



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

% Judgment reserved on: 04.09.2024
Judgment delivered on: 07.10.2024

+ FAO 38/2015

MUNIJA & ORS

.....Appellant

versus

UNION OF INDIA

.....Respondent

Memo of Appearance

For the Petitioner: Mr. S K Vashishth, Advocate

For the Respondent: Ms. Arti Bansal with Mr. Kamal Digpaul, Mr. Puspesh Digpaul and Ms. Akanksha Kumari, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Appellants are widow, sons and daughters of Liaqat Ali.
2. They filed claim under Section 16 of Railway Claims Tribunal Act, 1987 (*hereinafter referred to as 'said Act'*) seeking compensation of Rupees Eight Lacs contending that while undertaking train journey on 19.07.2012, he met with an "untoward incident" and succumbed to his such injuries.
3. Such claim petition has been dismissed by learned Railway Claims Tribunal, Principal Bench, Delhi and the above-said order has been impugned by filing present appeal under Section 23 of said Act.
4. Let us first take note of the averments made in the claim petition.



5. Such averments can be summarized as under: -
 - (i) On 19.07.2012, Mr. Liaqat Ali was travelling from Ghaziabad to Shahdara, Delhi in EMU Train.
 - (ii) He had purchased a valid ticket for undertaking said journey and kept such ticket with him.
 - (iii) He boarded said passenger train from Ghaziabad and on account of heavy rush inside the train compartment, he could barely find a place to stand near the gate of the train.
 - (iv) When the train was about to reach Shahdara Railway Station, many passengers came near the gate to de-board the train and on account of jerk and thrust from inside, Liaqat Ali fell down and received injuries which proved to be fatal.
6. According to claimants, one Mr. Mandeep had made a statement to the concerned investigating officer that the above-said passenger had fallen from such running train at Platform No. 4.
7. Above-said claim petition was resisted by Union of India and in its written statement, *inter alia*, it was stated that applicants be put to strict proof to show that the deceased was a *bonafide* passenger. It also supplemented that the matter was under inquiry and DRM report was awaited and leave was sought to file additional written statement at a later stage.
8. Fact remains that despite receiving such DRM report subsequently, no additional written statement was ever filed.
9. Naturally, the prime issue before the learned Tribunal was whether the deceased was a *bonafide* passenger of the alleged EMU train or not and whether his death was on account of 'untoward incident' as defined under Section 123(c) r/w Section 124-A of



Railways Act, 1989.

10. The widow of the deceased Liaqat Ali entered into witness box and proved various documents. It is important to note that some of these documents were of unimpeachable character as these were prepared, then and there, at the spot itself. It may also be noted that her cross examination is totally insignificant and the essential defence and stance taken by Union of India, as per DRM Report, was not even put.

11. No witness was examined by Union of India.

12. It is not in dispute that when the personal search of the deceased was carried out, a journey ticket was recovered from such deceased and such journey ticket was for undertaking rail-trip same day from Ghaziabad to Shahdara, Delhi. As per the details on the ticket, it was bought at 14:52 hours that day itself.

13. The claim has been rejected by learned Tribunal on the ground that deceased was never travelling in the passenger train in question i.e. EMU and had rather come from one Empty Coach Rack (ECR) bearing No. 64451 and since he was not travelling in a passenger train, he could not be considered a *bonafide* passenger and there was nothing to indicate that his death was due to accidental fall. It observed that said ECR did not have any stop at Delhi Shahdara Railway Station and, therefore, he jumped from the moving train which resulted in his death. Strong reliance has been placed upon DRM report which also seems to conclude that said passenger had jumped out of the moving ECR at Shahdara Railway Station.

14. However, such finding does not seem to be in consonance with the evidence led on record.



15. Admittedly, deceased was not accompanied by any family member or by his friend at the relevant time. Naturally, the claimants never exaggerated anything and are, admittedly, not witness to any such incident. However, recovery of valid ticket purchased same day at 14:52 hours from Ghaziabad cannot be disregarded and overlooked in a casual manner.

16. Even Union of India does not dispute that such railway ticket had been recovered from the *jamatalashi* of the deceased.

17. Such ticket was duly seized and memo in this regard has been proved as Ex. A-8. The same had been prepared by concerned police official of Police Post Railway Shahdara i.e. ASI Prem Kishore. It also needs to be highlighted that when ASI Prem Kishore had conducted investigation same day i.e. on 19.07.2012, he recorded statement of one Mr. Mandeep son of Mr. Surender Singh, who, in no uncertain terms, revealed that EMU had come from Ghaziabad side and all of a sudden, one passenger fell down at Platform No. 4. Such duly signed statement of the maker, having attestation of police official, was placed on record by the claimants before the learned Tribunal.

18. The entire thrust of the learned Tribunal is on DRM report which was not even made part of the pleadings as no additional written statement was ever filed.

19. Such DRM report was tendered in evidence and no railway official has been examined to verify its correctness.

20. Mere tendering the same in evidence would not suffice from any angle whatsoever.

21. Such DRM report does not seem to be sufficient to even hold that the deceased was not travelling in EMU. Even as per the contents



of said DRM report, *some passenger reported that one person was hit by ECR No. 64451 at Platform No. 4.*

22. Nobody knows as to who is this mysterious passenger.

23. Neither name nor address of any such passenger has been recorded anywhere.

24. Secondly and more importantly, it needs to be stressed again as to what was reported by such unknown passenger. *He merely claimed that a person was hit(sic) by ECR No. 64451 at platform no.4.* This is in contrast with the stand of respondent as according to them, the passenger had fallen down from ECR. Being hit by ECR is one thing and falling down from ECR is other and these two are distinctive and diametrically opposite things.

25. The DRM report also talks about recovery of railway ticket from the *jamatalashi* of the deceased and merely on the basis of some hearsay evidence of some unknown passenger, Railway officials concluded in the inquiry that the deceased had jumped from an empty rack and was not travelling in the passenger train EMU. Such DRM report needs to be, therefore, rejected for want of requisite corroboration and also for want of complete clarity and transparency. Importantly, as per one annexed report enclosed with DRM report, there is a mention that ECR was also part of the EMU Train and said fact was never clarified or elucidated by the respondent in any manner.

26. The police official of PP Shahdara Railways had been conducting the investigation and since the concerned I.O. had clearly recorded statement of one Mr. Mandeep who, unambiguously, revealed that the passenger had fallen down from EMU, there was no reason to have disbelieved such police report and to have rejected the



claim petition.

27. If the Railways were harbouring any uncertainty over the matter, it could have either called the aforesaid investigating officer or concerned station master who claims to know about the incident *albeit* through some unknown passenger or for that matter said Mr. Mandeep, whose name and address was available. Such Mandeep is a neutral and independent witness and it's not explained as to why he would make a false statement when he does not have any personal stake in the matter. The claimants had placed on record the entire investigation report of the police. They have done their best in this regard and it is indeed not comprehensible as to why such investigation report was discarded. Instead, relying on version of some unknown and mysterious passenger, Railways had tried to portray as if the deceased had fallen down from some empty rack and such version has been, unfortunately, accepted as gospel truth.

28. Recovery of valid passenger ticket, then and there, from the *jamatalashi* of the deceased also clinches the issue.

29. Police investigation report also indicates that the deceased in question had fallen down from EMU. The accident had taken place right at Platform No. 4 at Shahdara Railway Station. The statement of Mandeep cannot be thrown out and the cumulative effect of the aforesaid facts and circumstances clearly go on to indicate that Mr. Liaqat Ali was not only a *bonafide* passenger but also met with 'untoward incident' as defined under Section 123(c) of Railways Act, 1989.

30. A *bonafide* passenger would be the one who has purchased a



valid ticket for journey or is travelling with a valid pass. As per Section 2 (29) of Railways Act, a “passenger” means a person travelling with a valid pass or ticket.

31. In *Union of India Vs. Rina Devi: (2019) 3 SCC 572*, the Hon’ble Supreme Court, after taking note of the various judicial precedents, came to the conclusion that any injury in the course of boarding or deboarding the train would fall under “untoward incident” ‘entitling any victim to compensation’ and would not fall under the proviso to Section 124-A of Railways Act, merely on the plea of negligence of the victim as a contributing factor.

32. Para-25 of said judgment reads as under: -

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 deboarding 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.

33. The doctrine evolved in *Union of India Vs. Rina Devi* (supra) further emphasizes that having a valid ticket is not always necessary to substantiate a claim, though its possession significantly bolsters the claimant's position. The ruling illustrates that the mere absence of a valid ticket does not negate the assertion that an individual was a



bonafide passenger. This recognition is crucial, as it acknowledges situations where passenger might lose or misplace the ticket yet there are valid grounds for seeking compensation. Thus, even without a ticket, claimant can successfully demonstrate and prove the status of any such passenger as that of *bonafide* passenger. Therefore, conversely, possessing a valid ticket would certainly be akin to a *smoking gun* and would serve as ‘determining evidence’ in favour of the claimants, while enhancing the credibility of the claim to optimum level, virtually.

34. The above discussion would lay bare that the deceased was travelling in EMU train and when the train reached Shahdara Railway Station, many passengers came near the gate to de-board the train, and on account of violent jerk and receiving some thrust from inside, Liaqat Ali fell down and received injuries which proved to be fatal. The claimants placed on record documents and the report prepared by the police and, there should not have been reason to have consigned such report to dustbin. The stand taken by the Union of India is based solely upon DRM report which does not inspire any confidence and is palpably based on some hearsay version. It also lacks in clarity and precision. Moreover, nothing was brought on record by the respondent to show that no such EMU had ever reached Shahadra on the relevant date and at the relevant time. Thus, the respondent failed to substantiate its stance in the desired manner. Moreover, the respondent is not clear whether it’s a case of fall from ECR or a case of being hit by ECR. The blame again lies with respondent as to why it, even if its version is assumed to be true for moment, permitted any passenger to travel in ECR, which according to them is not meant for passenger.



35. Need we reiterate, the appreciation of evidence should be rather in consonance with the objective of the Act which has been enacted for speedy adjudication of claims to provide relief to the rail-users by way of expeditious payment of compensation to the victims of rail accidents and to those whose goods are lost or damaged in rail-transit.

36. Accordingly, present appeal is allowed and the impugned order is set aside.

37. As a necessary corollary, matter is remanded back to the learned Railway Claims Tribunal for awarding compensation for death, as prevalent at the relevant time as per prescribed Schedule attached with the *Railway Accidents and Untoward Incidents (Compensation) Rules 1990* to the rightful claimants within eight weeks from receipt of this order. We leave it to the learned Tribunal to decide the rate of interest and its period and if the same is also found payable, it be also released within said period of eight weeks.

38. Parties are directed to appear before the learned Tribunal on 11th November, 2024.

39. Appeal stands allowed in the abovesaid terms.

40. Copy of this order be communicated to the learned Tribunal for information and due compliance.

(MANOJ JAIN)
JUDGE

OCTOBER 07, 2024/dr