

HIGH COURT OF DELHI
Bench: Justice Dharmesh Sharma
Date of Decision: 04 January 2024

FAO 169/2022

ANITA DEVI & ORS. **Appellants**

VS

UNION OF INDIA **Respondent**

Legislation:

Section 16, 23 of The Railways Claims Tribunal Act, 1987
Section 2(29), 123(c), 124A of the Railways Act, 1989

Subject: Appeal against the decision of the Railway Claims Tribunal concerning compensation for the death of a passenger due to an accidental fall from a train.

Headnotes:

Railways Claims Tribunal Act – Appeal against RCT decision – Claim for compensation for the death of a passenger in a railway accident – RCT’s decision based on the location of the deceased’s body and nature of injuries – Appeal allowed and compensation awarded. [Para 1, 7-14]

Factual Matrix – Deceased's accidental fall from a train and subsequent death – Initially contested by Railways citing body’s location on different track – Appellants sought compensation under RCT Act. [Para 2-5, 7]

Issue Framing – Determination of bona fide passenger status, incident's coverage under Railways Act, claimants' dependency, and relief. [Para 6]

Analysis and Decision – RCT's flawed reasoning regarding the body's location and nature of injuries – Observations on passenger status and accidental death – RCT decision set aside, compensation awarded with interest. [Para 8-14]

Compensation – Awarded statutory compensation with interest, apportioned among the deceased's family members. [Para 14]

Order – RCT’s decision set aside, respondent/railways directed to pay compensation within two months, failing which interest rate increased. [Para 14-15]

Referred Cases:

- Deepa Devi and others v. Union of India (Claim application no. OA2U114/18) [Para 7, 12]

Representing Advocates:

Appellants: Mr. Ravi Sabharwal and Ms. Khushboo, Advocates.

Respondent: Mr. Mukul Singh, CGSC with Ms. Ira Singh and Ms. Pranjal Mathur, Advocates.

CORAM:**HON'BLE MR. JUSTICE DHARMESH SHARMA****J U D G M E N T**

1. This is a statutory appeal filed under Section 23 of The Railways Claims Tribunal Act, 1987¹ by the claimants/appellants for setting aside the impugned order dated 17.01.2022, passed by the Railway Claims Tribunal, Principal Bench, Delhi, hereinafter referred as the „RCT“ in O.A.(Ilu) DLI/CHD/21/2020, where the learned RCT had dismissed the claim petition of the petitioners for compensation.

FACTUAL MATRIX

2. The appellants/claimants are the widow, children and mother of the deceased Ramavatar. It is the case of the petitioners / appellants that Sh. Ramavatar, the deceased herein, was residing at village Prempura, Alwar, Rajasthan, and he used to travel very frequently to Bawal, Haryana for undertaking the work of masonry. His younger brother Sh. Sohan Lal, was residing at Bawal and he stayed with him sometimes depending on his work.

3. It was stated that on 23.12.2018, the deceased could not get any work so he decided to return back to his village Alwar; and that the deceased with the help of his brother, purchased a General Ticket bearing No. J-00861484 dated 23.12.2018 to travel back to his village and boarded the Jaisalmer Inter City Express (14659) train at around 8 P.M. It was claimed that on the unfortunate night of 23.12.2018, when the aforesaid train reached near KM No. 15/9-16/0, between Bawal - Ajarka station, the deceased accidentally fell down from the running train during the course of the journey and sustained fatal injuries. The dead body was found on 24.12.18 at about 2 am by the RPF (Railway Protection Force) staff on duty, who informed the Station Master, Bawal.

4. The appellants initially filed a claim petition under Section 16 of the RCT Act before the Chandigarh bench, but due to lack of territorial jurisdiction, the matter was then transferred to RCT Principal Bench, Delhi on 12.09.2019.

¹ The RCT

5. The respondent/ Railways contested the claim petition and relied on the report of the Divisional Railway Manager (for short „DRM“) and denied the claim by stating that the body was found on “Dn” track whereas the said journey for which the ticket was purchased i.e., Bawal to Alwar, was for an Up track/direction journey. They further stated that the Train No. 14659 Jaisalmer Intercity Express was being escorted by the Railway Protection Force (RPF) staff, who had not witnessed any such incident happening during the course of journey from Rewari to Phulera.

6. Based on the pleadings of the parties, the following issues were framed by the learned RCT:

- “1. Whether the deceased was a Bona Fide passenger of train at the time of incident?
2. Whether the alleged incident is covered within the ambit of Section 123(c) read with Section 124A of the Railways Act?
3. Whether the applicants are the only dependents of the deceased?
4. Relief if any?”

7. Suffice to state that the learned RCT held that there was no dispute that the deceased was found in possession of a valid rail ticket and it was also held that the dead body was found lying at KM 15/916/0 between Bawal and Ajarka in the middle of the Dn track, which was also recorded vide DD No.2 at 2:00 A.M. in the inquest proceedings. However, the learned RCT considering the nature of injuries in the post mortem report and the claim of the appellants that deceased was travelling in Up direction and due to accidental fall, his body fell on Dn track did not favour the tribunal. In its decision, the learned RCT relied on its earlier decision in **Deepa Devi and others v. Union of India** (claim application no. OA2U114/18). Hence, it was held that the death did not occur due to falling from the train and it was not a case of an „untoward incident²“. The impugned decision is now under challenge in this appeal.

ANYALYSIS AND DECISION

8. Having given my thoughtful consideration to the submissions advanced by learned counsel for the parties at the Bar and on considering the entire record of this case including the digital Lower Court Record³, I am afraid that the impugned order passed by the learned RCT cannot be sustained in law. It would be relevant to reproduce the reasons that prevailed in the mind of the learned RCT in finding Issue No. 2 against the claimants, which reads as under:-

² Section 2(n) of the RCT Act read with Section 123(c) of the Railways Act, 1989 (accidental falling of any passenger from a train carrying passengers)

³ LCR

“We find from the records filed before us that on at around 1 a.m. on 24.8.2018, Ashok Kumar Yadav engaged in track patrolling duty while doing his work found one dead body lying at Km 15/916/0 between Bawal and Ajarka in the middle of Dn track. He informed the same over phone to Lalaram Meena, Station Master/Bawal, who sent Points man to the site and informed all concerned and also made an entry in Station register a copy of same has been filed at page 71 of DRM report, memo to GRP and RPF/Rewari was issued by Station Superintendent, Rewari at 2 am (Page 70 of DRM report). GRP officials made DD No 2 at 2.20 hours and reached the site and started Panchayatnama proceedings wherein it is noted the body was found in the middle of Dn track. From the Panchayatnama (Ex. A-3) it is to be seen that body was cut in three parts, head was crushed and amputated and lying separated from neck, both legs were crushed and amputated and both hands were broken at shoulder Post-mortem report mention injuries such as:-

-Traumatic amputation of neck, both lower limbs, and both upper limbs present.

- Tatoon mark (रामवतार -अनीता), front of left forearm

- Head and face crushed

During course of arguments Learned counsel for the applicant urged that the deceased was travelling in Up direction and due to accidental fall body of deceased came on the Dn track. We are afraid that Counsel for applicants has concocted an improbable and unconvincing version. There is always distance between two railway tracks and as per Counsel for applicants the deceased was travelling in a train going towards Up side but due to fall his body came on another i.e. Dn track. A Division Bench of the Tribunal to which one of us (Sh. Kanwaljit Singh Ahluwalia) was a party while dealing with a similar matter held as under:-

In the case of Smt. Deepa Devi and others vs. Union of India through the General Manager Northern Railway, New Delhi in Claim application no. OA2U114/18 decided on 8/8/2019, the Division Bench of the Tribunal had noted the distance between the two railway lines. The relevant portion of the judgment rendered by the Division Bench of the Tribunal in case of Deepa Devi Vs. Union of India (supra) reads as under-

“We have also gone through the Addendum and Corrigendum Slip (ACS) No. 27 dated 17.07.2019 to the Indian Railways Schedule of Dimensions, 1676 mm Gauge (BG) Revised, 2004. As per the amendment carried it is specifically provided that for existing works, the minimum distance, centre to centre of two railway lines on straight tracks will be 4265 mm and for new works in addition to the existing works, distance between two railway lines from centre to centre will be 5300 mm.”

Therefore, it cannot be believed that due to fall from standing train on off side the body of the deceased will fall on another track at a considerable distance.

The dead body, in no case, can fall from one track going on one side to middle of another track. Relying upon the above Judgment and also taking into account the various injuries as is evident from Post Mortem Report we are inclined to accept the submissions made by the respondent that the death had occurred in this case not due to falling from any train and we therefore hold that untoward incident is not proved in this case and accordingly we decide issue no.2 against the

applicant. The nature of injuries rule out fall from the train, rather lead to an inference otherwise.”

9. *Ex-facie*, the aforesaid reasons are absolutely flawed and belies common sense and logic. At the cost of repetition, the learned RCT rendered a categorical finding that the dead body of the deceased was found on the railway track having valid railway ticket evidencing travel from Alwar by Intercity Express to Bawal, and therefore, he was a *bona-fide*⁴ passenger within the meaning of Section 2(29) of the Railways Act, 1989⁵.

10. No mileage can be taken by the respondent/Railways from the fact that the dead body of the deceased was found on Dn line track at KM 15/9-16/0. That alone would not invite a conclusive presumption that the deceased did not fall out of a running train. It is pertinent to mention here that as per the post mortem report No. 392/2018 conducted on 24.12.2018 at 12:45 PM, it was found that there were Traumatic amputation of neck, both lower limbs, and both upper limbs present and the cause of death was opined to be head injury, shock and haemorrhage as a result of multiple antemortem injuries sustained to the multiple body parts, produced by blunt force impact which could be possible in a railway track accident. The dead body of the deceased was evidently found at 2:10 AM on 24.12.2018 as recorded in DD No.2. It is also an admitted fact that the Intercity Express Train had passed through the tracks in the area where the body was found.

11. The observation of the learned RCT that as a result of fall from the Up line, the body could not be fallen on the down track and the assumption that the deceased would not have died by falling from the train on Up line track is not fathomable. The said aspect has not been cogently established by the respondent/Railways. It does not divine the eyes to appreciate that, after the fall of the body, its landing on the railway tracks must have depended on the speed of the Intercity Express Train.

12. Having regard to the nature of injuries sustained by the deceased, it is evident that he was run by another passing train either immediately after the fall or sometimes thereafter. Reliance by the learned RCT on its earlier decision in **Deepa Devi and others v.**

Union of India about the distance between the two tracks is lost into oblivion when it is an admitted fact that the railway route in question was a busy one and there was no evidence led by the respondent/Railways regarding the passing of any other train during the relevant time on the Dn tracks.

⁴ Section 2(29) of the Railways Act, 1989, a passenger means a person travelling with a valid pass or ticket. ⁵ RA

13. All said and done, once it is proven that the deceased was travelling as a *bona fide* passenger and he fell from a running train, the respondent/railways cannot avoid its liability. Further, no issue can be raised regarding any negligence on the part of the passenger either. Mere fact that the Railway Protection Force did not notice any accident or falling of any passenger from the train is also not conclusive. As a matter of fact, the Inquest Report No. 205 dated 24.12.2018 also indicated that the deceased had died as a result of railway accident. It also states on the face of the record that the place of the incident was far away from Bawal and there is no issue raised that the deceased tried to dis-board a running train and in any case the issue of negligence on the part of the deceased would be irrelevant. Therefore, in all human probabilities the deceased died due to an untoward incident as defined under Section 123(c)(2) of The Railways Act, 1989⁶.

14. In view of the foregoing discussion, this Court has no hesitation in setting-aside the impugned order dated 17.01.2022 passed by the learned RCT. The same is set-aside. Consequently, the claimants are

⁶ (i) Not Relevant

(ii) Not Relevant

(iii) Not Relevant

(2) The accidental falling of any passenger from a train carrying passengers. awarded the statutory compensation of Rs. 8,00,000/- with the interest @ 9% p.a. from the date of accident i.e., 23.12.2018 till its realization.

The amount of compensation be apportioned in the following manner:-

(i) 50% of the amount with interest in favour of the appellant No.1 Smt. Anita Devi being the wife of the deceased;

(ii) 10% with interest to each of the appellant Nos. 2 to 5 who are the children of the deceased;

(iii) Remaining 10% to appellant No. 6 Smt. Rampyari being the mother of the deceased.

15. The compensation be paid to the appellants within two months from today, failing which the respondent/railways shall be liable to pay the same @ 12% p.a.

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