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IN THE HIGH COURT OF DELHI

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FAO No.99/2005

Smt.Parveen @ Parro Appellant
through: Mr.S.P.Singh Chaudhary, Adv.

VERSUS

Union of India Respondent
through : None

DATE OF DECISION:

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26.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

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

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

1. None appears for the respondent in spite of service.
Proceeded against ex-parte.

2. The appellant is the mother of an unfortunate young boy named Salim. It is not in dispute that Salim received grievous injuries on 10.3.2003 and as a result of the injuries he died. It is also not in dispute that the injuries were a result of a fall from the train.

3. As per the decision of the Railway Claims Tribunal it has been held that Salim had a monthly season ticket entitling him to travel by rail from Shahdara to Ghaziabad and vice

versa and hence was a bona-fide passenger. Said finding has attained finality. On the issue whether the death was attributable to an untoward incident the Railway Claims Tribunal has held against the appellant. Reason for so holding is the charge sheet presented before the Criminal Court by the police and the record of investigation.

4. Opinion arrived at by Railway Claims Tribunal is that the record of police investigation shows that the deceased and his friends were the assailants and they have boarded the train to attack one Yogesh @Bittoo and Rambir and when they did so, Yogesh and Rambir retaliated. The result was the deceased being thrown out of the train.

5. The Railway Claims Tribunal has accordingly concluded by holding that the deceased was responsible for his own death.

6. 'Untoward incident' has been defined under Section 123(c) of the Railways Act 1989. It reads as under:-

(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 on 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.”

7. Suffice would it be to record that a violent attack, rioting, shooting or arsoning are all untoward incidents. For a death or injury at an untoward incident, compensation is payable under Section 124A of the Railways Act 1989. It reads as under:-

“124A. Compensation on account of untoward incident.– When in the course of working in 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 dependent 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;
- (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 purposes 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.”

8. Suffice would it be to state that because of proviso (c) to Section 124A of the Railways Act 1989 a person would not be entitled to compensation on account of a untoward incident if the cause is his own criminal act.

9. Question arises whether it stands established that the deceased was the assailant or is it a case where the deceased was a bona fide passenger in the EMU train travelling from Shahdara to Ghaziabad and was the victim of an assault?

10. The record of the Railway Claims Tribunal shows that the photocopy of record of investigation conducted by the police as also the challan was taken on record by the Railway Claims Tribunal in the form of attested copies thereof being filed by the Railway Authorities. The challan shows that one Puneet Kumar Dalmiya is the only eye-witness being listed in

the list of witnesses by the police. The challan shows that Puneet Kumar Dalmiya was the complainant on whose report the FIR was registered.

11. Puneet Kumar Dalmiya has appeared as a witness before the Railway Claims Tribunal. He was examined as AW-1 by Tribunal. He categorically deposed in his testimony that on the date of the incident the deceased had already boarded the train and after the deceased had boarded the train Rambir and Yogesh also boarded the train. He stated that there was past enmity and due to said enmity Rambir and Yogesh attacked Salim. They dragged him near the gate of the compartment. When the train was running Salim was thrown out of the train.

12. Puneet Kumar Dalmiya was cross-examined by the counsel for the Railways. His entire cross-examination is being reproduced by me. It reads as under:-

“Cross-examination by Sh.S.A.Khan, counsel for the respondent.

The deceased was my friend. I knew him since last 5-6 years. Sh.Yogesh and Rambir were having enmity with the deceased since last three years. Before this incident, the deceased and Rambir and Yogesh had quarreled three or four times. I did not report to the police about the alleged incident (volunteer – I had taken the deceased to the hospital for medical treatment and from there I had informed his father about this incident). It is incorrect to suggest that I was not travelling with Salim on the date of incident. The police had recorded my statement on this incident. My statement was recorded by the police on

8th April. It is incorrect to suggest that there was no quarrel between Salim, Rambir and Yogesh during the train journey. It is also incorrect to suggest that they had quarreled near Vivek Vihar police station. I have not lodged any complaint in any court about this incident. It is incorrect to suggest that I have made a false statement in my affidavit.”

13. It would be relevant to note that no suggestion has been put to Puneet Kumar Dalmiya that it was the deceased who had attacked Rambir and Yogesh. On the contrary suggestion put to the witness is that no quarrel as alleged by him ever took place during the journey.

14. The aforesaid suggestion by the counsel for the railway authorities itself suggests that the railway authorities projected a case of disclaimer vis-a-vis the incident and never cross-examined the witness with respect to the manner in which the incident took place. Thus, the testimony of AW-1 remains unshaken.

15. Unfortunately, the Railway Claims Tribunal ignored the afore-noted two material circumstances. Circumstance-one being that even as per the police record of investigation, AW-1 was an eye-witness. Thus, his testimony was relevant. Secondly, no suggestion was given to AW-1 that the deceased was the assailant and not vice-versa.

16. Under the circumstances, it has to be held that there has been a misdirected approach by the Tribunal in

valuating evidence.

17. The appeal is allowed.

18. The impugned order dated 24.2.2005 passed by the Railway Claims Tribunal is set aside. It is held that the deceased died at an untoward incident and his mother is entitled to compensation under Section 124A of The Railways Act 1989.

19. Being a case of death, under the compensation rules applicable, compensation payable is in sum of Rs.4 lacs.

20. The claim petition is accordingly allowed with a direction that the railway authorities would pay to the appellant compensation in sum of Rs.4,00,000/-.

21. The amount would be paid with interest @7% per annum from the date of the present order till date of payment.

22. Since none appears for the respondent to oppose the appeal, I refrain from awarding costs.

21. TCR be returned forthwith.

March 26, 2008
d.k.bainsla

PRADEEP NANDRAJOG, J.