

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.139/2010**

% **25th April, 2011**

SUMAN Appellant
Through: Mr. S.K.Vashisth, Advocate

VERSUS

UNION OF INDIA Respondent
Through: Mr. Manoj V. George, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed by the appellants, the widow and the minor son (today approximately 4 years in age) of the deceased, under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the order dated 17.02.2010 which dismissed the claim of the appellants.

2. The facts of the case are that the deceased, Sh.Lal Bahadur, on 10.12.2008 was returning from Rohtak to Dayabasti, Delhi by train, and due to heavy rush of passengers resulting in pushing/jostling, Sh.Lal Bahadur was thrown out of the train at Dayabasti resulting in his death. The respondent disputed the claim petition by alleging that no accident

occurred on 3 DR train on the particular day, and that the rail ticket placed on record is fake.

3. The Railway Claims Tribunal held that as per the certified copy of the seizure memo, Ex.AW1/3, there was in fact found one rail ticket from Rohtak to Dayabasti and similarly a DD No.17-PP, Ex.AW1/2 was also proved which showed that due to heavy rush of passengers one person had fallen out of the window of the train 3 DR. The Railway Claims Tribunal however, believed the case of the respondent/railways on the ground that the train no. 3 DR is a train which does not come back to Delhi from Rohtak but goes from Delhi to Rohtak and the ticket found was from Rohtak to Dayabasti, Delhi.

4. I have heard learned counsel for the parties and perused the original Trial Court record. The impugned order is completely and totally perverse, inasmuch as, there were two clinching documentary evidences which were filed and proved before the Railway Claims Tribunal and which showed that the deceased in fact had died by falling off the train. The first is a report of the Railway Constable, Sh. Hazari Lal, who was an eye-witness to the incident and whose report as DD No.17-PP of the date of the accident 10.12.2008 was proved as Ex.AW1/2, in which the Railway Police Constable clearly reported that from the train no. 3 DR one person fell down from the window and he died on the spot and which was reported to the Station Master. Surely, there cannot be a more independent and credible witness to the incident than an employee of the respondent itself.

This Constable himself in the report has quoted the train no. as 3 DR. Obviously, the appellant/defendant picked up the train no. 3 DR from this DD entry no. 17-PP dated 10.12.2008, Ex.AW1/2 and wrote the same train no. in the claim petition filed before the Railway Claims Tribunal. Therefore, merely because in the claim petition before the Railway Claims Tribunal, a wrong train no. has been noted would not mean that the deceased did not die as a result of an “untoward incident” by falling off from the train. Whatever be the train number that is, 3 DR or not, the fact is that there was a train which was travelling from Rohtak to Delhi, New Delhi and the deceased fell down from this train and died.

The second clinching evidence is the report of the Station Master, Delhi itself where he has reported that (Ex.RW1/1) a man was crushed by the train ECR 3DR. This aspect of a person being run over by the train no.ECR 3DR is also stated in another report, Ex. RW1/2 filed before the Railway Claims Tribunal.

5. What actually seems to have happened was that the deceased was travelling on a train from Rohtak to Dayabasti, Delhi and to prove which, there is the relevant train ticket for travel from Rohtak to Dayabasti, Delhi. Due to rush of passengers in the train he was pushed from the train and he, thereafter, was crushed by a train ECR 3DR and not that the deceased was travelling by the train 3DR. Therefore, it is quite clear from the record that except the confusion regarding the train number in which the deceased was travelling, it is not an issue that the

deceased was in fact crushed by a train, and that he was travelling on a valid ticket making him a bonafide passenger. When we take into account the report of the eye-witness Sh.Hazari Lal, whose report was proved as Ex.AW1/2, it becomes clear that the deceased in fact died as a result of an untoward incident.

6. A civil case is decided on balance of probabilities, and the balance of probabilities clearly proved that:-

a) The deceased was a bonafide passenger on a rail ticket (recovered from the body of the deceased) which was valid for the date of travel from Rohtak to Dayabasti, Delhi,

b) The deceased died by being crushed by a train ECR 3DR,

c) The deceased fell from the train as proved by eye-witness Sh.Hazari Lal. Thus, there is an untoward incident within the meaning of Section 123(c) of the Railways Act, 1989 and consequently railways are liable to compensate the appellants/defendants in terms of Section 124(a) of the Railways Act,

d) There should be no confusion on the ground that the deceased died while travelling on train 3 DR because the deceased died on a train (number not known) travelling from Rohtak to Delhi and the confusion of wrongly mentioning the train as numbered 3DR took place because the eyewitness Sh.Hazari Lal had wrongly mentioned the train number as 3DR

as the one in which the deceased was travelling whereas the deceased was travelling in a train from Rohtak to Delhi and was crushed after falling of this train by a train which was numbered 3DR.

7. I, therefore, accept the appeal by setting aside the order dated 7.12.2010 and hold that the appellants are entitled to the compensation of Rs.4,00,000/-, which is the compensation statutorily fixed for death of a person by an untoward incident in terms of Railways Accident and Untoward Incidents (Compensation) Rules, 1990. The appellants will also be entitled to pendente lite and future interest @ 12% simple till payment in accordance with the decision in the case of ***Tahazhathe P. Sarabi Vs. Union of India 2009 (7) SCC 372.***

8. Since there are two dependents, one the widow and the other a minor child who was about 9 months on the date of the accident, a sum of Rs.2,00,000/- alongwith accrued interest would be paid to the widow and the balance amount of Rs.2,00,000/- will be kept in a fixed deposit in a Nationalized Bank and which shall be payable to the minor son on his attaining majority. Interest, however, on this fixed deposit can be utilized by the appellant/widow/Smt. Suman for the maintenance and up-keep of the minor son. Appeal is accordingly disposed of.

APRIL 25, 2011
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VALMIKI J. MEHTA, J.