

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

+ **FAO No. 366/2011**

Judgment delivered on: 24th November, 2011

FAO 366/2011

RAM AVTAR Appellant
Through: Mr. S.N. Parashar, Adv.

versus

UNION OF INDIA Respondent
Through: Ms. Shilpa Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

KAILASH GAMBHIR, J.

1. The challenge by means of this First Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment dated 23.12.2010 of the Railway Claims Tribunal whereby the Claim Petition of the appellant was dismissed.

2. Briefly the case set up by the Appellant is that on 21.03.2010, the deceased Mr. Dinesh was travelling by train no.8D from Palam Railway Station to Sarai Rohilla Railway Station and there was huge rush in the compartment due to Navratra Mela and when he boarded the train he got enough standing space but when the train reached at near Choona Mandi Kirti Nagar Railway Station all of a sudden the train jerked violently and due to this jerk Mr.Dinesh fell down from

the train and died. The appellant who claims to be the dependent of the deceased filed a claim petition under section 16 of the Railways Claims Tribunal Act which was dismissed vide order dated 23.12.2010 and feeling aggrieved with the same, the appellant has filed the present appeal.

3. Arguing for the appellant, Mr. S.N. Parashar, learned counsel submits that Shri Dinesh Kumar was a bona fide passenger in the said train and he had gone to meet his uncle, Shri Prahlad, who is a resident of Palam. Learned counsel further submits that the deceased, Shri Dinesh Kumar had boarded the said train from Palam and his uncle Shri Prahlad himself came to see him off at the railway station. Learned counsel also submits that even Shri Prahlad had, in fact, purchased the railway ticket for Shri Dinesh Kumar , but, unfortunately when Shri Dinesh Kumar had reached near Kirti Nagar Railway Station, he had fallen down from the train due to heavy rush in the train because of *Navratra* festival. Learned counsel further submits that through evidence on record of Shri Prahlad Kumar, the appellant had proved on record that Shri Dinesh Kumar was a bona fide passenger in the said train and so far as the nature of the accident was concerned, the same was proved through the police records and the postmortem report. Learned counsel also submits that the deceased, Shri Dinesh Kumar was a resident of Paharganj and he had gone to meet his uncle, Shri Prahlad at Palam and his

accident at Chuna Mandi, Kirti Nagar would clearly prove the fact that his travelling from Palam to Sarai Rohilla and on his way having met with the said accident. Learned counsel also submits that the learned Railway Claims Tribunal has committed an illegality in disbelieving the said witness who proved on record the boarding of the train by the deceased on the evening of the said fateful day.

4. Opposing the present appeal, Ms. Shilpa Singh, learned counsel representing the respondent submits that the appellant failed to prove on record that the deceased, Shri Dinesh Kumar, was a bona fide passenger in the said train and, therefore, the learned Railway Claims Tribunal has rightly dismissed the said claim of the appellant. Learned counsel also submits that the body of the deceased was cut into two pieces and that by itself would be sufficient to prove that the deceased had not fallen down from the train but had himself come in front of the train. Learned counsel also submits that the initial onus was on the appellant to prove that the deceased was a bona fide passenger in the train and the said onus the appellant has failed to discharge. Learned counsel further submits that Shri Prahlad had contradicted himself as he in his examination-in-chief had deposed that he had himself purchased the ticket for Shri Dinesh Kumar, while in his cross-examination, he contradicted himself by saying that the ticket was purchased in his presence. Reliance is placed by learned counsel for the respondent on a decision of this Court passed in

FAO No. 60/2011 titled *Mehtab -vs- Union of India* decided on 14.7.2011

5. I have heard learned counsel for the parties and gone through the records.

6. To claim compensation under the Railway Claims Tribunal Act, the deceased has to be the victim of an *untoward accident* as defined under section 123 clause c of the Railways Act, and the relevant part is sub section 2 which states that *the accidental falling of any passengers from a train carrying passengers* is an untoward accident. The second requirement for claiming compensation is that the victim or deceased as the case may be should be a bonafide passenger which is defined in Section 124A explanation (ii) as *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.*

7. In the case at hand, the learned Trial Court dismissed the claim petition of the appellant on the ground that the appellant could not prove that the deceased was a bonafide passenger in the said train on the said date and secondly the trial court held that the nature of injuries sustained by the deceased does not show that he died due to the accidental fall from the train but because he was run over by the train while crossing the railway line. The appellant to prove the fact that the deceased was a bonafide passenger examined Shri Prahlad,

uncle of the deceased as AW2 who, in his examination-in-chief, deposed that he purchased a ticket of Rs.2 for his deceased nephew, the deceased, from Palam Railway Station to Sarai Rohilla Railway Station and handed over the same to him who put the ticket in his bag in his presence. In his cross examination, Mr. Prahlad, however, deposed that the train ticket was purchased by his nephew himself in his presence and he made him sit in the train. It is manifest that the deposition of AW 2 in his examination-in-chief and cross-examination is inconsistent. The said testimony of the witness does not inspire confidence to believe that the deceased had in fact traveled in the said train. It is also highly improbable that a man of 24 years was not capable of purchasing the ticket himself and his uncle would come to purchase a ticket for him. This court does not find any illegality or perversity in the finding of the learned trial court that the that the version of this witness cannot be taken at face value and that he has possibly deposed in order to help the applicant get claim compensation being an uncle of the deceased.

8. The other ground on which the claim petition was dismissed by the learned Trial Court was that the nature of injuries do not show that the deceased had died due to a fall in the train. A perusal of the police records show that the body of the deceased was found in the railway tracks and was cut into two pieces. It is highly improbable that the person, who is pushed out of a train due to overcrowding,

would fall in such a manner that his body would cut into two pieces. A person falling out of the train would naturally fall few feet away from the train and his body can not be cut into two pieces, and even if the body is cut into two pieces it can be only due to coming under any other train. But as this is not the case set up by the appellant, this argument cannot be acceded to. The body can be cut into two pieces only when the person comes under the train and it is only possible that the deceased was crossing the line and came under the train due to which his body can cut into two pieces and found in the railway tracks. Hence, in the view of this court the finding of the learned trial court on this ground as well is not irrational or perverse.

9. The question that whether the deceased was a bonafide passenger or not will only arise when it is proved that the deceased was a passenger in the said train, which in the present case the appellant has miserably failed to prove. Hence as the applicant has not been able to prove that the death of the deceased has occurred due to the untoward accident as defined under the act, hence this court does not find any merit in the appeal of the applicant.

10. This Court has time and again warned the people approaching the portals of law for claiming compensation under the Railway Claims Tribunal Act on the basis of concocted stories. It would be useful here to refer to the judgment of this court in the case of *Smt. Murli Devi vs. Union of India* FAO 132/2010 decided on 12.8.2011

wherein the learned single judge held as under:

"5. I am noticing that many cases are coming up before this Court where it is more than amply clear that there is a systematic endeavour to defraud the railways because of the enactment and implementation of the Railway Claims Tribunal Act, 1987 which provides for statutorily fixed compensation in case of an untoward incident. In case of death the compensation is fixed at Rs. 4 lacs, and which can be very large amount in many cases. It is high time that this practice of filing fraudulent claims against the Railways pursuant to the Railway Claims Tribunal Act is looked into very strictly, though of course in those limited number of cases where it is ex facie clear that a fraud is sought to be perpetrated on the Railways. The facts of the therefore dismissing this appeal, I would like to send a copy of this order to the appropriate authorities of the respondent, who of course are not to use this order in genuine cases where compensation has to be paid, but this order on being brought to the notice of the necessary authorities within the railways, are directed to take notice of baseless and false claims which are being filed under the Railway Claims Tribunal Act and take all such necessary steps to bring to the notice of its appropriate staff this issue, especially to the Railway Police who should conduct exhaustive search and enquiry, and use correct expressions in reports which are prepared so that the same can give a correct and complete picture to the Railway Claims Tribunals before which the cases come up."

The judgment relied upon by the counsel for the respondent in *Mehtab's case* is to the same affect wherein the Court after issuing an admonition to the litigants coming to the Court filing false claims.

11. In the light of the above, this court does not find merit in the present appeal and the same is hereby dismissed.

KAILASH GAMBHIR,J

NOVEMBER 24, 2011

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