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IN THE HIGH COURT OF DELHI

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FAO No.217/2005

Union of India Appellant
through: Mr. P.K.Dey, Advocate with
Mr. Kaushik Dey, Advocate

VERSUS

Krishan Lal & Ors. Respondent
through: Mr. J.P.Sekka, Advocate

% DATE OF DECISION
17.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)

CM No.11410/2005 in FAO No.217/2005

There is a delay of 52 days in filing the appeal. Notwithstanding the fact that delay has not been satisfactorily explained I condone the delay.

The CM is allowed.

FAO No.217/2005

1. Shakuntala Devi admittedly suffered injuries and died on account of being crushed by the train from which she

fell. Her husband and children filed a claim under the Railways Act, 1989 and sought compensation payable under the applicable Rules. Needless to state, 2 issues of substance were framed by the Railways Claim Tribunal. Firstly, whether the deceased was a bona fide passenger in the train in which the alleged accident took place and secondly whether the deceased died as a result of an untoward incident entitling the applicants to the statutory compensation.

2. The deceased, her husband and children were passengers in the train as per claim made by them. Railway tickets purchased were proved as Ex.AW-1/3 to Ex. AW-1/8.

3. Thus, finding returned by the Tribunal is that it has been successfully established that the deceased was a bona fide passenger in the train.

4. On the issue of the death of the deceased, in view of the testimony of AW-1 and AW-2 that when the deceased was in the process of boarding the train at the platform, her foot being on the foot board, the train suddenly commenced journey with a jolt and as a consequence, deceased fell down and got crushed by the train, the Tribunal has held in favour of the applicants.

5. 2 points have been urged in the appeal. Firstly, the train tickets did not specify the train number nor the time of

the journey. It is thus urged that the Railway tickets Ex.AW-1/3 to Ex.AW-1/8 do not connect the valid authorization to travel in the train in question. It is secondly urged that it has come on record that the bogey was already over crowded and hence the deceased assumed self imposed risk by attempting to board the over crowded bogey and hence contributed to her death. It is urged that under the circumstances the death cannot be attributed to an untoward incident.

6. On the first issue, suffice would it be to record that AW-1, husband of the deceased, as also AW-2 one Kamal Chhabra a co-passenger deposed that the deceased was a bona fide passenger. Krishan Lal deposed that he purchased the tickets AW-1/3 to AW-1/8 to undertake the journey from Daya Basti Station to Rohtak. Kamal Chhabra also deposed that Krishan Lal had purchased the tickets when he too was engaged in similar activity.

7. I note that in cross-examination no question has been put to AW-1 that the tickets were meant for some other train or some other journey. Thus the appellant is prohibited from making any submissions that the tickets in question did not connect the authorization of the deceased to undertake the journey in the train in question.

8. But I have more fundamental reasons to sustain the

finding.

9. It is matter of common knowledge that when a short journey is intended in a passenger train, a short distance travel ticket akin to a token is issued recording the fare received by the cashier and the station where from the ticket is issued. The fare is commensurate to the distance of the journey. As noted above, the deceased along with her family was undertaking a short journey from Daya Basti to Rohtak, a distance of about 70 kms. Thus AW-1/3 to AW-1/8 establish that the entire family were bona fide passengers.

10. I uphold the finding of the Tribunal on the first issue.

11. Pertaining to the second issue, it is to be noted that Section 123 of the Railways Act, 1989 defines, vide clause 'c', an “untoward incident” as follows:-

“(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 any train carrying passengers, or in a waiting hall, cloak room 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.”

12. Limb 2 to sub-clause 'C' states that the accidental falling of any passenger from a train carrying passengers would be an untoward incident.

13. It is obvious that where a passenger accidentally falls from a train carrying passengers it would be an untoward incident giving rise to a cause for receiving compensation under Section 124(A) which provides for compensation on account of an untoward incident.

14. Reverting to the evidence, suffice would it be to note that AW-1 and AW-2 have categorically deposed that the train was stationary on the platform when the entire family boarded and when deceased was boarding as the last member of the family, while she was in the process of boarding the train the same commenced journey by accelerating with a sudden jerk.

15. I find that said testimony of AW-1 and AW-2 has not even been challenged in cross-examination.

16. The contention of the learned counsel for the appellant that the train was already over-booked and hence by attempting to board the train which was full of passengers, the

deceased assumed self imposed risk and contributed to what had happened, I repel the same on account of the fact that the Railway authorities have no business to issue tickets in excess of the carrying capacity of a train. Each and every person to whom a ticket is issued would be entitled to believe the the Railway authorities has assured him or her of a safe journey by having a berth inside a bogey of the train.

17. Be that as it may, the guard of the train could not have given the requisite signal to the driver to move the train till all passengers were safely inside the bogey.

18. I find no merits in the appeal.

19. The appeal is dismissed.

20. Costs shall follow.

21. TCR be returned forthwith.

March 17, 2008
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PRADEEP NANDRAJOG, J.