

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

+ **FAO.No. 12/2009**

% *Reserved on : 23.03.2011.*
Decided On: 28..03.2011

MAMTA & ORS. Appellants
Through: Mr. S.K. Vashisht, Adv.

Versus

UNION OF INDIA Respondent
Through: Mr. J.K. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG,J.**

1. This appeal has been filed by the appellant who claims to be the dependents of the deceased assailing the impugned judgment dated 12.09.2008 whereby the Railway Claims Tribunal has dismissed the claim petition filed by the appellants under Section 16 of the Railway Claims Tribunal's Act. By filing the claim petition the appellants have claimed that on 26.05.2006 the deceased late Bharat Singh the husband of the first appellant was going to his cousin's house at Meerut by Dehradun Express. The deceased was travelling on a valid purchased ticket from Delhi junction to Meerut City by Dehradun Express Train. He has boarded the train from Delhi Junction but as the train was over-crowded, the deceased could not pass the gallery of the train to get a seat/berth, and when the train reached near Bihari Colony, Shadara the crowd pushed the deceased and the deceased could not control himself, and as a result thereof he fell down from the moving train and sustained fatal injuries. The post-mortem was conducted on the dead body of the deceased at GTB Hospital.

Thereafter on 06.12.2006 the appellants filed the claim petition claiming compensation of ₹ 5 lakhs from the respondents.

2. The respondents contested the proceedings by filing a written statement wherein apart from denying the allegations made in the claim petition they have contended, inter alia, that the alleged incident as narrated in the claim petition is not covered under the definition of untoward incident as defined under Section 123(c) of the Railways Act. They also pleaded that the deceased was not a bona-fide passenger.

3. On the basis of the pleadings of parties, issues were framed by the Tribunal and parties were put on trial. The appellants examined Shri Jeet Singh applicant No.4 who appeared as AW1 and one other witness namely Shri Praveen Kumar was also examined as AW2, and have placed on record documents Ex.AW1/1 to AW1/5. The respondents Railway administration has not adduced any evidence either oral or documentary except placing on record DRM's report wherein it has been specifically stated that the deceased Bharat Singh was run-over by the train while he was crossing railway line. It has also been stated in that report that no ticket was found from his Jama Talashi and it was concluded that deceased Bharat Singh died due to his own mistake and carelessness.

4. While deciding that the appellants were dependents of the deceased, the Railway Claims Tribunal decided issues No. 2,3 & 4 against the appellants. The Railway Claims Tribunal made the following observations:

“(i) Appellants have not placed on record either the original or copy of the railway ticket of the deceased, nor they have stated in the claim petition that the same has been lost during the course of the incident except that in the affidavit of AW1 it was stated that he could not find the belongings of the deceased which was supposed to be in possession of the deceased, namely, the pant, the purse, the cash, the journey ticket, the ring and one chappal, which the deceased was wearing. In column No. 11 of the claim petition which is meant for showing the details of the loss of any luggage on account of any accident, the appellants have written ‘NIL’

(ii) On the other hand the DRM's report placed on record by the respondents Railway administration shows that no ticket was found on the persons of the deceased during Jama Talashi.

(iii) As far as AW2 Praveen Kumar is concerned, it has been observed that he was the brother-in-law of the deceased. He being an interested witness, his evidence was scrutinized with care. It has been observed that the aforesaid witness stated on affidavit that on 25.05.06, the deceased Bharat Singh came to his residence and stayed overnight at his residence, and, that he was insisting upon his sister to go along with him to look after his wife, who was in the advance stage of pregnancy, and, he had declined the request of the deceased, and that thereafter in the morning, the deceased had stated to them that he will go to Meerut to bring his cousin, and that on the morning of 28.05.06, the deceased got ready and requested him to drop him up to the railway station, and accordingly, he went along with the deceased to the Delhi Junction on bicycle and dropped the deceased near the railway station booking counter, and, that the deceased purchased ticket from the counter and came to him, and that he took the said ticket of the deceased and checked it up, which was from Delhi Junction to Meerut City, and that thereafter, the deceased entered into a platform and he returned to his house, and that subsequently, at about 9.00 AM he received a telephonic information about the accident, and, he went to the GTB Hospital, Delhi. Under the cross-examination, he has stated that he had gone along with the deceased to the Old Delhi railway station at about 7.00 AM in the morning and the deceased had purchased the ticket. He has further stated in his cross-examination that he was not travelling along with the deceased in the train.”

5. Having taken note of the aforesaid statement made by AW2 the Tribunal has observed that:

“On the evidence of AW-2, I find that it is totally artificial and does not appeal to the common sense. According to the AW-2, after he had dropped the deceased near the railway station ticket-counter, the deceased purchased the ticket from the counter and came to him, and that, he checked the same etc., which on the face of it appears to be highly artificial. I am unable to comprehend as to why the deceased should again go to AW-2 and get the ticket checked through him. Admittedly, the deceased was aged about 30 years, and, was earning his living by doing private service. Therefore, it is quite natural to expect that the deceased was capable of taking care of himself, and, there was no need for him to get the ticket checked through AW-2. That apart, AW-1 Jeet Singh, who is the father of the deceased, has stated on affidavit that on 25.05.06, the deceased had left from his residence to Sadar Bazar, Delhi to visit his sister with the intimation to his family members that he will join his duty at M/s Lalit Choke Factory, Bihar Colony, Shahdra, Delhi on 26.05.06. It is thus clear from the affidavit of AW-

1, who is the father of the deceased, that the deceased had left his house on the morning of 25.05.06 stating that he shall visit his sister and then join his duty at his work place on 26.05.06. His evidence does not in any way indicate that the deceased had left his house on 25.05.06 with an intention to stay overnight in the house of AW-2 in order to make a request to send the wife of AW-2 to attend on his wife. That apart, if really the deceased had purchased the railway ticket for his travel by train, as alleged by AW-2, the said train ticket ought to have been found either on the person of the deceased or on the site of the incident. Admittedly, no such ticket was recovered either from the person of the deceased or from the site of the incident. Moreover, it is also not the case of the applicants in their claim application that the ticket of the deceased was lost during the course of the incident. Therefore, the circumstances placed on record, do not persuade me to accept the evidence of AW-2. In all probability, he appears to be an obliging witness, being the brother-in-law of the deceased.”

6. In view of the aforesaid, the Tribunal has observed that in the light of the hollowness of the statement made by the two witnesses on behalf of the appellants and the report of DRM, it was not proved on behalf of the appellants that either the deceased was a bona-fide passenger or the death of the deceased occurred in the manner as pleaded by the appellants. Rather relying upon the post-mortem report Ex.AW1/5 filed by the appellants themselves, it has been observed by the Tribunal that the said report shows that:

“The death of the deceased could not be caused due to a fall from the train, as alleged by the applicants. It appears that the place of work of the deceased was located near the railway track as per the investigation papers. It is true that the respondent Railway Administration did not adduced any evidence on its behalf. It has, however, placed on record the DRM’s report, and, the contents thereof would clearly disclose that the deceased was crossing the railway line, and during this process, he was run over by the train. The said contents of the DRM’s report stand corroborated from the contents of the document Ex. AW1/2, produced by the applicants themselves. In assessing the value to be attached to oral evidence of AW-2, the Members of the Tribunal are bound to call into aid their experience of life, and the Tribunal being a fact-finding authority, it is open to it to test the evidence placed before it on the basis of all probabilities. Having done this exercise, I find that the evidence of AW-2 is not capable of being accepted, and it is not a reliable witness.”

7. The Tribunal further observed:

“Reliance on the provisions of Section 123(c)(ii) of the Railways Act is not available to the applicants, as it is not a case, where the passenger had fallen from a train carrying passengers. Therefore, it is not a case of untoward incident within the meaning of Section 123(c)(ii) of the Railways Act. The facts of the case and the surrounding circumstances do not show that the deceased was travelling as a passenger of the train, and, has died on account of an untoward incident. On the other hand, they would reveal that the death of the deceased has occurred while he was in the process of crossing the railway track. Hence, the applicants have not approached the Tribunal with clean hands. They have tried to take the advantage of an unfortunate death in the family. It may be true that the Act, in so far as it relates to claims for compensation arising out of incidents, is a beneficial piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not, however, mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Further, as I have already noticed, the Tribunal has power to look into the documents produced before it and satisfy itself about the bonafides of the claim. On careful perusal of the material on record, I find that the deceased has died of his own criminal act or negligence. At any rate, it could not be a case of fall of a passenger from a train.

Therefore, having given my anxious consideration to the entire matter in issue, I am of the clear view that the material placed on record does not in any way indicate the deceased was a bonafide passenger of the train, and that, he has died due to an accidental fall from the train. On the other hand, they would go to show that in all probability, the deceased must have met with his death while crossing the railway track, and hence, it could not be an untoward incident within the meaning of Section 123(c) of the Railways Act. Hence, I record my findings on Issues No. 2 & 3 in the negative and on Issue No.4 in the affirmative.”

8. Having heard the learned counsel for the parties and having perused the record of the case I find that the case of the appellants that the deceased was a bona-fide passenger having purchased a valid ticket and that he fell down from the running train are not established by the appellants. Even though the respondents have not led any evidence but the DRM's report giving the circumstances in which the death has occurred coupled with post-mortem report, it is apparent that it was not a case of a death which might have resulted on account of fall from a

running train but is a case where the train has run-over over the body of the deceased which is not possible when a person fell down from the running train because the nature of injuries would be different in such case. Moreover, the explanation regarding the purchase of ticket is also not cogent and worthy of credence when statement of AW1 and AW2 are read together. Consequently, I find no merit in the appeal. The same is hereby dismissed with no orders as to costs.

9. TCR be sent back along with a copy of this order.

MOOL CHAND GARG,J

MARCH 28, 2011

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