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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/16/2022

Date of registration: 15.03.2022

Judgment reserved on: 27.08.2024

Judgment pronounced on: 29.08.2024

1. Badan Singh Tomar son of Shri Bhikam Singh, aged about 55 years.
2. Smt. Pushpa Devi wife of Shri Badan Singh Tomar, aged about 40 years (*died during pendency of the claim application*).

Both are residents of Pulandpur Divri, Bellhupur, Tehsil Vidhuna Bellhupur, District Auraiya (Uttar Pradesh).

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. Yaseen Mohammed, Learned Advocate

For the respondent: Mr. Jitendra Singh Rathore, Learned Advocate

J U D G M E N T

1. The present original application was preferred before this Tribunal by both the applicant, claiming themselves to be

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the only dependents, 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 costs thereon on account of death of their unmarried son Shri Rohit (hereafter to be referred as “the deceased”) in an alleged untoward incident. During pendency of the claim application, applicant No.2 Smt. Pushpa Devi, mother of the deceased expired on 15.01.2021. Hence, on the basis of an application moved on behalf of applicant No.1 Shri Badan Singh Tomar to this effect, her name was deleted. Now, applicant No.1 Shri Badan Singh Tomar, father of the deceased is the sole dependent of the deceased.

2. Briefly stated the facts of the case are that on 18.6.2018 the S.H.O., Police Station, Naraina on receipt of an information by Shri Narendra Sahu, Keyman about lying of a dead body below the Down Line towards Dantra, reached the site of incident, registered a Merg Report No.6/2018 under Section 174 Cr.P.C. and also completed other formalities including postmortem on the dead body. Following the postmortem, the dead body of the deceased was handed over to the family members for performing last rites of the deceased.
3. It is the case of the applicants that on 16.6.2018, the deceased was travelling from Ahmedabad to Agra by Train

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No.12548 after purchasing a valid second class railway journey ticket bearing No.53968572. There was a huge rush of passengers in the train on that day. During journey on 17.6.2018, when the train was running in between Dantra and Naraina railway stations, the deceased while going towards toilet, accidentally fell down from the running train due to rush of passengers and resultant push thereof which resulted in serious injuries and ultimate death on the spot as a result thereof.

4. Upon receipt of information from Sh. Narendra Sahu, Keyman of respondent Railway, the Police registered a case UD No.06/2018 under Section 174 Cr.P.C. and after completion of inquest proceedings and postmortem, the dead body was handed over to the family members for cremation of the dead body. The relevant railway journey ticket on which the deceased was undertaking his aforesaid journey, is made available with the claim application and it has been claimed that the deceased was a bonafide passenger of the said train at the relevant time.
5. It has also been stated by the applicants that they have not claimed or received any compensation with regard to this incident from any Court or Authority. Therefore, the present original application may be allowed.
6. Respondent appeared in pursuance of notice issued by this Tribunal and filed its written statement replying therein

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that the present original application has been filed by the applicants on the basis of false averments; and, therefore, the claim application *prima facie* deserves to be dismissed. It has also been replied that the alleged incident is not covered under the definition of untoward incident. The alleged incident is covered under the exceptions provided with Section 124A of the Railways Act, 19889 for which no compensation is admissible to the applicants.

7. It has further been replied that none saw the deceased performing the alleged journey or falling down from the train. It is stated that on 18.6.2018 Shri Rampal Jat, Station Master, was telephonically informed by Shri Narendra, Keyman, Gang No.11 about the lying of a dead body 25 - 30 feet away from the Down Line between Kms.235/7-8. On this, the Station Master, informed the Railway Protection Force, Phulera (hereinafter to be referred as "RPF Force"). Acting on the same, Shri Ummed Singh, Sub Inspector and Shri Dhanniram Meena, Constable reached the site of incident. Shri Narendra Sahu, Keyman was the first person who saw the dead body. As per the statement of the Guard and Driver of Train No.12548, they did not see anyone falling down from their train on that day. It has also been stated by them that on 17.6.2018, their train passed through the site of the incident at 3.15 hours. Hence, it

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is clear that neither was the deceased travelling by that train nor did he fall from the train.

8. It has further been replied that as per the applicants, the deceased commenced his journey on 16.6.2018 and the said train passed through the site of incident at 03.15 hours on 17.6.2018. During the interregnum, several trains passed through the site of incident but none of the on duty staff in the trains informed about the lying of a dead body at the site of incident. The ticket claimed to have been possessed by the deceased, is a managed one. Hence, the deceased cannot be termed as a bonafide passenger within the meaning of Section 2 (29) and the alleged incident is not covered under the definition of an untoward incident as defined under Section 123 (c) of the Railways Act, 1989.
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 proper adjudication of claim application, were formulated by the Tribunal on 17.5.2022:-
 - (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?

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- (ii) Whether the deceased met with an untoward incident due to a fall from the passenger carrying train, suffered injuries and died as a result thereof and if the present case is covered under the definition of Section 123 (c) (2) 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 Shri Badan Singh Tomar as AW/01 by filing his affidavit of evidence Exh. AW-1/1 in his examination in chief and reiterated the facts pleaded in the original application which are not reproduced here for sake of brevity. He was duly cross-examined by Learned Counsel for respondent railway. He has further tendered in his evidence certified copies of documents Exh. A/1 to Exh. A/11.
12. Respondent Railway, in its oral evidence, examined Krishna Kumar, Enquiry Officer as RW-1. He was cross-examined by learned counsel for the applicants on 27.2.2024. Respondent Railway has further relied upon its certified DRM report Exh. R/01 along with annexure which is already placed on record. Respondent Railway has also filed an investigation report of the Enquiry Officer, RPF Force which is the part of the original DRM report.

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13. 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 both 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) & (ii)

14. Since both these issues are inter-lined with each other, the same are being dealt with and decided together.
15. The case of the applicants is that on 16.6.2018, the deceased purchased a second class railway journey ticket bearing no. 53968572 to travel from Ahmedabad to Agra and boarded the Train No.12548. On 17.6.2018, when the train was running in between Dantra and Naraina railway stations, the deceased accidentally fell down from the running train which resulted in serious injuries and ultimate death on the spot as a result thereof.
16. The applicants, in order to prove the deceased as a bonafide passenger of the train, relied upon railway journey ticket Exh. A/04. The railway journey ticket Exh. A/04 was issued on 16.6.2018 at 14:27 hours from Counter No., 27 of Railway Station Ahmedabad. The said railway journey ticket was issued for travelling of one adult passenger from Ahmedabad to Agra Fort with permission to commence journey on

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- 16.6.2018. Respondent Railway has taken a verification report of the ticket from the booking office of Railway Station Ahmedabad and upon verification, the ticket has been found to be genuine.
17. Moreover, it has been admitted by respondent railway in its DRM report that the Police, during inquest proceedings, searched the dead body and upon search, the railway journey ticket Exh. A/04 was found with the deceased. It has clearly been concluded in the DRM report that the ticket Exh. A/04 was found with the deceased and the deceased had been claimed to be died due to falling down from the train but there is no eyewitness to the incident in question
18. The applicant No. 1, while appearing as AW-1, has categorically stated that on 16.6.2018, the deceased was travelling from Ahmedabad to Agra by Train No.12548 after purchasing a valid second class railway journey ticket bearing No.53968572. He has further stated that the deceased died due to accidental fall which resulted in grievous injuries and ultimate death on the spot.
19. During cross-examination, he has stated that it is true that the deceased was travelling alone on the date of incident. He did not see him purchasing the ticket, travelling by the train and falling down from the train. The incident took place on 17.6.2018. The Naraina Police telephonically informed him about the incident. The said phone was found

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with the deceased. The facts mentioned in the affidavit are based on the information given by the Police. The ticket recovered from the person of the deceased was kept by the Police in its custody whereas the other personal belongings were handed over to them by the Police. He has been cross-examined at length but nothing could be elicited to disbelieve his testimony.

20. The applicants, in order to prove the incident in question as accidental fall, have relied upon registration of UD Case No. 6 of 2018 Exh. A/01, Postmortem report Exh. A/02, Panchnama Memo Exh. A/03. It has clearly been recorded in the Panchnama Report Exh. A/02 and Postmortem report Exh. A/03 that the deceased had died due to falling down from the train.
21. Thus, it has been proved on record by the applicants that the deceased was a bonafide passenger of the train in question at the relevant time within the meaning of Section 2 (29) read with Section 124A of the Railways Act, 198 as he was travelling from Ahmedabad to Agra on a valid second class railway journey ticket and his death happened due to an untoward incident as a result of a fall from the train in question.
22. Thus, the applicants have discharged the burden of proof cast upon them to prove the fact that the deceased while travelling as a bonafide passenger from Ahmedabad to Agra,

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died as a result of an accidental fall from the running train. The onus has now been shifted upon respondent railway to disprove the case of the applicants.

23. Respondent railway has taken a plea that during investigation, it was revealed that the deceased was not a bonafide passenger of the alleged train and his death did not happen due to alleged untoward incident as there is no eye-witness to the incident. Besides, the dead body of the deceased was spotted at about 11.30 hours on 18.6.2018 whereas the alleged train passed through the site of incident at 3.15 hours on 17.6.2018. During this period several trains passed through the site of the incident but none of the Driver or Guard of any of those trains informed about the lying of a dead body. The dead body was lying about 25 - 30 feet away from the railway track which is not possible in the case of falling down a person from the running train. Thus, it is established that neither was the deceased travelling by the alleged train nor did he meet with an untoward incident as a result of a fall from the running train.
24. Respondent Railway, in order to substantiate its plea, has examined Shri Krishna Kumar, Enquiry Officer as RW/1. He has deposed by way of his affidavit that enquiry in the present matter was conducted by him. During enquiry, he recorded statements of witnesses who are particularly Shri Narendra

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Sahu, Trackman, Loco Pilot and Guard of Train no. 12547. It has been deposed by him that as per the Driver and Guard of Train No.12548, on 16.6.2018 their train after passing through Sakhun railway station, reached Jaipur at about 4.10 hours and during this period, none fell down or run over by their train. He further stated that during enquiry, none come forward who has witnessed the incident in question.

25. Sh. Krishan Kumar RW-1 further stated that the dead body was 2/3 days old and was giving off a bad smell and prior to spotting the dead body on 18.6.2018, several trains passed through the site of incident but none of the Driver or Guard informed about the lying of a dead body there.
26. During his cross-examination, he has stated that he went to the site of the incident. He did not prepare any site plan as it had already been prepared by the Civil Police. During enquiry, it was revealed that a ticket was recovered from the person of the deceased. The journey ticket is 16.6.2018 whereas the dead body was found on 18.6.2018. The train No.12548 passed through the site of the incident on 17.06.2018 at 3.15 hours. The dead body was first noticed by Shri Narendra Sahu on 18.6.2018 about 11.00 hours. The dead body was having a foul smell as it was 1 - 2 days old. He admitted that there is a steep slope at the site of the incident having bushes all around. The deceased belongs to

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Auraiya and the incident took place at Sakhun Dadra at Kms.235/78.

25. From the testimony of this witness of the respondent Railway, it is amply clear that a ticket was found on the person of the dead body and there was a steep slope and bushes where the dead body of the deceased was spotted by Shri Narendra Sahu, Keyman.
26. Admittedly the dead body of the deceased kept lying there unnoticed for about 18 hours. It is also an admitted fact that during this period several trains were passed through the site of incident but none of the Driver or Guard of any train spotted the dead body as the dead body was not visible due to topography of the place where it was lying. Shri Narendra Sahu, Keyman could only come to know about lying of a dead body because when he reached near the site of incident during patrolling, he felt bad smell and, therefore, he went below the Down Line where the dead body was lying. It has been opined by the doctor in postmortem report that the death is within 48 hours to 72 hours from the examination of dead body on 19.6.2018. Thus, the possibility of the railway journey of the deceased has not been ruled out by the doctor conducting the post mortem report.
27. Merely because there is no eye-witness to the incident, it cannot not be presumed that death of the deceased did not

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happen due to an untoward incident as a result of a fall from the passenger carrying train. I feel it pertinent to mention that it cannot be expected from a passenger who is travelling alone, to keep evidence of when, where, how and in whose presence he or she undertook the journey. The evidence in favour of the applicants is that the deceased had a valid ticket which proves that he was on the train going towards Agra.

28. Besides, the respondent Railway has not adduced any evidence to prove that the death of the deceased happened due to other reasons except by falling down from train. The incident in question does not fall within any of the exceptions provided with Section 124A of the Railways Act, 1989 for which the respondent Railway is exonerated from its liability to pay compensation to the applicants.
29. It is also worthwhile mentioning here that the Railways Act, 1989 is a social beneficial piece of legislation to protect the bonafide travelers who have a valid ticket or authority as per the definition of Section 2 (29) read with Section 124A of the Railways Act, 1989. The action claimed under Section 124A of the Railways Act, 1989 is, thus, maintainable and it has been held to be in a form of a strict liability for which the Railways are liable to pay compensation and an action is liable to be maintained on that account and compensation is to be paid.

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30. Therefore, in view of the facts and circumstances of the present case and law applicable thereon, it has been proved on record that the deceased while travelling as a bonafide passenger of the train question on the date of incident, died as a result of a fall from the passenger carrying train which is an untoward incident within the meaning of Section 123 (c) (2) read with Section 124-A of the Railway Act 1989. Accordingly, both these issues are decided in favour of the applicants and against respondent Railway.

Issue No.(iii) & (iv)

31. Both these issues are being dealt with and decided together.
32. The instant case was initially filed by the parents of the deceased being the only dependents. During pendency of the claim application, applicant No.1 Smt. Pushpa Devi, mother of the deceased expired on 15.1.2021. Hence, on the basis of an application submitted by applicant No.1 Shri Badan Singh Tomar to this effect, her name was deleted. Now the applicant No.1 Shri Badan Singh Tomar is the sole dependent of the deceased who was his unmarried son. In order to prove his identity, status and relation with the deceased, the applicant No.1 has relied upon his Aadhaar Card and PAN Card as Exh. A/10 and A/11 respectively. There is nothing on record to disbelieve the said evidence of the applicant No.1 to establish his relation with the deceased. The applicant No.1 being the father of the deceased, is the sole dependent

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of the deceased within the meaning of Section 123 (b) (i) of the Railway Act 1989.

33. This case pertains to an 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 applicant No.1 is entitled for an amount of Rs. 8,00,000/- (Rupees eight lakh only) as compensation. Since there was delay in filing the claim application on the part of the applicants and after condoning the same by the Tribunal on 08.3.2022, the present matter was registered at its original number on 15.3.2022, the applicant No.1 is entitled to interest from date of registration of the claim application i.e. 15.3.2022 till the date of award.
34. Therefore, in view of the above, the original application deserves to be allowed for an amount of Rs. 8,00,000/- and as such the original application is allowed for Rs. 8,00,000/- along with interest @ 9% per annum from date of registration of the claim application i.e. 15.3.2022 till the date of award with no order as to cost.

O R D E R

- 1) The applicant No.1 is 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 registration

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of the claim application i.e. 15.3.2022 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 applicant No.1 shall also be entitled to receive interest @ 9% per annum from the date of award till the actual date of depositing the amount with the Additional Registrar.
- 3) Applicant No.1 is permitted to withdraw 10% of the amount of compensation awarded to him i.e. Rs.80,000/- (Rs. eighty thousand only).
- 4) Further, the balance amount of compensation i.e. Rs.7,20,000/- (Rs. seven lakh twenty thousand only) along with whole amount of interest payable to him, shall be kept in fixed deposit in any Nationalized Bank for a period of three years.
- 5) The applicant No.1 are hereby directed to submit the details of his Aadhaar linked Bank account of a Nationalized Bank situated nearest to his place of residence to the Additional Registrar of this Tribunal.
- 6) The Bank shall not permit any joint name(s) to be added in the saving bank account or fixed deposit account of applicant No.1 i.e. his Saving Bank Account shall be an individual Saving Bank Account and not a Joint Account.

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- 7) The monthly interest be credited by Electronic Clearing System (ECS) in the said Saving Bank Account of applicant No.1.
- 8) The maturity amount of the FDR will be credited by Electronic Clearing System (ECS) in the Saving Bank Account of the applicant No.1.
- 9) No loan, advance, withdrawal, or premature payment be allowed on the fixed deposit without permission of the Tribunal.
- 10) The concerned Bank shall not issue any cheque book and/or debit card to the applicant No.1. 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.
- 11) The Bank shall freeze the account of the applicant No.1 so that no debit card be issued in respect of his account. The Bank shall make an endorsement on the passbook of the applicant No.1 to the effect that no cheque book and/or debit card have been issued or will be issued without the permission of the Tribunal and the applicant No.1 shall produce the passbook with the necessary endorsement duly signed and stamped by the Bank before the Additional Registrar of this Tribunal.

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- 12) The Bank is further directed to permit the applicant to withdraw money from his Saving Bank Account by means of a withdrawal form only.
- 13) 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.
- 14) Registry is directed to send a free certified copy of this judgment directly to the applicant No.1 at his 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

Date: 29.08.2024

**Labh Singh
Member (Judicial)**

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

**Labh Singh
Member (Judicial)**