

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

FAO 116/2021

Reserved on : 12.01.2023

Date of Decision : 18.01.2023

IN THE MATTER OF:

SH. ISLAM KHAN (SINCE DIED) THROUGH LEGAL HEIRS & ORS.
..... Appellants

Through: Mr. Shyam Singh Sisodia, Advocate

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Anshuman, Sr. Panel Counsel

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter, referred to as '*the Act*'), the appellants/claimants have assailed the order dated 19.11.2019 passed by the Railway Claims Tribunal, Principal Bench, Delhi whereby the claim application filed on their behalf was dismissed.

2. Learned counsel for the appellants contended that merely because the journey ticket was not recovered, the Tribunal erred in arriving at a conclusion that the deceased was not a *bona fide* passenger and held the

incident not to be an '*untoward incident*' as defined under Section 123(c) of the Railways Act, 1989.

3. The impugned order is supported by the respondent. Learned counsel appearing for the respondent submitted that not only the journey ticket was not recovered from the deceased but also even as per the statement of the guard of the train, the deceased had fallen from the train while attempting to board the running train. It was contended that the injuries sustained by the deceased were '*self-inflicted injuries*' and fall under the proviso to Section 124A of the Railways Act, 1989.

4. I have heard learned counsels for the parties and gone through the entire material placed on record.

5. The appellant No. 1 being father of the deceased, namely, *Vikar Mohammad*, alongwith other legal heirs claimed in the application filed before the Tribunal that on 02.06.2016, the deceased alongwith one *Mushir* purchased a combined journey ticket for two persons for travel from *Kasganj Railway Station* to *Surat* and then boarded the *Kasganj-Mathura* passenger train. It was claimed that travel by said train was upto *Mathura Railway Station* whereafter another train was to be boarded for journey upto *Surat*. It was claimed that as the said train was overcrowded, the deceased was standing near the gate of the compartment of the train. When the train started moving after its brief halt at *Sikandararau Railway Station*, on account of sudden jerk and push of other passengers, *Vikar Mohammad* fell resulting in severing of one hand and leg. The deceased was initially removed to *Government Hospital Sikandararau* and was thereafter referred

to *J.N. Medical College Hospital, A.M.U., Aligarh* where he succumbed to his injuries on the same day.

Sh. Mushir, the co-passenger appeared as AW-2. He deposed that he alongwith the deceased had purchased a joint journey ticket on 02.06.2016 for journey upto *Surat, Gujarat*. The journey ticket was kept by the deceased. They boarded the train at *Kasganj Railway Station* but on account of it being crowded, they had to stand near the gate of the compartment of the train. When the train reached *Sikandararau Railway Station*, it halted briefly but when it started moving, the deceased fell on account of sudden jerk as well as push by the crowd. The witness stated that he made a hue and cry and also informed about the incident to the family members of the deceased.

6. The issue whether loss or non-recovery of a journey ticket would always result in denial of claim, is no longer *res integra*.

7. From the above, *ex-facie* it appears that the deceased had sustained injuries on account of a train accident.

8. Insofar as the issue relating to journey ticket not been found is concerned, this Court deems it expedient to refer to the judgment of the Supreme Court in Union of India v. Rina Devi reported as (2019) 3 SCC 572, wherein it was held as under:

"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)

9. As noted above, the appellants/claimants have stated on affidavit that the deceased had undertaken the journey with one *Mushir* after purchasing a valid joint journey ticket. In the proceedings before the Tribunal, *Mushir* appeared and corroborated that the said journey was undertaken by him alongwith the deceased. The incident occurred on account of sudden jerk and push by the other passengers. He categorically stated that the journey ticket was kept by the deceased.

10. This Court is of the opinion that in view of the dicta of the aforesaid judgment in Rina Devi (Supra), the appellants have discharged their initial burden with respect to the deceased having purchased the journey ticket which was eventually lost.

11. The opinion of this Court is fortified by the fact that the respondent has not disputed the factum of death or that the deceased had died in the hospital on the very same day of the fateful incident. Accordingly, based on the foregoing discussion, the present appeal is allowed and the impugned order dated 19.11.2019 is set aside. Consequently, the matter is remanded back to the Tribunal for awarding the amount of compensation in terms of the Act. The matter shall be listed at the first instance before the Tribunal on

01.02.2023. Let the compensation amount be released to the appellants/claimants within four weeks thereafter.

12. The appeal is disposed of in the above terms.

13. The Registry shall communicate a copy of this judgment forthwith to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 18, 2023

na

भारतमेव जयते