



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

% **Judgment reserved on : 21 November 2023**

**Judgment pronounced on : 11 December 2023**

+ FAO 365/2014

GEETA DEVI

..... Appellant

Through: Mr. N.K. Gupta, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Shoumendu Mukherji, SPC  
with Ms. Megha Sharma and  
Ms. Akanksha Gupta, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**J U D G M E N T**

1. The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987<sup>1</sup>, assailing the impugned order dated 22.08.2014 passed by the learned Railway Claims Tribunal<sup>2</sup> in claim application bearing No. OA(Ilu) 524/2011 titled 'Smt. Geeta Devi v. Union of India' whereby the learned RCT dismissed the claim application of the applicant (appellant herein).

**FACTUAL BACKGROUND**

2. The applicant before the learned RCT and the appellant herein, Smt. Geeta Devi, is the wife of the deceased Late Raj Kumar Prasad, who moved a claim petition under Section 125 of the Railways Act,

---

<sup>1</sup> RCT Act

<sup>2</sup> RCT



1989, claiming compensation of Rs. 4,00,000/- (Rs. Four Lacs), for the death of her husband in an ‘untoward incident’.

3. Briefly stated, it is the case of the appellant that on 19.10.2011, her husband was travelling from New Delhi to Kodarma in train No. 12802 – Puroshottam Express; and that due to overcrowding, he was unable to get a seat in the train, and therefore, he had to stand at the gate/door; and as he reached close to Dilwa Station near track KM 407/23, all of a sudden there was a massive train jerk and owing to jostling of the crowd of passengers in the train, he (the deceased) accidentally fell from the compartment and died on the spot.

4. It was claimed that the deceased was travelling in the train on a valid Second Class Superfast (General) ticket, which was lost in the untoward incident. Further, it was stated that the matter was reported to the police and a case was registered at Rail P.S. Gaya vide U.D. No. 80/2011 and further an application was made to Rail P.S. Gaya on 24.10.2011 by Guddu Kesari, son of the deceased, subsequent to which the police investigated the matter and found the factum of the incident and death of the deceased.

5. The claim was hotly contested by the respondent/Railways before the RCT claiminig that the alleged incident does not fall within the category of ‘Untoward Incident’ as provided for under section 123 (C)(2) of the Act. In order to decide the claim application moved by the wife of the deceased, the learned RCT framed the following issues for consideration:

- “(i) Whether the death of the deceased had occurred as a result of an untoward incident, as defined under Section 123 (c)(2) of the Railways Act, 1989?



- (ii) Whether the deceased was a bonafide passenger of the train on the relevant day?
- (iii) Whether the application of Smt. Geeta Devi is maintainable?
- (iv) To what order/relief.”

6. In short, the learned RCT with respect to issue No. 1, held that Raj Kumar Prasad did not die in an ‘untoward incident’ near Gaya, and observed that the claim application had been filed in an attempt to gain undue financial benefit in the form of compensation, in connivance with GRP/Gaya. As regards Issue No. 2, the learned RCT found against the applicant and held that the deceased was not a *bonafide* passenger of Puroshottam Express as four trains had passed through the site and no one saw any dead body lying on the rail tracks soon thereafter. Issue No. 3 was also held to be against the applicant as it was found that the application of Smt. Geeta Devi claiming compensation for the death of her husband was not maintainable as she failed to establish that the deceased was her husband. Accordingly, Issue No. 4 was decided against the applicant, and it was held that she was not entitled to receive any compensation from the Railways.

7. Aggrieved by the decision of the learned RCT, the applicant has preferred the present appeal.

**GROUND FOR CHALLENGE:**

8. The impugned order passed by the learned RCT has been assailed on the ground that the RCT wrongly arrived at the conclusion that the deceased was not a ‘bonafide passenger’ and that he did not die as a result of an ‘untoward incident’; and that in



observing that no one saw the deceased falling from the running train, the RCT has failed to consider the GRP investigation and Death Report as well as the evidence of AW-1. Further, reliance has been placed on the CMI report, which has neither been proved nor corroborated by any witnesses. Moreover, the mandatory statutory requirement of filing a DRM report has not been complied with by the respondent/railways; and lastly, it is urged that no joint report of the guard and driver of the train in question has been filed, as is required by the rules and regulations of the inquiry framed by the Railways. It has also been stated that although the respondent/Railway has a defense under Section 124-A of the Railways Act, 1989, admittedly they have failed to bring their case within the ambit of the exclusion provided therein.

### **ANALYSIS & DECISION:**

9. This Court has given its thoughtful consideration to the rival submissions made on behalf of both the parties and also perused the relevant record of the case including the record of the RCT.

10. It would be relevant to reproduce reasons given by the learned RCT while deciding issue No.1, which read as under:-

#### **“Issue No.1**

05. The applicant claims that on 19/20.10.2011, her 58 year old husband late Raj Kumar Prasad, while travelling by train no. 12802, Puroshottam Express from New Delhi to Kodarma accidentally fell down from the overcrowded compartment of the running train at Km 407/23 near Dilwa Station, due to the jostling of passenger inside the coach and died on the spot.

06. No one saw Raj Kumar Prasad falling from any train. As per the station record of Gujhandi Station i.e. Station Master's Memo issued at 17.35 Hrs (Ext. R-2), it was the crew of a freight train called T. Wagon, who noticed a dead body lying near the track at Km 407/24-26. As per the report of Dy. SS/Gujhandi (Ext.



R-4), the body was found in between the up and the Dn line. Further the TSR record of Gujhandi station (Ext. R-3), reveals that train no. 12802 Puroshottam Express passed through the station at 16.22 Hrs and three more trains followed after that i.e, train no. 53522 at 16.48 Hrs., SKBCXEHL at 16.55 Hrs and CD/GR at 17.20 Hrs. The very fact that the crew of none of these trains saw the body lying in between the track, it is unlikely that the deceased fell from train no. 12802, as claimed by the applicant.

07. As per the police/medical reports i.e. FIR, dtd 21.10.2011 (Ext. A-3), the Inquest Report (Ext. A-4) and Post Mortem report of ANM Medical College, Gaya (Ext. A-5), the body which was recovered near the track at Km 407 between DLW-LBZ stations near Gaya, remained unidentified till 3 PM of 21.10.2011. According to Guddu Kesari, who claims to be the son of the deceased, vide his affidavit dtd. 16.11.2013 (Ext. AW-02), he came to know about the death of a 55 year old man accidentally falling from running train from news paper reports and then went to Gaya railway PS to identify the person as his father from the photographs available there. He adds that he gave an application to the Rail Police regarding the death on 24.10.2011.

08. As per the application addressed to GRP/Gaya dtd. 24.10.2011 (Ext. A-2) Raj Kumar, the deceased informed his family at Gaya on 19.10.2011 from his daughter's resident at Delhi that he is leaving by Puroshottam Express but did not reach home on 20.10.2011. So, according to Guddu, the family searched for him. Meanwhile, his sister informed him on phone from Delhi that the deceased had left as per his programme. It is added that on arrival at GRPS/Gaya the family members could identify the deceased from his photographs and clothes.

09. The GRP/Gaya solely on the basis of the so-called application of Guddu concluded in their final report (Ext. A-6) that Raj Kumar Prasad died after falling from Puroshottam Express. While drawing this conclusion, they did not even consult the railway records like arrival/departure time of various trains in Gaya Section on that day. Interestingly, the identity of Guddu was not verified by the police at the time of identification of the body. It is observed from the Voter Identity Card of Shri Guddu Prasad Kesari that he is the son of one Raj Kumar Kesari of Jhumri Talaya, Koderma, Ranchi, when the deceased is one Raj Kumar Prasad of Ramdhanpur Road, Gaya. So, there seems to be no connection between Guddu Kesari S/o Raj Kumar Kesari and Raj Kumar Prasad. In fact, there is no evidence on record to even suggest that the body which was recovered by the GRP from near the track, was that of any Raj Kumar Prasad or Kesari.



10. Shri Guddu Kesari and Smt. Geeta Devi, who claim to be the son and wife of the deceased respectively, did not even see their father/husband's body after his death and said to have identified him from the photograph/clothes four days after the so-called incident. Yet, both of them (affidavit dtd. 16.11.2013 and claim application) have given graphic details regarding Raj Kumar's journey from New Delhi to the site of the incident. They say, 'there was rush in the general compartment', 'while the train was approaching 'Koderma station.....Raj Kumar Prasad reached near the gate in order to get down at Koderma station, passengers started jostling etc. etc. The question here is who gave them all these details? When this question was raised to Guddu (Aw-02) (Ext. C-2) on 27.03.2014, he informed the Tribunal that the details are based on heresay. However, the relevant issue is, who are these people who told him after four days about the details of Journey undertaken by the deceased from New Delhi to the site of accident near Gaya. I have no doubt in my mind that Guddu S/o Raj Kumar Kesari of Jhumri Talaya has nothing to do with the unidentified dead body recovered near the track at Km 407 near Gaya Railway Station. So, it is an attempt on the part of the claimant to create a link between the dead body and the family by telling some cock and bull stories, in league with GRP/Gaya, so that undue financial benefit in the form of compensation can be received from a Government Department.

11. Thus, it is safe to conclude that Raj Kumar Prasad said to be husband of the applicant did not die in any untoward incident on 20.10.2011 near Gaya, as claimed. Accordingly, the above issue is decided against the applicant.”

11. First things first, learned counsel for the appellant has miserably failed to show any blemish in the reasoning adopted by the learned RCT while deciding issues No. 2 and 3. Evidently, no railway ticket was recovered from the deceased and there is not an *iota* of evidence to prove that the deceased, who used to travel frequently by train, had any monthly season rail ticket or that he had bought rail ticket on the fateful day. Secondly, the claimant has failed to lead any cogent and reliable evidence suggesting that the body of the unidentified person



recovered near the railway track on 20.10.2011 was that of deceased, Raj Kumar Prasad.

12. Be that as it may, the finding recorded by the learned RCT that four trains had passed through the railway tracks after Purushottam Express No. 12802 had crossed, between 1622 Hours to 1720 Hours and no one saw any body lying in between the tracks, completely goes to demolish the very foundation of the case that the deceased fell from the train Purushottam Express No. 12802. Nothing is brought on the record to suggest that such finding of fact is perverse or incorrect in any manner particularly when it appears that the railway line in question was a busy one with frequent movement of trains requiring around the clock vigil by the rail staff.

13. Further, it is surprising that no one from the family of the deceased went to the police or filed any missing person's report even after four days of the accident. The examination of AW-2 also culls out a sorry figure, insofar as he stated that he came to know about the death of a 55 year old person falling from a railway train from a newspaper article, and then made inquiries, and on approaching the police he identified his deceased father from his photograph taken from the spot. Incidentally, no such newspaper article was produced in evidence.

14. Anyhow, allowing them some latitude given that the Police generally does not entertain missing persons complaints, it is but apparent that the testimony of Guddu Kesari and Smt. Geeta Devi, stating that the deceased had fallen from a running train due to alleged jostling and overcrowding, is hearsay. Merely, because the dead body



was lying on the railway tracks, in the absence of any other independent or reliable evidence, the same cannot lead to a conclusion that the deceased died due to an ‘untoward incident’. Moreover, the appellant was unable to provide an *iota* of evidence that the body recovered was of her husband. Reference in this regard can be made to decision of the Supreme Court in the case of **Union of India v. Rina Devi**<sup>3</sup>, wherein it was held by the Supreme Court that “*mere presence of a body on the railway premises will not be conclusive to hold that injured/deceased was a bonafide passenger for which claim for compensation could be maintained*”.

15. In view of the foregoing discussion, the present appeal is dismissed.

**DHARMESH SHARMA, J.**

**DECEMBER 11, 2023**

*Sadique*

---

<sup>3</sup> (2019) 3 SCC 572