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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.297/2008

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2nd August, 2011

OM PRAKASH KATHURIA & ORS. Appellants
Through: Mr. Ram Niwas, Adv.

VERSUS

UNION OF INDIA Respondent
Through: None.

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)

CM No.14209/2011(for condonation of delay)

Delay in filing the application for restoration is condoned. CM stands disposed of.

CM No.14208/2011(for restoration)

This application is allowed and the appeal is restored to its original number.

CM stands disposed of.

+ FAO No.297/2008

1. The challenge by means of this First Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is to the order dated 30.5.2008

passed by the Railway Claims Tribunal which dismissed the Claim Petition of the legal heirs of deceased, one Smt. Ram Devi.

2. The case which was laid out in the Claim Petition was that the deceased on 24.3.2005 at about 8.30 AM was trying to board the train no. 385 and when she had put one step on the train, the train moved without any horn or signal and therefore as a result the deceased fell down and sustained multiple grievous injuries causing her death. It is stated that deceased was a bonafide passenger holding railway pass number D-43176660 which was valid from 2.2.2005 to 1.5.2005. The defence of the respondent/Railways was that the deceased was, in fact, trying to cross the tracks in an illegal manner after arriving at platform no. 1 by a train and while crossing the tracks was, in fact, hit by the train no.385. The case of the Railways was that the deceased should have in fact used the foot over bridge for reaching to platform no. 2 from platform no.1 but since she was crossing the railway tracks she was hit by the train no. 385 and it is not as if she was trying to climb the train no. 385. The Tribunal has noted that the only evidence which was led on behalf of the complainants was that of the deceased's husband, AW-1, and who was admittedly not an eye witness to the incident. The Tribunal has thereafter referred to the evidence of the witness of the Railway Administration Mr. Jagdish Prasad, S.S. Bijwasan, who reported that the driver and guard of the train no. 385 informed on walky-talky that one lady while crossing the tracks came into the contact with the train. It was the stand of the respondent's witness that if the deceased had used the foot over bridge at

Bijwasan to go from one platform to another platform then the accident would not have happened. There was no cross-examination of this witness of the Railways.

3. The Tribunal has believed the stand of the Railways and the following are the relevant observations of the Tribunal in the impugned order:-

“RW-1/1, Sh.Jagdish Prasad, the witness examined on behalf of the respondent railway administration, is an employee of the Northern Railway and on 24.3.2005 he was on duty as S.S. at railway station, Bijwasan, from 6 AM to 2 PM. He has stated on affidavit that he received an information at 8.35 AM from the driver and guard named Bhagwan Singh and Prem Chand respectively, Head Quarter Delhi Sarai Rohila, through walky-talky that one lady while track passing came into contact with their train. It appears that the above said driver and guard were on duty of the train no.385 (BG) Kalindi Express UP, arriving at platform no.2 (from Delhi to Rewari). He has further stated on affidavit that during the time of his duty, one 6RD(MG) train arrived at platform no.1 of railway station, Bijwasan, at 8.30 AM and the same was arrived from Rewari, Haryana (Rewari to Delhi Sarai Rohilla), at platform no.2 at 8.35 AM another train named as 385(BG) Kalindi Express UP was also arriving (Old Delhi to Rewari), through which the said accident had been caused. According to him there is a foot over bridge at Bijwasan station to go from one platform to another. He has also stated on affidavit that after enquiry he came to know that the injured was a teacher in M.C.D. Primary School at Bijwasan named as Smt. Ram Devi and the injured by passing the track, which is illegal in the eye of law, wanted to go at her job earlier. He has stated that after the incident, he called upon the 100 number, GRP/Delhi Sarai Rohilla and gave information to the concerned official vide control message no. SS/24/3/2 dated 24.3.2005. He has further stated that the injured was taken to the Safdarjung Hospital by her school staff where injured was declared as dead. According to him, the accident to the deceased was caused due to the negligence of the deceased and while committing an illegal act of track pass at the railway station, Bijwasan. He has further stated on oath that he came to know from

the persons, who had gathered near the deceased, that she was trying to cross the track to the school on the other side. He has stated that in the affidavit filed by him by way of evidence, he has also stated that the information regarding the accident was given to him at 8.35 AM by the driver and guard named Bhagwan Singh and Prem Chand respectively through walky talky that one lady while track passing came into contact with their train. He has further stated that thereafter he had proceeded to the spot and he was informed by the public, present at the spot, that the lady was trying to cross the track to go to the school on the other side. Learned counsel for the applicants being absent, his cross-examination of RW-1 has been taken as nill in view of the absence of the learned counsel for the applicants. Thus, the applicants have failed to avail the opportunity of cross-examining RW-1/1. There being no cross-examination to RW-1/1 on behalf of the applicants, his evidence has remained unchallenged.

From the evidence of RW-1/1, it is quite clear that he was informed of the accident by the driver and guard of the train in question as well as by the persons, who had gathered near the deceased, that the deceased while crossing the railway track came into contact with the said train. While it is true that RW-1/1 was not an eyewitness to the incident but his evidence by no means be ascribed to be insignificant, in view of the fact that he had received information from an authenticated source. Moreover, according to him after he had been informed of the accident, he had gone to the spot where he was informed by the public, present at the spot, that the deceased was trying to cross the track in order to go to the school on the other side. It is not in dispute that the deceased was working as an assistant teacher in MCD Primary Girls School, Bijwasan, New Delhi and even according to the applicants, the accident in question took place on 24.3.2005 at about 8.30 AM on railway line, railway station, Bliwasan, New Delhi. When the applicants have declined to avail themselves of an opportunity to cross-examine the witness, RW-1, his evidence ought to be accepted, more so when it stand corroborated from the other material placed on record.”(underlining added)

4. Learned counsel for the appellant sought to place reliance upon Ex.PW1/B (Ex.A-2) being the copy of the DD entry No.8(A) dated 24.3.2005 in which it is mentioned that one lady was thrown from the

train. It is argued that therefore this DD entry shows that the deceased was in fact thrown from the train no. 385. I do not agree. This DD entry has been properly explained by the witness of the Railways who mentioned the information given on walky-talky by the driver and the guard of the train no. 385. Further, the Tribunal has relied upon the post mortem report of the deceased Ex.PW1/C (Ex.A-3) dated 25.3.2005 which shows that the injuries are of such a nature that they do not appear to have been caused due to falling down from the train but in all probability it must have been caused due to being hit by a train while crossing the railway track.

5. Learned counsel for the appellant also sought to argue that the provisions of Section 124-A of the Railways Act, 1989 must be liberally read. There is no argument to this proposition of law that the provisions of Section 124-A of the Act, has to be liberally read, however, the same has to be liberally read where there is an untoward incident caused and not when a person died out of his own criminal negligence in crossing the tracks. There is no merit in the appeal. Dismissed.

AUGUST 02, 2011
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VALMIKI J. MEHTA, J.