

Doli Rani Saha

v.

Union of India

(Civil Appeal No. 8605 of 2024)

09 August 2024

**[Dr Dhananjaya Y Chandrachud, CJI, J.B. Pardiwala and
Manoj Misra, JJ.]**

Issue for Consideration

Issue arose whether the victim was a bona fide passenger of the train in question on the date of incident, and was entitled to compensation.

Headnotes[†]

Railway Claims Tribunal Act, 1987 – s. 16 – Railways Act, 1989 – s. 124A – Railway accident – Claim of compensation – Victim, if a bona fide passenger – Burden of proof – Discharge of – Victim travelling on the train and his death caused by a fall during course of his travel – Compensation claim by the victim’s sister, dismissed by the courts below – Correctness:

Held: In cases where the body of the deceased is found on railway premises, the initial burden would be on the claimant, which could be discharged by filing an affidavit of the relevant facts – Once the claimant did so, the burden would then shift to the Railways – Mere absence of a ticket would not negate the claim that the deceased was a *bona fide* passenger – On facts, the victim’s sister duly filed an affidavit stating the facts and adverting to the report arising from the investigation conducted by the respondent, which showed that the deceased was travelling on the train and that his death was caused by a fall during the course of his travel – Burden of proof then shifted to the Railways, which was not discharged – Thus, the presumption that the deceased was a *bona fide* passenger on the train was not rebutted – Report of the Investigating Officer indicated the details mentioned in the post-mortem report wherein the conclusions as to the time of death are approximations – Estimation as to the time of death in the post-mortem report differs from the time at which the IO stated that the deceased fell off the train by about half a day – Margin of error of about half a day in cases of compensation is not disproportionate,

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where the evidence is otherwise corroborated by the material on record, which on facts, indicate that the deceased was a bona fide passenger on the train and he sustained grave injuries leading to his death, due to his fall from the train – Thus, compensation due to the victim's sister – In case the amount so calculated is less than the amount prescribed as on the date of the grant of compensation, the claimant would be entitled to the higher of the two amounts – In 2003, the compensation payable for the death of a passenger was Rs 4,00,000 as provided under Schedule I of the Railway Accidents (Compensation) Rules 1990 – Compensation payable for the death of a passenger as on date is Rs 8,00,000 which was enhanced by a notification bearing GSR 1165(E) dated 22 December 2016 – Victim's sister entitled to compensation quantified at Rs 8,00,000 to be paid by the respondent to the victim's sister. [Paras 13-17, 19-21]

Case Law Cited

Union of India v. Rina Devi [\[2018\] 4 SCR 417](#) : (2019) 3 SCC 572; *Union of India v. Radha Yadav* [\[2019\] 1 SCR 741](#) : (2019) 3 SCC 410; *Kamukayi and others v. Union of India and Others* [\[2023\] 6 SCR 399](#) : (2023) SCC Online SC 642 – referred to.

List of Acts

Railway Claims Tribunal Act 1987; Railways Act 1989; Railway Accidents (Compensation) Rules 1990; Railway Accidents and Untoward Incidents (Compensation) Amendment Rules 1997.

List of Keywords

Bona fide passenger of the train; Compensation; Railway accident; Burden of proof; Absence of a ticket; Presumption; Report of the Investigating Officer; Post-mortem report; Antemortem injuries; Blunt force impact; Margin of error; Notification bearing GSR 1165(E) dated 22 December 2016.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8605 of 2024

From the Judgment and Order dated 13.11.2014 of the Gauhati High Court in RP No.41 of 2014

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Appearances for Parties

Abhinav Hansaria, Ms. Sneha Kalita, Advs. for the Appellant.
Vikramjit Banerjee, A.S.G., Ishaan Swarana Sharma, Sachin Sharma, Gautam Bhardwaj, Shantu Sharma, Amrish Kumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

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A. Background and submissions

1. The case of the appellant is that her brother, Swapan Kumar Saha, suffered a fatal fall from a moving train, (No 5658; Kanchanjanga Express) at KM 373/9, Dolma Gate on 5 September 2003, resulting in his death. The body of the deceased was recovered three days after the incident, on 8 September 2003.
2. The appellant filed a claim petition under Section 16 of the Railway Claims Tribunal Act 1987 before the Guwahati Bench of the Railway Claims Tribunal¹ seeking compensation of Rs 4,00,000 arising from the death of her brother. By its judgment dated 17 March 2009, the Tribunal dismissed the claim, concluding that the deceased was not travelling on the train. The review petition against this judgment was dismissed on 29 September 2010.
3. The decision of the Tribunal was assailed in first appeal before the Gauhati High Court. The High Court dismissed the first appeal by its

* Ed. Note: Pagination as per the original Judgment.

1 “Tribunal”

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judgment dated 7 January 2014 in MFA No 288 of 2010. A review petition against this judgment (bearing Review Petition No 41 of 2014) was also dismissed on 13 November 2014. The appeal arises from this judgment of the High Court.

4. We have heard Mr Abhinav Hansaria, counsel, in support of the appeal and Mr Vikramjit Banerjee, Additional Solicitor General, with Mr Ishaan Swarana Sharma, counsel, for the respondent.
5. The submission of the appellant is that in concluding that the deceased was not travelling in the train on 5 September 2023, both the High Court and the Tribunal have overlooked the findings contained in the final report dated 6 November 2003 submitted by the Investigating Officer² to the Sub-Divisional Magistrate, Rangiya. According to the submission, the above report also includes an extract from the post-mortem report which indicated that the cause of death was due to head injuries resulting from a “blunt force impact”. The estimated time of death was determined to be between forty-eight and seventy-two hours before the conduct of the post-mortem.
6. In support of the claim that compensation ought to be awarded to the appellant, Mr Hansaria submitted that:
 - a. It is not necessary to produce a valid ticket to claim compensation under Section 124A of the Railways Act 1989,³ in view of the decision in [Union of India v Rina Devi](#);⁴
 - b. The law laid down by this Court in successive decisions has clarified the test by which the amount of compensation under the Railways Act must be computed, including the entitlement of the claimant in case of an increase in the permissible amount; and
 - c. The appellant should be awarded interest as admissible in law.
7. In response, the respondent argued that the appellant had not provided a reason for the delay in the discovery of the body of the deceased. It argued that other employees of the Railways were bound to have chanced upon the body in the days after the alleged

2 “IO”

3 “Railways Act”

4 [\[2018\] 4 SCR 417](#) : (2019) 3 SCC 572

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date of death. It supported the judgments of the Tribunal and the High Court.

8. Written submissions have been submitted on behalf of the appellant as well as the respondent.

B. Decisions of the Railway Claims Tribunal and the High Court

9. Before turning to the issue at hand, it is necessary to briefly advert to the judgments of the Tribunal and the High Court. The Tribunal framed the following issues for consideration:

- a. Whether the deceased was a *bona fide* passenger of the train in question on the date of incident;
- b. Whether the incident as alleged in the claim application took place and was covered within the definition of an untoward incident under Section 123(c) of the Railways Act; and
- c. Whether the appellant was entitled to compensation, and what the relief should be, if any.

10. The appellant (AW-1) deposed in support of the claim, together with her cousin, Deepak Saha (AW-2). Both witnesses were cross examined. The railways did not produce either oral or documentary evidence. After considering the material on record and hearing the parties, the Tribunal found as follows:

- a. No ticket was found with the deceased, whose body was found on 8 September 2003;
- b. Neither AW-1 nor AW-2 were eye witnesses to the death;
- c. There was nothing else on record to show that the deceased boarded the train; and
- d. The appellant was required to produce the best evidence but did not do so. The report of the IO was not sufficient to rebut the presumption under Section 191 of the Railways Act.

The Tribunal concluded that there was no evidence to prove that the deceased died as a consequence of falling off the train. It found that compensation was therefore not payable to the appellant. It later dismissed the application for review of its judgment on the ground that no new facts were placed on record which would warrant a review. The Tribunal also observed that the secret witnesses examined by the IO were not examined.

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11. On appeal, the High Court dismissed the appeal against the decision of the Tribunal. By its judgment dated 7 January 2014, the High Court held that:
 - a. From the material available on record, it appeared that the body of the deceased was found lying near the railway track. However, nothing on record indicated that the deceased was travelling as a passenger on the train;
 - b. The post-mortem report indicated that the death took place between forty-eight and seventy-two hours before the conduct of the post-mortem, which was on 9 September 2003 at 1:30 pm. From this, it cannot conclusively be held that the deceased died on 5 September 2003; and
 - c. The report filed by the IO is not supported by substantive material. Since he had no personal knowledge regarding the cause of death, his report cannot be accepted as evidence of the fact that the deceased was travelling as a passenger on the train in question.

The Court therefore concluded that the appellant failed to establish that the deceased was travelling as a passenger on 5 September 2003 on the train in question.

12. The High Court later dismissed the review petition preferred by the appellant. It held that:
 - a. The material facts as well as the questions of law had been considered in the judgment under review; and
 - b. The report of the IO was based on a “secret enquiry” conducted by him. The IO did not disclose the material facts which led him to conclude that the deceased was travelling in the train. Further, he was not examined. The opinion of the IO, as recorded in his report, was therefore not substantiated.

Therefore, the High Court concluded that the appellant had not made out a case that there was an error apparent on the face of the record.

C. The errors in the judgments of the Railway Claims Tribunal and the High Court

13. From the recapitulation of the various judicial pronouncements leading to the present appeal, it can be seen that the primary issue

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is whether the deceased was travelling on the train in question. In [Rina Devi](#) (supra), a two-Judge Bench of this Court considered the question of the party on which the burden of proof will lie in cases where the body of the deceased is found on railway premises. This Court held that the initial burden would be on the claimant, which could be discharged by filing an affidavit of the relevant facts. Once the claimant did so, the burden would then shift to the Railways. Significantly, it also held that the mere absence of a ticket would not negate the claim that the deceased was a *bona fide* passenger. The relevant extract from the ruling of the Court is reproduced below:

“29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. **However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways** and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

(emphasis supplied)

14. In the present case, the appellant had duly filed an affidavit stating the facts and adverting to the report arising from the investigation conducted by the respondent, which showed that the deceased was travelling on the train and that his death was caused by a fall during the course of his travel. The burden of proof then shifted to the Railways, which has not discharged its burden. Therefore, the presumption that the deceased was a *bona fide* passenger on the train in question was not rebutted.
15. Further, the report of the IO indicates the details mentioned in the post-mortem report. It states that the cause of death was due to an injury sustained on the head and that all injuries were antemortem and caused by “blunt force impact”. It also states that forty-eight to seventy-two hours had passed since the time of death.

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16. The High Court noticed the time of death estimated by the post-mortem report. From this, it concluded that it was not possible to hold that the deceased died on 5 September 2003 because the post-mortem examination was conducted on 9 September 2003 at about 1:30 pm. It appears that the High Court was of the opinion that the deceased died later than 5 September 2003 because the post-mortem report indicated that forty-eight to seventy-two hours had passed since the time of death. However, the High Court did not notice that the IO indicated that the deceased fell off the train at approximately 11:15 pm on 5 September 2003.
17. Seventy-two hours prior to the conduct of the post-mortem would be about 1:30 pm on 6 December 2003. This would be about thirteen to fourteen hours after the deceased fell off the train. Conclusions in post-mortem reports as to the time of death are approximations. This is also indicated by the fact that they usually provide a window of time in which the deceased may have died. A margin of error of about half a day in cases where compensation is at issue is not disproportionate, where the evidence is otherwise corroborated by the material on record. In this case, the estimation as to the time of death in the post-mortem report differs from the time at which the IO stated that the deceased fell off the train by about half a day. The report of the IO otherwise corroborated that the deceased fell from the train. Further, the post-mortem report also stated that the deceased sustained antemortem injuries due to blunt force. Hence, from the material on record, it can be concluded that the deceased was a *bona fide* passenger on the train in question and that he sustained grave injuries leading to his death, due to his fall from the train. Compensation is therefore due to the appellant.

D. Compensation and interest

18. The decision in [Rina Devi](#) (supra) holds as follows on the aspect of compensation:
 - “19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order

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will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in [Rathi Menon](#) [[Rathi Menon v. Union of India](#), (2001) 3 SCC 714, para 30 : 2001 SCC (Cri) 1311] and Kalandi Charan Sahoo [Kalandi Charan Sahoo v. South-East Central Railways, (2019) 12 SCC 387 : 2017 SCC OnLine SC 1638] stands explained accordingly. The four-Judge Bench judgment in [Pratap Narain Singh Deo](#) [[Pratap Narain Singh Deo v. Srinivas Sabata](#), (1976) 1 SCC 289 : 1976 SCC (L&S) 52] holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

The decision in [Rina Devi](#) (supra) has subsequently been followed in [Union of India v. Radha Yadav](#)⁵ and in [Kamukayi and others v. Union of India and Others](#).⁶

19. In [Rina Devi](#) (supra), this Court held that the claimant would be entitled to interest from the date of the accident and, in case the amount so calculated is less than the amount prescribed as on the date of the grant of compensation, the claimant would be entitled to the higher of the two amounts. The principle which has been laid down in [Rina Devi](#) (supra) serves a salutary purpose. This was noticed in the decision in [Radha Yadav](#) (supra) where it was observed that “*the idea is to afford the benefit of the amendment, to the extent possible*”.
20. In 2003, the compensation payable for the death of a passenger was Rs 4,00,000, as provided under Schedule I of the Railway Accidents (Compensation) Rules 1990, as amended by the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules 1997. The compensation payable for the death of a passenger as on date

5 [\[2019\] 1 SCR 741](#) : (2019) 3 SCC 410

6 [\[2023\] 6 SCR 399](#) : 2023 SCC Online SC 642

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is Rs 8,00,000, which was enhanced by a notification bearing GSR 1165(E) dated 22 December 2016.

21. Following the judgment in [Rina Devi](#) (supra), from which we see no reason to depart, we hold that the appellant is entitled to compensation quantified at Rs 8,00,000. The compensation shall be paid by the respondent to the appellant by 30 September 2024, failing which the amount awarded by this Court shall carry interest at the rate of six per cent per annum from the date of the order of this Court until payment.
22. The District Legal Services Authority, Kokrajhar shall provide all details, including the address of the appellant, so as to facilitate payment by the respondent in terms of the above directions. If the appellant has a bank account, including a Jan Dhan account, details shall be provided by the DLSA to the respondent so that the transfer of funds is made seamlessly to the appellant.
23. The appeal is disposed of in the above terms.
24. Pending applications, if any, stand disposed of.

Result of the case: Appeal disposed of.

[†]Headnotes prepared by: Nidhi Jain