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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.100/2011

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23rd September, 2011

DWARIKA MAHTO & ORS.

Through: Mr. Appellants
Sanjeev Mehta,
Advocate.

VERSUS

UNION OF INDIA

Through: Ms. Respondent
Shilpa Singh,
Advocate.

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)

C.M. No.3755/2011 (condonation of delay) in FAO No.100/2011

This is an application for condonation of delay of 240 days in filing the appeal on the ground that the appellants are very poor persons having a hand to mouth existence and therefore they did not have necessary funds to file the present appeal. It is stated in the application that time was taken for arranging funds and which funds were made available from close relations only in the first week of December, 2010, whereafter counsel was engaged, and who thereafter took some time to go through the documents before filing the appeal. Though there is general opposition to this application, I find that there is

truth and credibility in the averments made in the application. The application is therefore allowed and delay of 240 days in filing of the appeal is condoned.

+ FAO No.100/2011

1. The challenge by means of this First Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment of the Railway Claims Tribunal dated 2.12.2009 which dismissed the claim petition for compensation filed by the appellants who were the legal heirs of the deceased Smt. Jamuna Devi.

2. The facts of the case are that Smt. Jamuna Devi, the deceased, on 17.5.2008 purchased a second class train ticket No.50961406 from New Delhi to Gaya and boarded a train from New Delhi on the said date. She de-boarded the train on 18.5.2008 on reaching Mugalsarai railway station alongwith other passengers for some work. After completion of the work, she again boarded a train on 19.5.2008 from Mugalsarai, being train No.302 Varanasi-Asansol Passenger, for travelling from Mugalsarai to Gaya. Due to heavy rush and intense jostling among the passengers in the train, she fell down from the train resulting in grievous injuries which caused her death.

3. As per the rules of the respondent, it is not disputed that a person can break the journey after travelling 500 kms., for a period of two days. The Mugalsarai railway station admittedly was beyond the distance of 500 kms. from New Delhi from where the deceased de-boarded the train on 18.5.2008 and then again boarded a train on

19.5.2008. The deceased was thus entitled to break the journey at Mugalsarai railway station for two days i.e. the deceased was entitled on the same train ticket purchased from Delhi for Delhi to Gaya to again travel from Mugalsarai to Gaya railway station since she within a period of 48 hours of de-boarding took another train for travelling from Mugalsarai to Gaya.

4. The contention of the respondent before the Railway Claims Tribunal was that the deceased was not a bonafide passenger on the train No.302 Varanasi-Asansol Passenger train while travelling from Mugalsarai to Gaya inasmuch as there was no endorsement of break journey on the ticket which was purchased by the deceased at New Delhi on 17.5.2008.

5. The Railway Claims Tribunal accepted this defence of the respondent by observing as under:-

“ The only question that requires determination in this case is, whether the deceased Smt. Jamuna Devi W/o Shri Dwarika Mahto was a bonafide passenger of train No.302 Varanasi-Asansol passenger after purchasing a ticket from New Delhi to Gaya as on 17.5.08.

The time table book **“Trains at a glance, Indian Railway July 2008-June 2009” at page 270** gives the answer of the above question (supra) in the following words:-

Question- Can I break my journey at any intermediate station?

Answer- If you hold a journey ticket for more than 500 kms, you can break your journey once for two days at any station enroute. This facility can be availed only after travelling 500 kms, from the starting station. If your ticket is for more than 1000 kms, you will be allowed to break your journey twice. The day of departure & arrival must be excluded while calculating the number of eligible days for break of journey. And remember to get your ticket endorsed

by the Station Master/Ticket Collector at the station, where you intend to break up your journey.

After perusal of record, I find that there is no endorsement on the journey ticket placed on record by the applicants and which was essential for the validity of the journey ticket. So, there is modicum of merit in the submissions of Ld. Counsel for the respondents & there is no momentum of force in the submission of Ld. Counsel for the applicants. Hence, it is clear that Smt. Jamuna Devi (deceased) was not a bonafide passenger of 302 DN Varanasi-Asansol passenger train on 19.5.08 from Mugalsarai to Gaya on the basis of ticket, which was purchased by the deceased on 17.5.08 from New Delhi Railway Station. The applicants are not entitled to get any compensation on account of death of Smt. Jamuna Devi on the ground that the deceased was not a bonafide passenger of the train in question. Hence, Issue No.1 is decided in negation & against the applicants.

Once, the main issue is decided in negation, the other supplementary issues carry no weightage & relevance. So, the claim application is liable to be dismissed."

6. In my opinion, the appeal deserves to succeed and the impugned judgment is liable to be set aside. The issue before me is whether lack of endorsement on the train ticket of the break in the journey at Mugalsarai would necessarily mean that the deceased was not a bonafide passenger for travelling on the same ticket which was purchased on 17.5.2008 for the travel on 19.5.2008 by the train No.302 Varanasi-Asansol passenger from Mugalsarai to Gaya.

Of course, as per the rules of the respondent, once there takes place a break in the journey, it is necessary that endorsement be made on the ticket, and, in the absence of endorsement, the same ticket cannot be used again for further travel to the destination mentioned in the original ticket, inasmuch as, it is only the required endorsement will show when there was break in the journey and when

the journey again recommenced inasmuch as the recommenced journey has to be within 48 hours of the break in the journey.

7. The facts of the present case are not in dispute that there has been filed and proved on record the necessary ticket bearing No.50961406 for travelling from New Delhi to Gaya on 17.5.2008. It is also not in dispute that the deceased in fact commenced journey from New Delhi on 17.5.2008, de-boarded the train at Mugalsarai on 18.5.2008 and then again re-boarded a train on 19.5.2008; being Train no. 302 Varanasi-Asansol Passenger; for travelling from Mugalsari to Gaya on the existing ticket bearing No.50961406. I have deliberately used the word admittedly with respect to the aforesaid facts because it is not the case of the respondent/railways in the written statement that there was no travelling on 17.5.2008, there was no de-boarding at Mugalsarai on 18.5.2008 and there was no re-boarding on 19.5.2008 for travelling from Mugalsarai to Gaya. Even assuming such be the case, however, no evidence whatsoever was led by the respondent with respect to the fact that there was no travelling on 17.5.2008, de-boarding on 18.5.2008 and re-boarding on 19.5.2008. Once the aforesaid facts are proved and established on record, the only issue which remains will be the technical violation of non-endorsement, and it is not as if there was ticketless travelling in violation of the rules, leaving aside for the moment the issue of non-endorsement.

8. In my opinion, with respect to cases which come under the Railway Claims Tribunal Act, 1987, such technical violation should not

result in holding that the deceased was not a bonafide passenger. The term bonafide passenger is basically meant under the Railway Claims Tribunal Act, 1987 to ensure that a ticketless traveller should not be given the compensation. In admitted facts, once there is a valid ticket of travel and the boarding, then de-boarding and then again re-boarding took place within the period required in accordance with rules, I would hold that the deceased was a bonafide passenger, and the deceased did not cease to be so merely because of the lack of the endorsement. Of course, if the respondent/railways had pleaded and proved that there was travelling after the break in journey beyond the period of 48 hours and consequently besides the technical violation of non-endorsement there would in fact have been a genuine violation of the rules because the ticket would have been invalid after 48 hours, the decision of this case would have been different, but since all the rules except the requirement of endorsement have been complied with, I would hold that the deceased was a bonafide passenger in terms of the expression as required under the provision of Section 2(29) of the Railways Act, 1989. One must not lose sight of the fact that the provisions of Sections 123(c) and 124A of the Act are enacted in a legislative scheme for social welfare. These sections are part of the scheme of beneficial social legislation. This is no longer res integra and it 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.*** The Supreme Court in this judgment of ***Prabhakaran (supra)*** has reiterated that the

provisions of Sections 123(c) and 124A of the Railways Act, 1989 provide for a no fault liability. In fact, recently the Supreme Court in the case of ***Jameela & Ors. vs. Union of India 2010 (12) SCC 443*** has gone to the extent of stating that even if there is negligence yet there still is an untoward incident entitling compensation, unless it is proved that the negligence is a criminal negligence involving self-inflicting injuries.

9. I am strengthened in my aforesaid view of the deceased being a bonafide passenger in view of explanation (ii) of Section 124A of the Railways Act, 1989 which reads as under:-

“Section 124A(ii) 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.”

This explanation provides that a person will be a passenger i.e. a valid passenger/bonafide passenger for the purpose of this Section 124A of the Act as long as he had purchased a valid ticket. Obviously, this explanation was added to lay emphasis on the social nature of legislation that once it is found that a person is not a ticketless traveller and has a valid ticket for travelling by train, such person would be a passenger entitled to compensation for an untoward incident. The emphasis is thus for denial of compensation only to a ticketless traveller. This explanation (ii) of Section 124A of the Act makes it abundantly clear that even in the absence of a valid endorsement of the

break in the journey as long as the other requirements of the break in journey were complied with, the passenger would be a bonafide passenger once he is found to have been otherwise travelling on a valid ticket.

10. The appeal is accordingly allowed. Appellants are entitled to statutory compensation of Rs.4 lacs alongwith interest from the date of filing of the claim petition @ 6% per annum simple till a period of two months of passing of this judgment and if the amount is not paid within two months, thereafter, interest will be paid @ 9% per annum simple till the date of actual payment. The compensation granted by this judgment will be equally distributed among all the appellants. The respondent is directed to ensure that cheques for compensation are encashed only by the appellants and necessary intimation be sent to the bank so that the funds are withdrawn by the appellants only and not misused by anyone else.

11. With the aforesaid observations, the appeal stands allowed and disposed of.

SEPTEMBER 23, 2011/Ne

VALMIKI J. MEHTA, J.