



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Judgment reserved on : 07 November 2023**
Judgment pronounced on : 28 November 2023¹
 + FAO 224/2019 and CM APPL. 26598/2019

RESHMA & ORS Appellants

Through: Mr. Rajan Sood, Ms. Ashima
 Sood and Ms. Megha Sood,
 Advs.

versus

UNION OF INDIA Respondent

Through: Ms. Arunima Dwivedi, CGSC
 with Ms. Pinky Pawar and Mr.
 Aakash P., Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The present appeal is filed in terms of Section 23 of The Railway Claims Tribunal Act, 1987² assailing the impugned order dated 17.09.2018 passed by the Learned Railway Claims Tribunal, Principal Bench, Delhi³, in claim application bearing No. OA (Ilu) No. 306/2017 (hereinafter referred to as the 'claim application') under section 16 of the learned RCT Act, titled 'Smt. Resham & Ors. Vs. Union of India', whereby the learned RCT dismissed the claim application of the applicants (appellants herein).

FACTUAL BACKGROUND:

2. To put it briefly, the appellants before this Court are the legal heirs of the deceased Shri Nitin Kumar, consisting of his wife, minor

¹ Written submissions filed by appellants on 21.11.2023. No written submissions filed on behalf of respondent.

² RCT Act

³ RCT



son and dependent parents. It is their case that the deceased was a daily passenger having a valid MST⁴ No. 15703626 valid from 19.08.2017 to 18.09.2017. On the fateful day of the accident, i.e., 16.09.2017, the deceased was travelling from Ghaziabad to Okhla by train for his duty at Intex Phone Service Centre, and when the train reached at Platform No.3, Tilak Bridge Railway Station, New Delhi, he accidentally fell down from the moving train and sustained serious/grievous injuries all over his body leading to his death. Post-mortem was conducted on the body of the deceased vide PMR No.823/2017 at Maulana Azad Medical College & Lok Nayak Hospital, New Delhi wherein opinion was expressed that the injuries were possibly sustained in a railway accident. This sequence of events led to the filing of the claim application by appellant/applicant under Section 16(1) read with Section 13 (1-A) of The RCT Act, and Section 124-A of the Railways Act, 1989.

3. Respondent Railways contested the claim application and relying upon the DRM Report, it was stated that the deceased was not a 'bonafide passenger' of the train and that the incident occurred due to negligent and careless act on the part of the deceased, as he trying to de-board from a moving train.

4. The Commissioner framed the following issues for consideration:

“1. Whether the deceased was a passenger of the train in question at the relevant time of the incident?

2. Whether the death of the deceased was on account of an accidental fall from the train in question, amounting to an untoward

⁴ Monthly Season Ticket



incident, as defined under Section 123(c), read with Section 124-A of the Railways Act, 1989?

3. Whether the applicants are the dependants of the deceased within the meaning of Section 123(b) of the Railways Act, 1989?

4. To what amount of compensation, if any, are the applicants entitled? and

5. Relief, if any?"

5. Perusal of the record shows that the learned RCT vide order dated 07.06.2018, closed the evidence of the claimant/wife of the deceased observing that she was not an eye witness and marked the entire documents placed on the record as A-1 to A-23 as the same were admitted. No evidence was led by the respondent either. However, the learned RCT called upon the claimants to demonstrate how the MST was valid to travel on Lucknow Mail assuming that it was a superfast train, and no information was sought from the respondent Railways. Eventually, learned RCT vide impugned order dated 17.09.2018 held that although the deceased had died in an 'untoward incident' sustaining injuries on falling out of a moving Lucknow Mail Express Train, it was held that MST was valid for "to and fro" journey from Ghaziabad and Okhla via Old Delhi from 19.08.2017 to 18.09.2017 for a distance of 34 kms; and that the MST holders were permitted to travel only in EMU⁵, DEMU⁶ or slow moving conventional passenger trains. The learned RCT held that the deceased was not travelling as per the specific route allowed by the MST and rather took his journey on a superfast train, which was not allowed coupled with the fact that the deceased boarded a train which runs from Ghaziabad to New Delhi via Anand Vihar. Hence, issue

⁵ Electric Multiple Unit



Nos. 1 and 2 were held against the claimants. In the end, although claimants were held to be legal heirs of the deceased, the claim application was dismissed.

ANALYSIS AND DECISION:

6. Having heard the learned counsels for the parties and on perusal of the record as also written submissions filed on behalf of the appellant, at the outset, I find that there are *serious questions marks* over the legality of the impugned order dated 17.09.2018 passed by the learned RCT.

7. It would be expedient to extract relevant observations of the learned RCT in arriving at the aforesaid decisions vide issues No. 1 and 2, which reads as under:

“3. Issue-wise Reasoning for the judgment:

1. Both these issues, being inter-connected, are taken up together. Perusal of the MST (Ex.A-5), shows that it is valid for to and fro journey between Ghaziabad and Okhla from 19.08.2017 to 18.09.2017, for a distance of 34 kms. and route specified is via Old Delhi Jn. This MST is verified by the respondent railway vide Page No. 13 of DRM's Report, according to which it was issued on 19.08.2017 at Window No.1 of Ghaziabad Railway Station. As per the DRM's Report, the deceased had commenced his journey from Ghaziabad by Train No.12229 (Lucknow - New Delhi, Lucknow Mail), which travels from Ghaziabad to New Delhi via Anand Vihar - Tilak Bridge Railway Stations route and not via Old Delhi Jn. Railway Station route. The MST holders of 2nd class are not permitted to travel by this train since it is a superfast train. The MST holders are permitted to travel only in EMU, DEMU, slow moving conventional passenger trains, which travel on route specified in the MST. It is seen that in the train journey undertaken by the deceased, he violated the following rules of travel on MST :-
(i) To undertake travel by a superfast express train on which MST holder is not allowed. In the present case, the deceased was travelling by Train No.12229 (Lucknow - New Delhi, Lucknow Mail), which is a superfast train and on which 2nd class MST holder

⁶ Diesel Electric Multiple Unit



is not allowed to travel.

[Page C-13 of Public Time Table of Northern Zone, valid from 01.10.2016 to 30.06.2017, giving information about restriction of travel by unreserved ticket and season ticket holder, given as under Restriction on Second Class unreserved ticket holder and restriction Season Ticket holders, given as under :-

Restriction on Second Class unreserved ticket holder and restriction Season Ticket holders

<i>Restriction on second class reserved ticket holders</i>			<i>Restriction on Season Ticket Holders</i>	
<i>Train No. & name</i>	<i>Holding IInd Class tickets/ booked for distances/ station or less</i>	<i>Exceptions</i>	<i>Holding Ist class season tickets</i>	<i>Exception</i>
<i>1229/12230 Lucknow Mail</i>	<i>200 Kms. Between Lucknow- New Delhi- Lucknow</i>	<i>IInd class ticket holders permitted to travel ex.Hapur to New Delhi and back</i>	<i>1229 restricted between Lucknow- New Delhi 4230 Restricted between New Delhi- Hardoi</i>	<i>No exception</i>

(11) MST holder should not travel by a train travelling on a route, which is different than the one authorised on the MST. In the present case, the route specified in the MST is Ghaziabad to Okhla and back via Old Delhi Jn., whereas he picked up a train, which runs from Ghaziabad to New Delhi via Anand Vihar, a route, which is different from one shown on his MST. The aforesaid MST is valid for a route via Old Delhi Jn. Railway Station, whereas he travelled on a train (Train No. 12229 - Lucknow Mail) via Anand Vihar - Tilak Bridge.

[Para 221 and 242.1(iv) of Indian Railway Conference Association Coaching Tariff No.26, Part - I (Voiume-I) inforce from January 2007, given as under:

"221. Passengers wishing to travel by other than the booked route - Except as provided in Rule 101(5) of I.R.CA. Coaching Tariff Part I (Volume II) passengers desirous of adopting an alternative route from any junction may travel by that route on paying the differences, if any, between the booked and diverted route for themselves, attendants and luggage. If the fare by the



selected route is not in excess of that by the booked route, the Junction Station Master will collect the original ticket or the respective half of the return ticket, as the case may be, and issue an Excess Fare Ticket, making the following endorsement thereon

*"Permission granted to the holder to travel via..." In
Such a case, no excess fare will be charged.*

242.1 Season tickets — (iv) Validity — Season tickets are not valid for travel in reserved coaches and trains. They are valid for travel by Passenger Trains. In the case of Mail/Express/Superfast trains, they are valid for travel by only those Mail/Express/Superfast trains, where it has specifically been permitted by' Railway Administration. However, they are valid for travel subject to the distance restriction otherwise applicable in individual train.

The first class season ticket holders are, however, allowed to travel in first class coaches during day time only, subject to the distance restrictions applicable on the concerned train.]

2. On both counts shown above, the subject travel of the deceased was improper and against the rules of travel by, MST holder. Although In this case, a tea vender located at Tilak Bridge Railway Station has affirmed through his statement that he saw Lucknow, Mall Express Train passing through Platform No.3 of Tilak Bridge Railway Station at a slow speed and a person fell down from the rear portion of this train, but the reason of fall was not mentioned by this eyewitness. The DRM's Report brings out the fact that since the deceased was travelling from Ghaziabad for Okhla on Lucknow Mall Express Train, which does not have a scheduled halt at Tilak Bridge Railway Station, hence, he attempted to de-board from the train at Tilak Bridge Railway Station while the train was moving at a slow speed with a view to get down at Tilak Bridge Railway Station and pick up a train going towards Okhla from Tilak Bridge Railway Station itself rather than travelling all the way upto New Delhi and boarding another train from New Delhi to Okhla. He must have been wanting to save time, so as to reach his place of duty in time and in the process of de-boarding from a moving train even though at a slow speed, he failed to control his balance, which resulted into his coming between the platform and the train and receiving grievous Injuries, which resulted in his death while on the way to the hospital. Be that as it may, we that although the death did result in an untoward Incident when the deceased was trying to de-board from a moving train at Platform No.3 of Tilak Bridge Railway Station, we also find that due to the reasons explained above, he was not a bona fide passenger of Lucknow Mall Express Train at the relevant time of the Incident.



8. On a careful perusal of the afore-referred narrative, first things first, there is no denying the fact that the deceased died when he fell out of the moving Lucknow Mail Express Train No. 12229/12230 passing through Platform No.3, Tilak Bridge Railway Station, New Delhi, which resulted in the accident being in nature of an ‘untoward incident’ as defined under Section 2(n)⁷ r/w Section 123 (c)⁸ of the Railways Act, 1989, which is further substantiated by the DD No. 11A dated 16.09.2017 as also DLR entries register of the RPF along with the post-mortem report No. 823 of 2017 conducted at Lok Nayak Hospital, where he was declared brought dead.

9. Secondly, while it is clearly manifest that the MST recovered from the body of the deceased in Jama Talasi was valid for travelling ‘to and fro’ Ghaziabad & Okhla via DLJ i.e., Old Delhi Railway Station/junction, there is placed on the record no evidence by the respondent Railways that Lucknow Mail Express Train No. 12229 had no second class compartments attached to it. It is not the case of the respondent Railways that the deceased was travelling in a reserved compartment of the said train. Learned RCT fell in error inasmuch as it overlooked the fact that it was recorded in DD No. 34 dated

⁷ Section 2 (n) “untoward incident” shall have the meaning assigned to it in clause (c) of Section 123 of the Railways Act, 1989 (24 of 1989)

⁸ Section 123(c) “untoward incident” means—

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloakroom or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.



16.09.2017 by ASI Kuldeep Singh PS NDRS that he recorded statement of one Pawan Kumar, running Tea Stall no. 2 at platform No. 3 & 4 who informed that at about 8:30 am in the morning when Lucknow Mail was passing through the platform no. 3 at Tilak Bridge, New Delhi, he saw, and quoting his own words in Hindi language “धीरे धीरे चल रही थी उसी समय मैंने ट्रेन के पीछे की ओर लगी जनरल बोगी से एक आदमी अचानक गिर गया”. Simple English translation of the above sentence is that when the train was passing through at slow speed, one person/passenger suddenly fell out from the General Compartment attached in the rear of the train.

10. It is also brought out from the passenger chart (annexed as ‘Annexure-A’ with the main appeal) that as per the third column, second class UTS ticket holder were permitted to travel from ‘Ex Hapur to New Delhi and back’ and it is borne out from the record that the deceased had boarded the train from Gaziabad station, which is located on way from Hapur to Delhi. The first column of the chart then restricted first class season ticket holders from travelling between Lucknow to New Delhi on such train. Hence, the finding recorded by the learned RCT that second class MST holders were not permitted to travel on Lucknow Mail in the general compartments attached to it, is patently erroneous and unsustainable.

11. The aforesaid disposition is clearly substantiated on a bare perusal of the above referred tabular information relied upon by the learned RCT in the impugned order. Although the third column provided “no exception” to the first class season ticket holders to travel from Lucknow to New Delhi, it is silent as to how 2nd class



season ticket holder shall be treated for a journey less than 200 kms. In the said scenario, the findings recorded by the learned RCT that the deceased had not taken the prescribed route in the MST to go to Ghaziabad via Old Delhi Junction falls into oblivion since there is nothing to discern that the passengers could not have taken a different route from New Delhi *via* Anand Vihar to reach Ghaziabad. What belies common sense is how in the world the train could cover distance ‘to and fro’ Ghaziabad to Okhla via old Delhi Railway junction. The MST imprints “Ghaziabad Jn & Okhla” via DLJ. It would obviously imply a train journey commencing from Old Delhi Railway Station to Ghaziabad in State of Uttar Pradesh via/through Okhla in south East of Delhi, and likewise back to Old Delhi Railway junction following the same route. Interestingly, the conditions in the MST are capable of more than one interpretation. For instance, it could mean journey from Old Delhi Railway Station/Junction to Ghaziabad via Okhla and back. It could also mean journey from Ghaziabad via Anand Vihar Railway Station and New Delhi Railway Station and then onwards to Old Delhi Railway Station, provided distance of more than 34 kms is not covered. Whatever be the way out, in case of two interpretation as to the route structured by the respondent Railways, the interpretation that is in favour the victim/passenger should be accepted, rather than the other way around. Be that as it may, there is no *iota* of evidence led that the rail fare for such diversion, if assumed to be so for the sake of convenience, was higher than what was otherwise provided or stipulated for the valid use of MST. Further, there is no *iota* of material to raise an inference that the deceased



followed a route covering a distance of more than 34 kms as conditioned in the MST.

12. Lastly, the finding recorded by the learned RCT that the deceased was probably trying to de-board a running train at Tilak Bridge in order to catch a train to Ghaziabad via Okhla is a blind surmise or conjecture since no evidence was led by the respondent Railways to that effect. At the cost of repetition, the narrative of the aforesaid DD No. 34A recorded soon after the incident tells its own tale. All said and done, it is now well settled that there is no concept of ‘contributory negligence’ in railway accident compensation matters and it is well ordained in law that Section 124A⁹ of the Railways Act lays down “strict liability” or “no fault liability” in case of railway accidents. Reference in this regard can be invited to decision in **Union of India v. Prabhakaran Vijaya Kumar**¹⁰, wherein it was held as under:

⁹ Section 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.

¹⁰ (2008) 9 SCC 527



“10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an “accidental falling of a passenger from a train carrying passengers”. Hence, it is an “untoward incident” as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression “accidental falling of a passenger from a train carrying passengers”, the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations Le the one which advances the object of the statute and serves its purpose should be preferred.....

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.....

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14. In our opinion, if we adopt a restrictive meaning to the expression “accidental falling of a passenger from a train carrying passengers” in Section 123 (c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression “accidental falling of a passenger from a train carrying passengers” includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

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17. Section 124-4 lays down strict liability or no fault liability in



case of railway accidents. Hence, if a case comes within the purview of Section 124-4 it is wholly irrelevant as to who was at fault

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52. In view of the above, we are of the opinion that the submission of learned counsel for the appellant that there was no fault on the part of the Railways, or that there was contributory negligence, is based total misconception and hence has to be rejected.”
(Emphasis Supplied)

13. The aforesaid proposition of law has been reiterated in a plethora of subsequent decisions by the Supreme Court and reference can also be invited to a decision in **Union of India v. Rina Devi**¹¹ wherein it was held:

"25. We are unable to hold the above view as the concept of self-inflicted injuries' would require intention to inflict self- injury and not mere negligence of any particular degree. Doing so would amount to involving the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this contention refer to judgement of this Court in "United India Insurance Co. Ltd. Vs. Sunil Kumar" laying down that plea of negligence of the victim cannot be allowed in claim based on 'No fault theory' /s. 163A of M. V. Act. Accordingly, we hold that death or injury in the cases of boarding or de-boarding a train will be an 'untoward incident' entitles a victim to the compensation and will not fall under proviso to Section 124A of Railway Act, merely on the plea of negligence of victim as a contributing factor".

14. Furthermore, the plea as to the deceased passenger following a different route than what was prescribed by the MST, came for consideration in another case decided by High Court of Andhra Pradesh titled as **K. Vidya Kumari and Others v. Union of India, South Central Railway**¹², wherein it was observed as under:

"7. ...The explanation contained in Section 124A of the Railways Act. clearly contemplates that a person who purchase a valid ticket

¹¹ (2019) 3 SCC 572

¹² 2002 SCC OnLine AP 860



for travelling by a train carrying passengers on any date or possess a valid platform ticket, and if he becomes a victim of an untoward incident, he is entitled for compensation. The section does not further clarify that the passenger must possess the valid ticket of the same train from when he had an accidental fall. The fact that even a platform ticket holders also entitled for compensation, itself is a clear indication that any person who is having a valid railway ticket for travelling by a train carrying passengers on any date and becomes a victim of an untoward incident He is entitled for compensation'. Even Karnataka High Court in Smt. Vinodamma & Ors. Vs. U.O.I. reported in II (2012) ACC 431 AIR 20010 Karnataka 174 has made the same observations".

15. This Court finds no persuasive reasons to differ from the dictum laid down by learned Single Judge of the Andhra Pradesh High Court. Reference can also be invited to a decision of our own High Court in the case of **Hemlata & Ors. v. Union of India**¹³, where it was held as under-

“5. The legal position with respect to the untoward incident inside the railway station is well settled Section 124-A of the Railways Act is based on the principle of no fault liability and the compensation cannot be denied to the appellant on the ground that the deceased was negligent and it wholly irrelevant as to who was at fault. Section 123(e) of the Railways Act defines *untoward incident* to include the accidental falling of any passenger from a train carrying passengers. The word 'passenger' has been defined under Section 2 (29) of the Railways Act as a person travelling with a valid pass or ticket. The Explanation to Section 124A clarifies that the word "passenger" includes a railway servant on duty, and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket and becomes a victim of an untoward incident. As such, there are three categories of persons who are defined as passengers:- (i) a person with a valid ticket to travel, (ii) a person who holds a railway pass to travel and (iii) a person who holds a platform ticket. In each of the categories, so long as person is in railway premises or a train, he is taken as a passenger. His or her presence in the railway premises or a train is taken as authorized It is for this reason that there are decisions which extend meaning of the term "passenger" to a person who

¹³ 2017 SCC OnLine Del 10484



comes to a platform and gets into a wrong train [*Gaurav Kapoor v Union of India*, III (2014) ACC 639 (Del)] or a person who purchases a passenger train ticket and gets into an express train [*Santoshi v Union of India*, 2014 SCC Online Del 6510 (Del)]: person travelling atop a train and not inside a passenger compartment [*Raj Pal Goel v. Union of India*, 2014 ACJ 2315] or a person breaking journey without an endorsement and getting into another train in continuation of the journey to the destination station [*Dwarika Mahto v. Union of India*, 2011 ACI 768]. In all these situations, it is possible to feed meaning and logic to the decisions only if we recognise that primacy always is the lawful authority to enter the railway premises when the incident of travel itself becomes secondary.

16. In view of the foregoing discussion, the impugned order dated 17.09.2018 is a stark case of erroneous exercise of jurisdiction on the part of the learned RCT and suffers from patent illegality and absurdity. The same is hereby set aside. The claimants are made entitled to statutory compensation of Rs. 8 lakhs along with interest @ 12% per annum from the date of accident till the date of this judgment. The compensation along with interest so calculated be paid to the claimants within two months from today, failing which, the claimants shall be entitled to interest @ 12 % per on the statutory compensation amount of Rs. 8 lakhs till its realization.

17. The present appeal along with pending application stands disposed of accordingly.

DHARMESH SHARMA, J.

NOVEMBER 28, 2023

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