

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 202 of 2020**

1. Suresh Ram
2. Raju Ram
3. Pappu Ram
4. Bhola Kumar
5. Bablu Kumar
6. Sukesh Kumar
7. Puja Kumari Appellants

Versus

The Union of India through General
Manager, East Central Railway,
Hajipur, Vaishali (Bihar) Respondent

For the Appellants : Ms. Chaitali Chatterjee Sinha, Advocate
For the Respondent : Mr. Shiv Kumar Sharma, CGC

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. on 10.10.2023

Pronounced on 17.10.2023

The instant appeal is preferred for setting aside the Judgment dated 17.09.2019 passed by Mr. Dipankar Lahiri, Railway Claims Tribunal, Ranchi Bench in Case No. OA(IIU) RNC/72/2018 in an application under Section 16 of Railway Claims Tribunal Act, 1987, whereby and whereunder the learned tribunal has dismissed the claim application of the appellants on the ground that the deceased did not die in an untoward incident as defined under Section 123 of the Railways Act, 1989.

2. Factual Matrix giving rise to this appeal in a nutshell is that on 29.03.2017 the deceased went to Windhamganj to meet her brother and was returning on 30.03.2017 boarding on Singrauli-Palamau Patna Link express to Garhwa. At About 11.30 in the night a message was received by the family members of the deceased that a lady has been died in a railway accident at Garhwa Town Railway Station near Railway Line 3 and Pole No. 10/4. The informant went to place of occurrence. It is alleged that no foot over bridge has been built near the railway station to enable the passengers to go across from one side to another and there is also no facility of electricity near the railway track and the passengers are compelled to cross the railway line and in that

course the deceased while crossing the track hit by an unknown train resulting in her death. The dead body of deceased was identified by her son Bablu Kumar who lodged a case at Rail Police Station Daltonganj on 31.03.2017 which was registered as U.D case no. 12/2017 (annexure 2). After investigation final report was submitted by the investigating officer with conclusion that it is a case of accidental death on account of being run over due to crossing the track (annexure 4). It was stated by claimants that deceased was a bonafide passenger of train no 23347 Singrauli Palamau link express. She had purchased valid ticket from Windhamganj to Garhwa. She completed her journey and was returning to her house by crossing the railway track, where there was no foot overbridge and electricity facility and passengers had to cross the railway track to go to the other side, which resulted in the accident running over the deceased by another moving train due to which she died on the spot. The claimants application for compensation of Rs. 8 lacs with interest was rejected by the learned tribunal which has been assailed in this appeal.

3. The main ground for rejection of claim petition is the finding recorded by learned tribunal that the fact of a bonafide passenger getting run over after completing his journey while trying to cross the track to go to the other side on account of non availability of foot overbridge does not come within the purview of Section 123(c) of the Railways Act which defines "Untowards Incident".

4. The learned counsel for appellants, Ms. Chaitali Chatterjee Sinha has argued that admittedly at Garhwa Railway Station footover bridge facility was not available and after completion of journey the bonafide passengers were constrained to cross the railway track in darkness of night to reach their destination. It is further submitted that even after completion of journey by a bonafide passenger hitting by another train while crossing railway track due to non availability of foot over bridge, the incident comes under the definition of untoward incident and none of the exception as mentioned under Section 124 A of the Railway Act has been proved by the respondents to negate their liability. The impugned judgment passed by learned tribunal is not based on the application of judicial mind and settled principle of law propounded by various High Courts and place reliance upon the Judgment of Hon'ble Apex Court rendered *in Union of India Versus Rina Devi (2018) 2 JBCJ 478 (SC)*. She has also placed reliance upon judgment in

First Appeal No. 419/2019 rendered by Hon'ble High Court of Bombay, Nagpur Bench wherein it was held as under-

18. In the case at hand also, there was no foot overbridge at the time of the incident. The communications obtained on behalf of the appellants under the RTI Act clearly suggest, that at the relevant time, there was no foot overbridge. It is only after the subject incident that one foot overbridge has been opened for passenger traffic on 31/12/2018. When admittedly, as in this case, Railway Station did not have an overbridge at the time of the incident, the passengers would have been forced to, after alighting a train, walk along the tracks or cross them. What other option would they have. While walking along railway track No.3, the deceased could not have imagined that a High Speed train would be approaching and then hit him. This was an untoward incident. No other evidence has been brought on record by the Railway Administration to prove or demonstrate otherwise. The Railways Act is a beneficial Legislation as held by several decisions of the Hon'ble Apex Court and this Court and the provisions should receive liberal and purposive interpretation and not a literal or a narrow or a hypertechnical one. Paragraph 14 of the decision in the case of ***Union of India V/s Prabhakaran Vijaya Kumar (2008) 9 SCC 527*** is apt and is quoted as under :

"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.

5. In the premises of above proposition of law, the learned counsel for appellants submits that the findings recorded by learned tribunal in this case is not sustainable and liable to be set aside.

6. Per Contra: the learned CGC, Mr. Shiv Kumar Sharma for the respondent has controverted the aforesaid contentions raised on behalf of appellants and submitted that in the factual position of the case and the materials available on record the learned tribunal has arrived at right conclusion while dismissing the claim of the appellants which

suffers from no illegality or infirmity calling for any interference by way of this appeal, which is fit to be dismissed.

7. The only point for determination in this appeal is whether a bonafide passenger getting run over after completing his journey while trying to cross the track to go to the other side on account of non –availability of a Foot Over Bridge does not come within the purview of Section 123(c) of the Railways Act which defines “untoward incidents”?

8. In this case it is admitted fact that the deceased was a bonafide Rail passenger. It is also proved fact that the dead body of the deceased was found near railway track at the Railway Station Garhwa. Cause of death is also opined due to railway accident as per Inquest and Post Mortem report of the deceased. It is also proved fact that the said accident took place while the deceased after alighting from the train on completion of her journey was moving to cross the track to go her home in the dark night, hit by another train and died on the spot. There is no material showing that the deceased had any intention to inflict any injury upon herself or adamant to commit suicide.

9. In the case of *Rakesh Saini & Ors. Versus Union of India & Anr.* AIR 2004 Delhi 107 where the deceased was crossing the railway track due to non availability of Foot Over Bridge, it was held that the deceased could not be held to be negligent, but it was the railway administration that was negligent and the dependents of the deceased were found entitled to compensation. It was held at para 13 as under

*“ Undisputedly no over-head bridge or subway to approach the train at Old Azadpur Railway Station for boarding the train coming from New Delhi side and going towards Ambala side was provided. Thus the passengers for boarding the said train had to cross the Railway Station. It is itself hazardous and would amount to negligence on the part of the respondents. It defeats the contention of the Court as to how the respondents could act in such a negligence by exposing the passengers to a grave risk in forcing them to cross the Railway track meant for incoming trains from Ambala side for boarding the trains which were to go towards Ambala. This fact alone is sufficient to fasten the respondents with the liability. There has to be safe passage in the form of over-bridge or sub-way for reaching the other side and not by means of crossing the Railway track which itself is dangerous. The Apex Court in the case of *M.P.Electricity Board vs. Shail Kumari* (2002) 2 SCC 162: (AIR 2002 SC 551) made following pertinent observations fastening the respondents with ‘strict liability’: “Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known in law as*

'Strict Liability'. It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed. But, such consideration is not relevant in cases of strict liability where the defendant is held liable, irrespective of whether he could have avoided the particular harm by taking precautions".

10. In view of aforesaid discussion of propositions of law, I arrive at conclusion that in the instant case deceased was a bonafide Railway Passenger and due to negligence of Railway Department for not providing facility of foot over bridge and proper electricity light facilitating the passengers have no option but to cross the railway track. Providing amenities for safe journey, certainly comes within the legal liability of Railways. The Railways administration cannot take advantage of its own negligence in order to avoid liability to pay the compensation to the genuine claimants, who suffers risk of death due to no provision of foot over bridge.

11. In the light of above discussion, I find that impugned judgment is not justified under law, which is hereby set aside. It is held that deceased was bonafide passenger who died due to untoward incidents and the appellants being the dependants of the deceased are entitled to compensation under Section 124(A) of The Railways Act, 1989 to a sum of Rupees Eight Lacs (Rs. 8,000,00/-) with interest @ 6 % from the date of filing the application i.e. 13.03.2018 till the date of realisation. The aforementioned amount shall be deposited within six weeks before the tribunal and learned tribunal shall distribute the amount in equal proportion among the appellants, subject to due verification. Accordingly, this appeal is allowed and the impugned judgment is set aside.

(Pradeep Kumar Srivastava, J.)