page 48 of the original claim application.”

3. Mr. Rajan Sood, learned counsel appearing for the appellants, contended that in the present case, the deceased had lost his balance during the course of journey and fell down on the railway track, where he was hit by an incoming train. It was further contended that the Tribunal failed to appreciate that the deceased was a *bonafide* passenger in the train at the time of the incident and suffered an *untoward incident* as defined under Section 123(c) of the Railways Act, 1989.

4. Learned counsel appearing for the respondent, on the other hand, while supporting the impugned order submitted that the deceased was not a *bonafide* passenger, inasmuch as the ticket in question was purchased at Patel Nagar Railway Station for undertaking journey from Patel Nagar to Gurgaon Railway Station, but instead of de-boarding the train

at destination station, the deceased continued his journey upto *Garhi Harsaru* Railway Station where the accident took place.

Learned counsel placed reliance on the DRM's Report as well as the testimony of one Loco Pilot *Tarun Kumar Sharma* of train No.22985 which is stated to have hit the deceased, to submit that the deceased, after de-boarding the train at *Garhi Harsaru* Railway Station, dashed with the said (incoming) train while crossing the railway track.

5. I have heard learned counsels for the parties and also gone through the entire records of the Railway Claims Tribunal.

6. From a reading of the case records, two questions of law are discernible in the present case – (i) whether the deceased was a '*bonafide* passenger' in the train in question at the time of incident, and (ii) whether the accident constituted an 'untoward incident' as defined under Section 123(c) of the Railways Act, 1989.

7. As per the impugned judgment, a submission was made before the Tribunal on behalf of the claimants that the ticket price from *Patel Nagar* Railway Station to *Gurgaon* and *Garhi Harsaru* Railway Station was the same. In the alternative, it was submitted that even if the deceased travelled beyond the destination i.e. *Gurgaon* Railway Station, he could have regularized his journey by paying the fare difference.

8. The respondent, on the other hand, averred that the deceased had de-boarded train No.54412 at *Garhi Harsaru* Railway Station and while walking on railway track, he met with an accident with train No.22985. On said basis, the respondent argued that the deceased had seized to be a *bonafide* passenger.

9. Indisputably, the deceased had purchased a valid journey ticket bearing No. *UAC-32019836* at *Patel Nagar* Railway Station. He had

boarded the train at *Patel Nagar* Railway Station and the journey was to come to an end at *Gurgaon* Railway Station. However, the deceased did not de-board at the destination station and continued to travel beyond *Gurgaon* Railway Station.

10. In the proceedings before the Tribunal, the respondent neither refuted nor produced any document to challenge the claimants' submission that the ticket price from *Patel Nagar* Railway Station to *Gurgaon* or *Garhi Harsaru* Railway Station was the same. Further, no evidence was led by the respondent to support the claim that the deceased had in fact deboarded train No.54412 before he met with the accident. The respondent's version of events was sheer conjecture, which was accepted by the Tribunal without any cogent reason.

11. Finding merit in the submission made by the claimants before the Tribunal, I deem it expedient to take note of the decision rendered by the Bombay High Court in Vaishali wd/o Nitesh Bhalerao v. Union of India reported as **2010 SCC OnLine Bom 921**, wherein it has been held that merely because the passenger travels beyond authorized distance, he cannot be said to have ceased to be *bonafide* passenger.

12. Besides, it is now a well-settled position of law that in railways accident claims, the initial burden of proof on the claimants may be discharged by their filing of evidence by way of affidavit. Taking the view, the Supreme Court in Union of India v. Rina Devi reported as **(2019) 3 SCC 572** held:-

“29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger.

Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

(emphasis added)

13. In the present case, it is apparent that the claimants had filed their evidence by way of affidavit, wherein it was stated that the deceased (their son), had boarded a train from *Patel Nagar* Railway Station. When the said train reached between *Gurgaon* and *Garhi Harsaru* Railway Station, the deceased, who was standing on the off-side gate of the train compartment, fell down from the train and died. The incident was witnessed by a Loco Pilot manning another train on adjacent platform, who confirmed in his statement to the GRP that the deceased was travelling in train No.54412 and fell down from it.

14. In view of the aforesaid, I am of the opinion that the Tribunal erroneously held that the deceased was not a *bonafide* passenger at the time of incident.

15. The second issue arising herein is whether or not the accident in question was ‘untoward incident’ in terms of Section 123(c) of the Railways Act, 1989. The case of the claimants is that the deceased had ‘fallen’ from passenger train No.54412. Per contra, the stand taken by the respondent before the Tribunal was that there was no negligence on its part and the deceased had jumped from wrong side of the platform; as such, it was protected under Section 124A of the Railways Act, 1989 and not liable to pay compensation.

16. Before proceeding further, I may first take note of Section 124A of the Railways Act, 1989 which reads as under:-

“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.”*

17. To the extent that the respondent has claimed that there was no negligence on its part, I am guided by the decision of the Supreme Court in Union of India v. Prabhakaran Vijaya Kumar and Others reported as

(2008) 9 SCC 527, where it has categorically been held that Section 124A of the Railways Act, 1989 incorporates the principle of strict liability and in such cases, a contention that there was no fault on part of the Railways or that there was contributory negligence, is not acceptable.

18. Notably, the respondent in the present case has only baldly averred that it is protected under Section 124A of the Railways Act, 1989. The respondent's case that the deceased had not 'fallen' from the train in question is essentially based on the statements given by *Tarun Kumar Sharma*, driver/Loco Pilot of train No.22985. However, these statements are an improvement over the statement given by *Tarun Kumar Sharma* to GRP Station, Gurgaon, wherein it is recorded that the deceased lost his balance while alighting from the passenger train No.54412 and collided with engine of train driven by him. Moreover, when *Tarun Kumar Sharma* had appeared as a witness before the Tribunal, he had admitted to the contents of the earlier statement before GRP. Suffice it to say, the testimony of *Tarun Kumar Sharma* does not inspire confidence.

In addition, although learned counsel for the respondent has submitted that the accident occurred at *Garhi Harsaru* Railway Station, as per the 'site plan' prepared by officials of the respondent on 14.04.2019 itself, the body of the deceased was found between two railway tracks. No Railway Station is shown in the site plan. It rather indicates that one route went to *Gurgaon* Railway Station, the other went to *Garhi Harsaru* Railway Station.

19. As such, the respondent has failed to make out that it is protected under Section 124A of the Railways Act, 1989. Having so concluded, I may also make reference to Gyasu and another v. Divisional Railway Manager and another, **FAO 5160/2008**, where a Single-Judge Bench of

the Punjab and Haryana Court was faced with an issue akin to the one involved in the present case. The respondent/Railways had denied liability to compensate by arguing that the deceased had deboarded on wrong side of the platform, walked to cross Down line on which another train passed and as such, her act amount to criminal negligence. The findings of the Tribunal on the issue of accident not being '*untoward incident*' was set aside and the claim application was allowed by observing as under:-

“The deceased could de-board on alleged wrong side of the platform only if there was an excess to de-board the train from the other side. Even if the deceased was negligent in de- boarding the train from wrong side or got entangled in railway accident while crossing the track, it is difficult to accept contention of the respondents that she died or suffered injuries due to her own criminal act.”

20. At this stage, it would be expedient to advert to the decision in Rina Devi (Supra) again, where it has been opined that death caused while de-boarding a train would be an '*untoward incident*' and compensation for the same cannot be denied merely on the plea of negligence of the injured/deceased as a contributing factor. Relevant excerpt from the decision is reproduced hereunder:-

“23. In Pushpa 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, 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 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.”

(emphasis added)

21. Keeping in view the facts and circumstance of the case as well as the foregoing discussion, I decide the second issue in favor of the claimants. The Tribunal has erred in passing the impugned order, and accordingly, the appeal is allowed.

22. The matter is remanded back to the Tribunal for determining the amount of compensation to be awarded. The same be listed before the concerned Railway Claims Tribunal on 14.10.2022.

23. A copy of this judgment be communicated to the concerned Railway Claims Tribunal, Principal Bench, Delhi for information.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 07, 2022

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