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BEFORE THE RAILWAY CLAIMS TRIBUNAL, JAIPUR BENCH,
JAIPUR

CORAM: SHRI LABH SINGH HON'BLE MEMBER (JUDICIAL)

Original Application No. OA/IIu/JP/13/2022

Date of Filing:03.03.2022

Judgment reserved on:21.8.2024

Judgment pronounced on:05.09.2024

1. Smt. Yashoda Devi wife of Late Shri Neeraj Kumar, aged about 29 years.
2. Raman Kumar Saini son of Late Shri Neeraj Kumar, aged about 12 years.
3. Hemant Saini son of Late Shri Neeraj Kumar, aged about 10 years.
4. Aditi daughter of Late Shri Neeraj Kumar, aged about 7 years.
5. Hariram Saini son of Late Shri Shivdutt Rai, aged about 69 years.
6. Smt. Gomti Devi Saini wife of Hariram Saini, aged about 67 years.

Applicants No.2 to 4 being minor hence, through their natural guardian and mother Smt. Yashoda Devi wife of Late Shri Neeraj Kumar.

All are residents of 182, Ward No.26, Mohalla Khushipura, Rambas, Rajgarh, District Churu (Rajasthan).

Applicants

Versus

Union of India represented by the General Manager, North Western Railway, Jaipur (Rajasthan).

Respondent

Claim for Rs.8,00,000/- along with interest

Present:

For the applicant: Mr. Hansraj Devanda, Learned Advocate

For the respondent: Mr. Tikam Chand Sharma, Learned Advocate

J U D G M E N T

1. The present original claim application has been preferred before this Tribunal by the wife, minor children and parents of the deceased, claiming to be the only dependent, under Section 16 of the Railway Claim Tribunal Act 1987 read with Section 124-A of the Railways Act 1989 seeking compensation for an amount of Rs.8,00,000/- (Rupees eight lakh only) along with interest and cost thereon on account of death of Shri Neeraj Kumar (hereafter to be referred as “the deceased”) in an alleged untoward incident.
2. Briefly stated the facts of the case are that on 25.11.2021, Shri Ramesh Chand Sharma, Station Master, Govindgarh Malikpur, issued a memo to Government Railway Police, Jaipur (hereinafter to be referred as “GRP Police”) that on 25.11.2021, Train No.04861 Jaipur – Churu DMU arrived at Gobindgarh station at 20.16 hours and departed at 20.18 hours. As soon as the train started, the Guard of the said train informed them that an unknown person had been run over by the train. The Station Master and Shri Kamlesh Chopra, Pointsman reached the site of incident and found that a person after falling down from the train, came under the

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train in between Kms.170/7 - 170/8 and died on the spot. A Mobile phone of OPPO Company and a bag was found with the deceased. Upon receipt of information, the GRP Police registered a UD case No. 47/2021 dated 25.11.2021 under Section 174 Cr.P.C. After completion of inquest proceedings and postmortem, the dead body was handed over to the family members for performing last rites of the deceased.

3. The case of the applicants is that on 25.11.2021, the deceased commenced his journey from Jaipur to Churu by Train No.04861 Jaipur - Churu Passenger after purchasing a valid second class railway journey ticket. During the journey, when the said train reached Govindgarh Malikpur railway station, the deceased got down from the train to drink water and after drinking water, when he boarded the train, the train suddenly started moving. Due to sudden moving of the train, the deceased lost his balance and accidentally fell down from the moving train in between the train and face of the platform and suffered grievous injuries.
4. Having seen the incident, the fellow coach passengers raised the alarm and pulled the alarm chain. After the stoppage of the train, the Guard was informed about the incident who in turn, informed the Station Master. The Station Master through a Memo informed the GRP Police and Railway Protection Force (hereinafter to be referred as "RPF Force").

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5. It has further been averred that the injuries suffered by the deceased ultimately proved fatal and died on the spot. Further, the dead body of the deceased was shifted in the Mortuary of SMS Hospital, Jaipur. The Police, on the basis of the Aadhaar Card recovered from the person of the deceased, informed the family members about the incident. Shri. Parshad approached the Police and identified the deceased as Shri Neeraj Kumar. The GRP Police, after completion of inquest proceedings and postmortem, handed over the dead body to the family members for performing last rites of the deceased.
6. It has been stated by the applicants that the relevant railway journey ticket on which the deceased was performing his aforesaid journey, was lost during the course of incident and that the deceased was a bonafide passenger of the train in question at the relevant time. The applicants have not claimed or received any compensation with regard to this incident from any other Court or Authority. Therefore, the present original application may be allowed.
7. Respondent Railway Administration appeared in pursuance of notice issued by this Tribunal and filed its amended written statement replying therein that though it has been pleaded that the deceased was travelling from Jaipur to Churu after purchasing a valid ticket whereas during search made on the person of the deceased, no railway journey ticket was recovered. Thus, the deceased was not a bonafide passenger of

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the train in question at the relevant time. The incident in question occurred due to sole negligence of the deceased while boarding the moving train.

8. It has further been replied that from the Panchnama prepared by the Police, it reveals that nothing has been mentioned about the railway journey ticket. The Joint Inspection Report prepared by the GRP Police, also indicates that no railway journey ticket was found on the person of the dead body during search. During enquiry, the statements of Shri Muniram Meena, Guard and Shri Dhanphool Meena were recorded and it was stated by them that after pulling of alarm chain, when they reached the site of incident, it was told to them by the fellow coach passengers that the deceased met with this incident in the process of boarding the moving train. Hence, the alleged incident is not covered under the definition of an untoward incident but the same is covered under clause (b) and (c) to the proviso to Section 124A of the Railways Act, 1989 for which no compensation is admissible to the applicants.
9. The burden lies upon the applicants to prove their own case. On the basis of these and other pleas, dismissal of the claim application has been sought by the respondent Railway with costs.
10. Based on the pleadings of the parties and material made available on record, the following issues, for just and

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proper adjudication of claim application, were formulated by the Tribunal on 22.4.2022:-

- (i) Whether the deceased was travelling on a valid railway journey ticket and was a bonafide passenger of the train in question at the relevant time?
- (ii) Whether the deceased met with an untoward incident due to fall from the passenger carrying train, suffered injuries and died as a result thereof and the present case is covered under the definition of Section 123 (c) read with Section 124A of the Railways Act, 1989?
- (iii) Whether the applicants are the sole dependants of the deceased and are entitled to compensation as claimed under Para-16 of the claim application?
- (iv) Amount of relief, if admissible?

11. The applicants, in order to prove their case, examined applicant No.1 Smt. Yashoda Devi as AW/01 by filing her affidavit in the evidence reiterated the same facts as pleaded in the original claim application which are not reproduced here for the sake of brevity and that she was duly cross-examined thereon by learned counsel for the respondent Railway on 19.1.2023. She has also tendered certain documents in the documentary evidence as Exh. A/1 to A/23.
12. Respondent Railway examined Shri Bacchu Singh, Enquiry Officer as RW/01 who filed his affidavit of evidence Exh.RW-1/1 in his examination in chief. He was duly

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cross-examined by learned counsel for the applicants on 27.6.2023.

13. Respondent Railway Administration in its documentary evidence, has filed the Enquiry Report Ex.R/01 along with its annexure which is already placed on record. Respondent Railway Administration has also filed an Enquiry Report of the Enquiry Officer, RPF Force which is a part of the DRM Report.
14. I have carefully gone through the case file, perused the pleadings of the parties, documents placed on record by them and heard the arguments put forth by the learned counsels for both the parties and after hearing learned counsels for the parties, I shall now proceed to consider the claim application on its merits, specifically within the ambit of issues framed in the present case.

Issue No.(i)

15. Insofar as issue No. (i) is concerned, the case of the applicants is that on 25.11.2021, the deceased was travelling from Jaipur to Churu by Train No.04861 holding a valid second class railway journey ticket. The railway journey ticket was lost during the course of the incident; however, the deceased was a bonafide passenger of the train in question at the relevant time. The question arises whether in absence of railway journey ticket the victim

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could be termed as bonafide passenger of the train in facts of circumstances of particular case.

18. At the very outset, it would be relevant to reproduce herein the relevant provisions of Section 2(29) of the Railway Act 1989, wherein a bonafide passenger has been defined and Section 124-A which provides for compensation to the victims in an untoward accident and the same are as follows:

Section 2(29): "Passenger" means a person travelling with a valid pass or ticket"

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;*

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(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 purpose 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.

19. Thus, a passenger includes a person travelling with a valid pass or ticket as well as who has purchased a valid ticket for travelling by a train carrying passenger on any date or having a valid platform ticket and becomes a victim of an untoward incident. If it is established that the deceased was a bonafide passenger then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, the railway administration would be liable to pay compensation.

20. In the instant case, the applicant No.1 while appearing as AW/01 has deposed by filing her affidavit of evidence Exh. AW-1/1 in her examination in chief that on 25.11.2021, the deceased was travelling from Jaipur to Churu by Train No.04861 after purchasing a valid second class railway

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journey ticket which was lost during the course of the incident. The deceased was a bonafide passenger of the train in question at the relevant time. During cross-examination, she has stated that she was not travelling with the deceased when the said incident took place. She did not see him purchasing the ticket and boarding the train. However, she has proved the fact that the deceased was travelling by train on the date of incident in question.

21. Therefore, in view of law and principle laid down in the judgment passed by the Hon'ble Apex Court in the case of Union of India v. Rina Devi, 2018 SCC OnLine SC 507, the applicants have discharged the initial burden of proof placed on them by filing an affidavit of evidence Exh. AW-1/1 of the applicant No.1 of relevant facts that the deceased was a bonafide passenger of the train in question at the time of occurrence of the incident within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989. The burden now shifted upon the respondent Railway Administration to disprove the case of the applicants.
22. Respondent railway has taken a plea that during investigation, it was found that subsequent to occurrence of incident, a search was made on the person of the deceased but no ticket was recovered. A Joint Inspection Report was also prepared by the GRP Police to this effect. Thus, it is

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established that the deceased was not a bonafide passenger of the train in question at the relevant time. Hence, the claim application filed by the applicants deserves to be dismissed on this score alone.

23. Respondent Railway, in order to substantiate its plea, examined Shri Bacchu Singh, Enquiry Officer as RW/1. He has deposed by filing his affidavit of evidence Exh. RW-1/1 in his examination in chief that the enquiry was entrusted to him after filing of the claim application. It has further been deposed by him that on 25.11.2021, he went to the site of incident and Shri Ashok Kumar searched the dead body but no ticket was recovered. A Joint Inspection Report was also prepared at the site of incident to this effect and the same bears his signature. From the testimony of this witness of the respondent Railway, it is ample clear that search was made on the person of the deceased by Shri Ashok Kumar.
24. It is an admitted case of respondent railway that the deceased after falling down from the moving train, became entangled in between the train and face of the platform. Hence, he must have dragged by the train in the same condition till the train came to halt. It is also clear from the Postmortem Report that the whole chest and abdomen of the deceased had been crushed due to this accident. The photographs of the dead body are available with the DRM Report and a perusal of the same reveals that the clothes of

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the deceased had also been torn subsequent to occurrence of the incident. Under such circumstances, the possibility of missing a ticket, which is a small piece of paper, at the site of the incident, in my considered view, cannot be ruled out. Besides, the respondent Railway has also not adduced any evidence to show that an extensive search was made at the site of incident to locate the ticket and other personal belongings of the deceased.

25. I feel it pertinent to state that nobody can enter into the railway station or into the train without having a valid ticket as at all entry points, Railways Administration has deputed its staff to detect ticketless and unauthorized persons entering the platform and even in train, the TTE has been deputed to detect the persons who board the trains without railway journey ticket or pass. Thus, if a person is travelling by a train, it is presumed that he/she is travelling with a valid ticket and the onus lies upon the railway authority to prove that such person was not having a ticket and as such he or she is not a bonafide passenger.
26. Therefore, in view of the above facts and law applicable thereon, it is held that the deceased was a bonafide passenger of the train at the relevant time of incident within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 1989. Accordingly, this issue is

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decided in favour of the applicants and against the respondent.

Issue No.(ii)

27. It is an admitted case of the applicants that the deceased had injured due to falling down from the train in question and died as a result thereon; however, it is case of the respondent railway that the deceased was trying to board the moving train which is an offence under Section 156 of the Railways Act, 1989 and, therefore, the alleged incident is not covered under the definition an untoward incident within the meaning of Section 123 (c) (2) of the Railways Act, 1989 but the same is covered under clause (b) and (c) to the proviso to Section 124A of the railways Act, 1989 for which no compensation is admissible to the applicants.
28. Learned Counsel for the respondent railway argued that the said fact stands corroborated from the testimony of the witness of the respondent Railway Administration and the original DRM's Report. Hence, the claim application filed by the applicants deserves to be dismissed with costs.
29. Although the witness of the respondent Railway Shri Bacchu Singh RW/01 has deposed by way of his affidavit that the deceased met with this incident in the process of boarding the moving train at Govindgarh Malikpur railway station, during cross-examination, he stated that he reached the site of incident after occurrence of the incident. The incident

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took place at Platform No.1 of Govindgarh Malikpur railway station. During enquiry, it was revealed that no passenger was available on the platform. It was told by the Pointsman that the deceased got down from the train to drink water and he met with this incident while attempting to board the moving train. When this witness of the respondent Railway was shown the statement of Shri Kamlesh Chopra, Pointsman duly signed by him, he recognized his signature. The statement has been marked as Exh. R-1/1. This witness of the respondent Railway has further stated that it is true that it has nowhere been mentioned in the said statement that the deceased was boarding the train. The incident took place during night time.

30. From the testimony of this witness of the respondent Railway, it is ample clear that he is not an eye-witness to the incident. Besides, Shri Kamlesh Chopra, Pointsman has also nowhere stated in his statement (RW-1/1) that the deceased met with this incident in the process of boarding the moving train. The respondent Railway could have examined Shri Kamlesh Chopra to ascertain the factual position but it has failed to do so. Hence, the testimony of this witness of the respondent Railway, in my considered view, does not have any force to prove that the death of the deceased did not happen due to an untoward incident as a result of a fall from moving train and the present case is covered under

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clause (b) and (c) to the proviso to Section 124A of the Railways Act, 1989 for which the respondent Railway is absolved from its liability to pay compensation to the applicants.

31. Apart from the above, all the documents prepared by the GRP Police also indicate that death of the deceased happened due to an accidental fall from the running train and resultant injuries. The said documents were prepared in ordinary course of duty and, therefore, the veracity of the same, in my considered opinion, cannot be doubted.
32. Insofar as the plea of respondent Railway that the incident in question falls within exemption clause (b) and (c) to the proviso to Section 124-A of the Railways Act 1989 is concerned, first of all there is nothing on record which could prove that it was a criminal act of the deceased. Secondly, the issue of negligence in the train accidents/incidents has been settled by the Hon'ble Apex Court in the case of Union of India Versus Rina Devi (Supra). Hon'ble Apex Court, in the case of Union of India Vs. Rina Devi (Supra) while discussing the issue of negligence of the victim of the train incident, held as under:

“16.4: 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

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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 judgment of this Court in United India Insurance Co. Ltd Versus Sunil Kumar 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 de-boarding 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. Thus, the plea of respondent railway that it was a negligent act of the deceased, is not tenable in the eye of law. This Tribunal is duty bound to follow the ratio of law laid down by the Hon'ble Apex Court in case of Union of India Vs. Rina Devi (Supra) being the law of land under Article 141 of the Constitution of India.
34. Hence, in view of my discussions in foregoing paras and after taking into consideration the facts and circumstances of the case in hand, it is held that death of the deceased happened as a result of an untoward incident due to a fall

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from the passenger carrying train and the present case is fully covered under the ambit of Section 123 (c) (2) read with Section 124A of the Railways Act, 1989. Accordingly, this issue is decided in favour of the applicants and against the respondent Railway.

Issue No.(iii)

35. The applicants, in order to prove their identity, status and relation with the deceased, have relied upon their Aadhaar Cards and Jan Aadhaar Cards as Exh.A/15 to A/23 wherein it has been proved that the present applicants are the wife, minor children and parents of the deceased and they are residing at the same address as mentioned in the cause title.
36. Further, in order to prove the dependence of the present applicants on the deceased, the applicant No.1 (AW/01) has deposed by way of her affidavit in evidence that the present applicants are the only dependents of the deceased. During cross-examination nothing contradictory has come out. On the other hand, the respondent Railway Administration has not adduced any evidence to rebut the sole dependence of the present applicant. Therefore, it has been proved on record that the applicants are only dependents on the deceased as defined in Section 123(b) of the Railways Act 1989.

Issue No. (iv)

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37. This case pertains to untoward incident occurred after amendment of the Railway Accidents and Untoward Incidents (Compensation) Rules 1990 vide G.S.R No. 1165(E) dated 22.12.2016 which is applicable with effect from 01.01.2017 and hence the applicants are entitled for an amount of Rs. 8,00,000/-(Rupees Eight Lakh Only) with interest @ 9% per annum from the date of incident till the date of judgment.
38. The applicants, under Part-I of the Schedule of the Railway Accidents & Untoward Incidents (Compensation) Rules, 1990, as amended in 1997 and 2016, are jointly entitled to Rs 8,00,000/- as compensation on account of the death of the deceased in an untoward incident.
39. Therefore, in view of the above, the original application deserves to be allowed with the following order:

O R D E R

- 1) The applicants are entitled for an amount of Rs.8,00,000/-(Rupees eight lakh only) as compensation along with interest @ 9% per annum from the date of incident i.e. 25.11.2021 till the date of award.
- 2) The respondent Railway Administration is hereby directed to deposit the amount awarded with the Additional Registrar of this Tribunal within a period of 30 days from the date of receipt of the copy of the judgment failing which the applicants shall also be entitled to receive interest @ 9%

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per annum from the date of judgment till the actual date of depositing the amount with the Additional Registrar.

- 3) Further, out of the whole amount of compensation, Rs.5,50,000/- shall be payable to applicant No.1 and balance amount shall equally be distributed amongst applicants No.2 to 6 i.e. each will get Rs.50,000/-. The whole amount of interest accrued shall be payable to applicant No.1.
- 4) Applicant No.1 is permitted to withdraw 10% of the amount awarded to her i.e. Rs.55,000/- (Rupees fifty five thousand only). Similarly, applicants No.5 and 6 are also permitted to withdraw 10% of the amount awarded to each of them i.e. Rs.5,000/- each.
- 5) Further, the balance amount of Rs.4,95,000/- (Rs. four lakh ninety five thousand only) along with whole amount of interest payable to applicant No.1 shall be kept in fixed deposit in any Nationalized Bank for a period of three years. Alike, the balance amount of Rs.45,000/- (Forty five thousand only) payable each to applicants No.5 and 6 shall also be kept in fixed deposit in any Nationalized Bank for a period of one year.
- 6) However, the whole amount of compensation payable to applicants No.2 to 4 shall be kept in fixed deposit in any Nationalized Bank under the guardianship of their mother i.e. applicant No.1, till such time they become major.

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- 7) The applicants are hereby directed to submit the details of their Aadhaar linked Bank accounts of a Nationalized Bank situated nearest to their place of residence to the Additional Registrar of this Tribunal.
- 8) The Bank shall not permit any joint name(s) to be added in the saving bank accounts or fixed deposit accounts of the applicants i.e. their Saving Bank Accounts shall be an individual Saving Bank Account and not a Joint Account.
- 9) The monthly interest be credited by Electronic Clearing System (ECS) in the said Saving Bank Accounts of the applicants.
- 10) The maturity amount of the FDRs will be credited by Electronic Clearing System (ECS) in the Saving Bank Accounts of the applicants.
- 11) No loan, advance, withdrawal, or premature payment be allowed on the fixed deposits without permission of the Tribunal.
- 12) The concerned Bank shall not issue any cheque book and/or debit card to the applicants. However, in case the debit card and/or cheque book have already been issued, the Bank shall cancel the same before the disbursement of the award amount.
- 13) The Bank shall freeze the accounts of the applicants so that no debit cards be issued in respect of their accounts. The Bank shall make an endorsement on the passbooks of the

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applicants to the effect that no cheque book and/or debit cards have been issued or will be issued without the permission of the Tribunal and the applicants shall produce the passbooks with the necessary endorsement duly signed and stamped by the Bank before the Additional Registrar of this Tribunal.

- 14) The Bank is further directed to permit the applicants to withdraw money from their Saving Bank Accounts by means of a withdrawal form only.
- 15) The Respondent Railway Administration is also directed to place on record the proof of deposit of the award amount with up to date interest, if any along with a calculation sheet and the same shall be filed with the Additional Registrar.
- 16) Registry is directed to send a free certified copy of this judgment directly to the applicants at their postal address mentioned in the claim application by Speed Post in view of Rule 34 (3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

Pronounced in open Court

05.09.2024

Labh Singh
Member (Judicial)

(The Judgment has been dictated in open Court and consists twenty one pages and each page has been checked and signed by me)

Labh Singh
Member (Judicial)