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HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. No.253 of 2009

Decided on : 24th May, 2013

GEETA & ORS.

..... Appellant

Through: Mr. N.K. Gupta, Advocate.

Versus

UOI

..... Respondent

Through: Mr. Amit Dubey, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is an appeal filed by the appellants under Section 23 of the Railway Claims Tribunal against the judgment dated 9.4.2009 passed by the Chairman, Railway Claims Tribunal dismissing the petition of the appellants bearing No.OA (IIU) 79/2008 for grant of compensation.

2. Briefly stated the facts of the case are that one Gurdeep Singh is purported to have died as a result of injuries sustained by him in an untoward railway accident on 7.1.2008 at about 11 a.m. at platform No.3, Sadar Bazar Railway Station. It was alleged that he was involved in this

accident on account of being a *bona fide* passenger in EMU Train No.SNP-2. The appellant No.1, Geeta, is the widow, appellant Nos.2 & 3 are the children and appellant No.4 is the mother of the deceased. The respondent/UOI filed its written statement and contested the claim of the appellants that the deceased was neither a *bona fide* passenger in the train nor did he died because of an untoward incident which would entitle the appellants to any claim.

3. On the pleadings of the parties, following issues were framed :-

- “1. Whether the applicants prove that they are the dependants of the deceased Sh. Gurdeep Singh within the meaning of Section 123 (b) of the Railways Act?*
- 2. Whether the applicants further prove that the deceased was a bona fide passenger on the train in question on the relevant day?*
- 3. Whether the applicants also prove that the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application?*
- 4. Whether the respondent proves that the petitioners/applicants have failed to prove any negligence on the part of the respondents in the claim application/petition?*
- 5. To what order/relief?”*

4. Both the parties were given opportunity to adduce their evidence. In support of their case, the appellants filed affidavit of Geeta, widow of the deceased as AW-1 and she proved documents exhibit AW 1/1 to AW 1/14. She has stated that the deceased, her husband, was a *bona fide* passenger. He was undertaking a train journey after purchasing ticket and because of the sudden jerk of the train, he fell down from the train because of which he suffered injuries and died. She was subjected to cross-examination and in her cross-examination, she admitted that she had not accompanied the deceased to the railway station nor did she saw the deceased purchasing the ticket. So far as the documents are concerned, these are the documents mostly which have been drawn by the police after the dead body of the deceased was spotted at the track. In these documents, it has been stated that dead body of a person was found on the track, who was reportedly travelling in a train and had perhaps fallen from it. In some documents, it is written that the deceased had suffered injuries because of the train accident but as to how he suffered those injuries is not mentioned.

5. The respondent did not adduce any evidence. So far as the Issue No.1 with regard to the appellants being dependants of the deceased is

concerned, that was decided in their favour but so far as Issue Nos.2, 3 & 4 are concerned, the Tribunal decided against the appellants holding that there was no evidence which could show that the deceased was a *bona fide* passenger. The reason for arriving at this conclusion was that there was no direct evidence which could show that the deceased had boarded the train as a *bona fide* passenger as neither the ticket was recovered from his person nor there was any ocular evidence in this regard by way of testimony of either the widow or any other person. It was observed by the Tribunal that the documents which are sought to be relied upon by the appellants are only based on surmises and conjectures so far as the deceased being a *bona fide* passenger is concerned, which cannot be relied upon. The learned Tribunal also discounted the plea of the appellants that the burden of proof that the deceased was a *bona fide* passenger in the absence of ticket having been found on his person, was essentially on the Railways. In this regard, the Tribunal observed that the question of shifting of onus on the Railways would arise only when *prima facie* evidence is adduced by the appellants to show that the appellant had boarded the train after purchase of a ticket. Since there was no direct evidence in this regard, therefore, the Tribunal observed that there was no

question of shifting the onus on the respondent of showing that the deceased had undertaken the travel without ticket. On the basis of this reasoning, the Tribunal dismissed the claim petition of the appellants on 9.4.2009.

6. Feeling aggrieved, the appellants have preferred the present appeal. I have heard the learned counsel for the appellants. The learned counsel for the appellants has essentially relied upon the plea that the deceased was a *bona fide* passenger and it was contended by him that non-production of ticket by the appellants or the absence of recovery of ticket from the person of the deceased could not be taken as a ground for drawing an inference that he was not a *bona fide* passenger. It was contended by the learned counsel that once there was an averment and proof to the effect that the deceased had travelled in the train, it was essentially on the respondent/Railways to have discharged the burden of showing that he was not a *bona fide* passenger. In support of his contention, the learned counsel for the appellant relied upon number of judgments. These are *Union of India vs. Radha Devi* passed in F.A.O. No.424/2011 decided by this court on 22.9.2011, *Union of India vs.*

Leelamma & Others; 2010 ACJ 566, Union of India vs. Hari Narayan Gupta & Another; III (2007) ACC 870, Union of India vs. Virendra Bharti & Another; 2010 ACJ 2353, Union of India vs. Sanjay Behera; 2010 ACJ 1831, and Ramdhan & Nemdeo & Another vs. Union of India & Another; I (2010) ACC 339.

7. In addition to this, the learned counsel has also submitted that there is a document exhibit AW 1/9 which is the statement of one Ravinder Kumar which has been accepted and wherein he has categorically stated that it was he who had seen the deceased falling from a running train and on inquiry, he learnt that it was the deceased. It is stated by the learned counsel that the statement of Ravinder Kumar, s/o Roshan Lal, which has been recorded by the police, cannot be ignored. It was stated that the Tribunal is not only to rely on the ocular evidence but is also to decide the claim petition on the basis of the documents which are proved before it. Accordingly, it is stated that the learned Tribunal has fallen into gross error by disbelieving the testimony of the widow, AW-1, Geeta, as well as by not relying upon the document proved and exhibited and denying the claim of the appellants.

8. *Per contra*, the learned counsel for the respondent vehemently contended that the judgment passed by the Tribunal is quite lengthy and has analyzed the evidence threadbare and it has arrived at a reasoned conclusion that the deceased could not be considered to be a *bona fide* passenger by any stretch of imagination. It has been also stated by him that the claim of the appellants could not be entertained only on the basis of surmises and conjectures by assuming that the deceased was a *bona fide* passenger without any positive proof being adduced by the appellants showing that the deceased was undertaking the travel after due purchase of a ticket. It is further stated that no train ticket or a monthly pass had been recovered from the person of the deceased and, therefore, no such presumption could be drawn.

9. I have carefully considered the submissions made by the respective sides and have also gone through the impugned judgment as well as the judgments cited by the learned counsel. I find myself in full agreement with the judgment and the reasoning given by the Tribunal that the deceased could not be considered to be a *bona fide* passenger. The reason for this is that there is complete lack of evidence which would show that

the deceased had been undertaking the travel in a particular train after due purchase of ticket. The reason for forming this view is essentially that there is no ocular evidence in this regard. Two pieces of evidence which are sought to be relied upon by the appellants are the affidavit of the widow AW-1, Geeta, wherein she stated that she had left her husband (deceased) to the railway station where he had purchased the ticket and undertaken the journey. When cross-examined, she had categorically admitted that she did not accompany her husband and if she did not accompany him, there was hardly any occasion for her to see that her deceased husband had purchased the ticket. So much so, the Tribunal had also noted the fact that the affidavit of the lady has given a specific train number in which the deceased was undertaking the travel but the fact of the matter remains that she had admitted that after learning about the death of her husband, she had made repeated attempts to find out from the respondent about the train number with which the accident had taken place. Not only this shows inaccuracy in the statement of the lady but it also clearly shows that she had absolutely no personal knowledge and her testimony by way of affidavit was based on totally hearsay evidence. Merely because the lady has stated in the affidavit, without any rhyme or

reason, that her husband was undertaking a travel after purchasing the ticket cannot be relied upon so as to give compensation.

10. The factum of deceased undertaking travel after purchasing of ticket also is not fortified from the fact that after the death of the deceased, when the personal search was taken by the police, although other documents were recovered from his person but there was no recovery or seizure of the train ticket or a railway pass form. I am purposely referring the railway pass because it has been the case of the appellants that the deceased was employed with the Railways as electrician or a fitter and, therefore, it is well possible that he might be having a pass and undertaking the travel authorizedly. Even this was not the case of the appellants.

11. The third component of evidence which has been sought to be relied upon by the learned counsel for the appellants is the statement of one Ravinder Kumar, who has stated that he had seen the deceased falling from a running train. His statement is recorded by the police under Section 161 Cr.P.C. and has been exhibited as AW 1/9. This statement cannot be given any credence so far as *prima facie* proof of the deceased

being a *bona fide* passenger in a train is concerned. This is on account of the fact that 'what is evidence' is defined under the Evidence Act as a statement made on oath before the court or any document produced for the perusal of the court. In the instant case, admittedly the statement made by Ravinder Kumar is not before the Tribunal. If he was an eye-witness, the minimum which was expected of the appellants was to procure his attendance by getting the summons issued to him and get his statement recorded before the Tribunal, where he would have testified and he would also have been subjected to cross-examination so as to elicit the truth but this has not been done. In the absence of his examination before the Tribunal, his statement purported to have been recorded by the police under Section 161 Cr.P.C. cannot be treated as a piece of evidence or even a document so as to fasten the liability regarding payment of claim by the Railways. This at best is only a previous statement which can be used only for the purpose of contradiction of the witness in terms of Section 145 of the Evidence Act as and when he would have testified before the court. It could not be used even for corroborative purposes. This can certainly be not considered to be a document because it is not document drawn by Ravinder Kumar contemporaneously and he is not

the author of the document. Therefore, *prima facie* the burden was on the appellants to have established, in the first instance, that the deceased was a *bona fide* passenger of a particular train and then only the question of factum of his death in an untoward incident would have arisen. There is no doubt about the fact that the deceased has died unfortunately in a train accident but it could be well possible that he has been himself responsible for the same and this is also a hard fact that on account of the sad demise of the deceased, a catastrophic effect has fallen on the family as a whole but nonetheless when one has to fasten the respondent with the liability of payment of compensation in terms of the statute, the minimum requirement of the statute has to be satisfied. I do not find any infirmity in the order of the Tribunal.

12. So far as the judgments of this court or of other High Court's, which have been relied upon by the learned counsel for the appellants, are concerned, I have gone through the said judgments but all these judgments are only distinguishable on the facts of the present case. Merely because in a particular judgment, the High Court has observed that the onus of proof is on the Railways to prove that the passenger in a

given case was undertaking the travel without ticket, does not mean that in the instant case also, the onus was initially on the respondent to prove that the deceased was undertaking the travel without ticket. Such an onus has to be shifted on to the railway authorities only once *prima facie* the initial onus is discharged by the appellants to show that the deceased had boarded the train after purchase of ticket and thus was a *bona fide* passenger. For example, in *Leelamma's case (supra)*, the Railways had admitted that there was an accidental fall of the deceased from the train. It was observed in such a contingency that the injuries were not self-inflicted by the passenger or there was no time to commit suicide by him. In such a contingency, it was essentially on the respondent to prove that the deceased was not a *bona fide* passenger on account of non-production of ticket. Similar was the judgment passed in *Hari Narayan Gupta's case (supra)*. Therefore, the facts of no two cases are similar much less the evidence which is produced and accordingly merely because in one case, the High Court has observed that the burden of showing that the deceased was travelling without ticket was not discharged by the Railways, it could not be a ground for denying the compensation to the appellants, does not mean that in all cases of train accidents, there is a presumption that the

deceased was a *bona fide* passenger and the burden shifts on to the respondent. Such a proposition cannot be laid down nor is laid down by any other authority relied by the appellants. It is in the given facts and circumstances of each and individual case that the court has to consider as to whether the appellants have been able to produce *prima facie* evidence to show that the deceased was a *bona fide* passenger. Once this is shown, the onus obviously shifts on to the railways to show that the deceased was not a *bona fide* passenger.

13. Having regard to the totality of circumstances, I am not satisfied that there is any merit in the appeal. On the contrary, the judgment passed by the Tribunal is a reasoned and speaking one with which I find myself in full agreement. The appeal is without any merit and accordingly, the same is dismissed.

V.K. SHALI, J.

MAY 24, 2013
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