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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.427/2010

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19th July, 2011

PINKI

..... Appellant

Through: Mr. D.K.Sharma, Adv.

VERSUS

UNION OF INDIA

..... Respondent

Through: Mr. Sharat Kapoor with
Mr. Sourabh Chugh, 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?
3. Whether the judgment should be reported in the Digest?

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 order dated 21.07.2010 whereby the claim petition of the appellant seeking compensation for death of her husband, Sh. Hukum Singh was dismissed.

2. The facts as alleged in the complaint, are that Sh. Hukum Singh on 05.06.2009 was travelling from Delhi to Ghaziabad by Chhattisgarh Mail and when the train was passing through Sahibabad Railway Station, due to heavy rush of passengers and pushing from inside

the compartment, Hukum Singh fell down from the train and died. In the written statement filed by the respondent before the Tribunal, the defence was that the deceased was not a bonafide passenger and there was no pushing from inside the train and hence there was no untoward incident entitling the claim of compensation.

3. The Railway Claims Tribunal has dismissed the compensation claim firstly on the ground that the deceased was not a bonafide passenger, and secondly the deceased died by trying to get down from a running train and in the process fell down and died. Finally, inconsistency in the postmortem report with the other evidence was relied upon.

4. In my opinion, the appeal has to succeed. Firstly, the Tribunal was unjustified in holding that the deceased was not a bonafide passenger merely because the railway pass was not signed at the earmarked place before the commencement of the journey. Merely, because there is a technicality of non-signing of the railway pass cannot mean that the deceased was not a bonafide passenger inasmuch as the railway pass does show that the same was issued in the name of the deceased Hukum Singh, and for travel from Delhi to Ghaziabad, and on which route Shahibabad Railway Station falls. A reference to the railway pass further shows that the basic reason for the requirement of the signature appears to be utilization of the pass by a person other than the person in whose name the pass is issued and who has to be a family member. However, a mere non-signing would not mean that there is actually no bonafide railway pass. I may further note that the deceased was, in fact, an

employee of the railways itself. Secondly, the Tribunal has fallen into an error in relying upon the DRM's report which states that the deceased was trying to get down from the running train and in the process fell down and died. This was not even the case which was pleaded by the respondent before the Claims Tribunal. The written statement filed by the respondent in the Tribunal simply denied that the deceased did not die on account of pushing/jostling and resulting in falling down from the train. There was no positive case laid out of the death of the deceased having been caused on account of his trying to climb down from a running train and falling down. So far as the postmortem report is concerned, it may show that the death had taken place prior to the date of the alleged incident, however, the other documents totally contradict such fact as stated in the postmortem report. This fact of the deceased having died a few days before the incident is contradicted, firstly by the report of the DRM itself which is relied upon by the Tribunal and which shows, the deceased, in fact, did fall down from the train on the stated date as from the search of the person of the deceased, the identification of the deceased as also the railway pass was recovered. Further, there is a report of the Station Master of the date of the incident of a person having fallen down from the train and grievously injured and which report pertains to the same time of the accident/incident and also mentions the same platform No. 1 as mentioned in the report of the office of the DRM.

5. A civil case is decided on balance of probabilities. After all the facts and evidence have come before the Civil Court/Tribunal, they are put

in a scale so as to decide the conclusion which should emerge therefrom. A reference to the facts aforesaid shows that the deceased railway employee was in fact a bonafide passenger because there was in fact a railway pass issued in his name for journey from Delhi to Ghaziabad of the date of the accident. Further, merely because there are certain inconsistencies cannot take away from the fact that the DRM's report and the Station Master's report show that the deceased had fallen down from the train and had suffered grievous injuries and had subsequently died. Accordingly, there is a death of a bonafide passenger on account of falling down from a train. As already stated above, no case was pleaded by the respondent before the Tribunal that the deceased died on account of his own negligence trying to alight from a moving train. The Tribunal therefore could not have dismissed the compensation claimed on a ground which was not even pleaded by the respondent.

6. Let us even assume that the case of the respondent is at the best is that the death of the deceased was caused on account of trying to alight from a moving train. Firstly, there is no evidence at all before the Claims Tribunal of the respondent to this effect. The respondent has chosen not even to file an affidavit of evidence to rebut the affidavit of evidence which was filed by the appellant/claimant. Further, the issue that a rash and negligent act of the deceased will not prevent entitlement of the compensation to the dependents is no longer *res integra* and has been decided by the Supreme Court in its recent judgment reported as

Jameela & Ors. vs. UOI, (2010) 12 SCC 443. Paras 7, 10 and 12 of the said judgment are relevant and which read as under:-

“7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124-A of the Act, because the deceased had died by falling down from the train because of his *own negligence*. First, the case of the Railways that the deceased M.Hafeez was standing at the open door of the train compartment in a *negligent* manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness to the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his *own negligence* it will not have any effect on the compensation payable under Section 124-A of the Act.

10. It is not denied by the Railways that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a “passenger” for the purpose of Section 124-A as clarified by the Explanation. It is now to be seen, that under Section 124-A the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the Railway Administration. But the proviso to the section says that the Railway Administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).

12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.” (Emphasis added).

The emphasized portion of the paras 7 and 12 reproduced above shows that a rash and negligent act of the deceased would not prevent the incident to be an untoward incident within the meaning of Section 124-A of the Railways Act, 1989. The Supreme Court has emphasized that unless the criminal act has an element of malicious intent or mens rea the same cannot be a criminal act. A negligent act or own negligence of the deceased will not effect on the compensation payable under Section 124-A. A negligent act and a rash act, without anything else, is not a criminal act. In the case of ***Jameela (supra)*** before the Supreme Court, the facts were nearly same as the facts of the present case as there was no eye witness to the incident and the GRP had found the dead body of a male person at the Magarwara Railway Station and on the search of the person of the deceased in ***Jameela's case (supra)*** the railway ticket was found along with a phone number by which the identity of the deceased came to light.

7. Accordingly, the appeal is accepted. The appellant is granted the statutorily fixed compensation of Rs.4,00,000/-. The appellant will also be entitled to interest at the rate of 9% per annum simple from the date of filing of the complaint before the Railway Claims Tribunal and till payment by the respondent. The appeal is disposed of accordingly. Trial Court record be sent back.

JULY 19, 2011
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VALMIKI J. MEHTA, J.