

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

+ FAO 38/2011

Judgment delivered on: 14th November, 2011

ARTI DEVI & ANR Appellant
Through Ms Aruna Mehta, Adv.

versus

UNION OF INDIA Respondent
Through Mr K.C.Bajaj, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

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

KAILASH GAMBHIR, J. (Oral)

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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 26.8.2010 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. Manoj Kumar was travelling by Mahananda Express from Phaphund to Delhi in the general compartment which was overcrowded and when the train started, due to jolting and jerk he fell down from the train and died when the train had just moved only a few yards from the station.
3. Learned counsel for the Appellant states that with the evidence of Appellant no.1 AW1, the widow of the deceased Mr. Manoj Kumar and the evidence of AW 2, Mr. Randhir Singh, it is clear that the deceased Mr. Manoj Kumar was travelling in the said train but unfortunately had fallen down because the said compartment of the train was overloaded with passengers. Counsel also submits that the co-passenger who entered the witness box as AW-2 in his deposition clearly supported the fact that he was travelling with Mr. Manoj Kumar. Counsel further submits that even the said witness has explained that due to heavy rush in the train he could not pull the chain to stop the train and on the next station Etawa he had informed the family members of the deceased.

Counsel further submits that the said witness has also deposed that he was to attend the wedding of his brother on 30.05.2005 and, therefore, he could not take any further steps in the matter. In support of her arguments, counsel for the Appellant has placed reliance on the judgment of the Madhya Pradesh High Court in the case of *Raj Kumari vs. Union of India 1993 ACJ 846* to submit that the onus is on the Railways to prove that the deceased was not a bona fide passenger.

4. I have heard Counsel for the parties and gone through the records.
5. The learned trial court dismissed the claim petition of the appellants primarily on the ground that the deposition of AW 2 in his cross-examination was inconsistent with his examination-in-chief and due to which legitimate doubts could be raised about the fact that AW 2 had in fact travelled on the day of the accident. The Trial Court also observed that AW2 made no effort to get down from the train after his friend had fallen down which was an unusual behaviour. The Trial Court also observed that there is a doubt that the ticket was handed over by AW 2 to the TTE at Delhi. The learned court observed that the evidence of AW 2 was not trustworthy and thus

dismissed the claim petition.

6. In my considered view the learned trial court has rightly observed that the testimony of the said witness AW 2 Randhir Singh was totally unreliable. In the Affidavit filed by the said witness, he has deposed that he had informed the in-laws of the deceased Manoj Kumar after he had reached Delhi whereas in his cross examination he had deposed that he got down from the train at Etawa and intimated the family members of the deceased on phone and then went back. Clearly, the said inconsistent stand of the witness does not inspire any confidence to know as to when and whom did he inform about the deceased falling from the train. Another fact which is quite surprising is as to how he could get the phone no. of the parents' in-law of the deceased and why he did not choose to contact the parents of the deceased. The said witness also does not disclose as to how he claimed to know the deceased Manoj Kumar? Was he a neighbour of Manoj Kumar or was he working with Manoj Kumar at the same place or his friendship is because both of them belonged to the same place? There is no clear answer to the said questions and in any case if he claims herself to be a friend of

the deceased then he should have done more than informing the family of the deceased.

7. It is again quite amazing to know that the said witness instead of seeking medical help because of the alleged falling down of his friend just allegedly informed the parents in-law of the deceased. It is again beyond the comprehension of this Court that how can somebody just inform the family and walk away from a friend who has fallen down from the train. As the deceased succumbed to the injuries he sustained due to the fall and died, it is highly improbable that if somebody's friend has fallen down from the train he would not do anything like pulling the chain or shout or get medical help at the next station. The defence of the witness that he had the wedding of his brother to attend at Delhi and therefore he continued with his journey is also worth discarding. Therefore, the evidence adduced by the said witness is totally untrustworthy and unreliable.
8. In the facts of the present case the question is not whether the deceased was bona fide passenger in the train or not, rather the question is whether the fact disclosed in the claim petition can inspire any confidence that the deceased Manoj

had in fact travelled in the said train on the fateful day. Whether he was a bonafide passenger is a secondary question, as the first requirement was for the claimants to prove the fact that the incident of the deceased falling down from the train in the manner as claimed in the petition had occurred or not. The appellants would be entitled to compensation if they were able to prove that the deceased had died due to an *untoward accident* as defined in section 123(2) of the Railways Act, 1989. Failing on that account itself as the deposition of the AW 2 has not able to inspire any confidence, this court does not find the appellants entitled to the compensation as claimed.

9. It would be relevant here to mention that this court has time and again admonished filing cases of compensation on phony grounds as for most people the amount of compensation is a huge amount that drives people to concoct a story and approach the portals of law. Here it would be relevant 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.”

10. In the light of the above, this Court do not find any illegality or perversity in the impugned order dated 26.8.2010 passed by the learned Trial Court. There is no merit in the present appeal and the same is hereby dismissed.

KAILASH GAMBHIR,J

NOVEMBER 14, 2011

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