

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

+ **FAO No.380/2010**

% **23rd September, 2011**

HIRA LAL RAM & ORS. Appellants
Through: Mr. Harvinder Singh with
Ms. Vidhi Gupta, Advs.

VERSUS

UNION OF INDIA Respondent
Through: Ms. Geetanjali Mohan with
Mr. Ketan Madan, Advs.

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? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

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 7.4.2010 whereby the Railway Claims Tribunal dismissed the Claim Petition filed by the appellants for compensation on account of death in an untoward incident of the wife of the appellant no.1 and the mother of the other appellants.

2. The facts of the case are that the deceased Smt. Bhagirathi Devi along with her daughter, Arti Kumari boarded the train no. 2368 DN Bikramshila Express to travel from New Delhi to Patna Junction on 9.1.2008. For the travel, the deceased and her daughter had purchased

two tickets. It was further the case of the appellants that when the train stopped at Mughalsarai Junction, Smt. Bhagirathi Devi (deceased) alighted from the train for purchasing some eatables and drinking water, and when she boarded the train back, due to heavy rush she could only find a place to stand near the gate. After the train re-started, Smt. Bhagirathi Devi could not maintain her balance, on account of the heavy rush of the passengers in the train and jerk in the train, and consequently accidentally fell down near the outer signal of Ara railway station resulting in her death.

3. The respondent contested the case and the main defence was that the deceased was not a bonafide passenger inasmuch as the ticket filed was alleged to be a procured ticket.

4. The Railway Claims Tribunal dismissed the Claim Petition by holding that if two persons were travelling, there should have been one common computerized ticket and not two separate tickets. This is the only rationale applied by the Railway Claims Tribunal to dismiss the Claim Petition.

5. In my opinion, the appeal deserves to succeed and the impugned order is bound to be set aside. The Railway Claims Tribunal has fallen into a clear error in holding that merely because there were separate tickets for the deceased/mother, Smt. Bhagirathi Devi and for the daughter, Arti Kumari who were travelling together, it must necessarily follow that the ticket was a procured ticket. In my opinion, the

following are the reasons, on balance of probabilities, to hold that Smt. Bhagirathi Devi was a bonafide passenger on the train in question:-

i) It is not improbable that two separate individual tickets could have been purchased instead of one common computerized ticket. A ticket of travel of the deceased has in fact been produced and exhibited. Once this is done, there is a very heavy onus on the respondent to show that the ticket was not the ticket with respect to the deceased, and more so because the accident took place on 10.1.2008, and the ticket was purchased on 9.1.2008, i.e. no one on 10.1.2008 or later can normally get a back dated computerized ticket. Even assuming for the sake of argument in some method, as per the case of the respondent, this ticket is procured, however, such a statement/stand by the respondent had necessarily to be so categorically and clearly proved, otherwise, the result will be that a bonafide passenger who proves that he has a valid ticket will ordinarily be held not to be a bonafide passenger and will have to be held to travel without a ticket merely because the respondent suspects and feels that the travel was without a valid ticket.

ii) Two ladies being a mother and daughter, who are travelling by a long distance train, would not ordinarily, subject to other factors, be said to have been travelling without valid tickets. Further, it is not the case of the respondent that there was any male member travelling with the deceased, Smt. Bhagirathi Devi and her daughter, Arti Kumari. I would therefore hold that this is one more

circumstance, taken with the other circumstances, to hold that the ticket which has been filed and proved on the record was the valid ticket of travel of the deceased, Bhagirathi Devi.

iii) The argument of learned counsel for the respondent that the daughter Ms. Arti Kumari was telling a lie that she handed over her own ticket to the TTE at the railway station at which the train stopped after the accident is not an argument which deserves acceptance because it is surely nothing unnatural for a person to go and call up the family members from a telephone booth outside the station, and which happened in the facts of the present case. For the sake of completeness, I must put on record that it is not the case of the respondent that there were ready to use public telephones available in the stations where the daughter got down, from which she could have called the family members, and that therefore there was no need to go outside the railway station to make a telephone call. The other argument of learned counsel for the respondent that the daughter Ms. Arti Kumari should instead of first calling her family members should have first contacted the railway officials, is also not an argument having any strength inasmuch as when a person is flustered on account of the death of a near and dear one, one does not act on a set pattern. In my opinion it would be too much to expect that a daughter who had lost her mother would, under all circumstances, instead of calling up her family members ought to have first chosen only and only to contact the railway officials.

6. I therefore hold that the deceased Smt. Bhagirathi Devi died as a result of an untoward incident and she was a bonafide passenger on the train. I must note that the provisions of Section 123(c) and Section 124-A of the Railways Act, 1989 are part and parcel of a social/beneficial legislation for giving compensation on the basis of no fault liability. It is because of peculiar circumstances and the conditions in Indian Railways and also difficulty in getting evidence to prove a case thoroughly that the Railway Claims Tribunal Act, 1987 has been enacted specifically providing that the strict provisions of the Code of Civil Procedure, 1908 will not apply to proceedings before the Railway Claims Tribunal.

The aspect that the legislation in a question is a social/beneficial legislation and should be liberally interpreted has been so held by the Supreme Court in the case of ***Union of India vs. Prabhakaran Vijaya Kumar and Ors., 2008 (9) SCC 527***. I may only add that a civil case is decided on balance of probabilities. The balance of probabilities in the present case are a clear pointer to the deceased being a bonafide passenger.

7. In view of the above, the appeal is accepted. The impugned order dated 7.4.2010 is set aside. The appellants will be entitled to the statutory compensation of Rs.4,00,000/- along with interest at 6% per annum simple from the date of filing of the Claim Petition and which shall be payable within a period of 60 days from today, and where after, interest which will be payable would be 9% per annum simple if the compensation with interest is not paid within 60 days. The compensation

along with interest be equally distributed among the three appellants. The respondent must ensure that not only the cheques are credited only in the account of the appellants but also the amounts are withdrawn only by the appellants so that there is no misuse of the funds. Necessary instructions be sent to the bank concerned. Appeal is accordingly disposed of.

8. Trial Court record be sent back.

SEPTEMBER 23, 2011
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VALMIKI J. MEHTA, J.