

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

+ **FAO No. 131/2011**

% **28th February, 2014**

MENKA DEVI & ORS. Appellants
Through: Mr. Davinder Nath Dewan, Adv.

VERSUS

UNION OF INDIA Respondent
Through: Mr. J.P.Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 13.8.2010 by which the Tribunal dismissed the claim petition filed by the appellants/applicants who are the dependants of the deceased Sh.Lal Dev Prasad. Appellant no.1 is the widow of late Sh. Lal Dev Prasad.

2. The facts of the case as pleaded by the appellants/applicants were that Sh. Lal Dev Prasad on 26.2.2009 was travelling from Kodrama to New Delhi by train 2381 Poorva Express when near the Khurja railway station(Davar Station), he fell down from the train and died. The case

of the respondent/Railways before the Railway Claims Tribunal, and which has been accepted by the Tribunal, was that the deceased at Davar Station after getting down from the train was loitering on the railway tracks and he got run over by another train no.2301 which was passing the Davar station. Tribunal for this purpose has placed reliance upon the memo issued by the Station Master at Davar which states that two passengers have been run over by 2301 Express.

3. So far as the aspect that the deceased Lal Dev Prasad was a bonafide passenger, the same has been found in favour of the appellants because the certified copy of the ticket was filed and proved as Ex.AW1/5. The relevant portion of the impugned judgment observing that the deceased did not fall down from the train as per the police report Ex.AW1/3, but he died on account of loitering in the tracks is contained in the following observations of the Railway Claims Tribunal:-

“Regarding the nature of the incident, the applicants have maintained that he fell from a train. In confirmation of this fact, the applicant’s counsel has drawn attention to the police report (AW1/3) which states that in the opinion of the police, the death of Sh. Lal Dev Prasad may have occurred due to fall from a train but for definite confirmation, the body should be sent for postmortem. However, the respondent has contested this version of the applicant. The investigation report of the DRM has highlighted the Station Master, Dawar’s Memo (Page 6 of DRM’s report) wherein it is mentioned that that two passengers had been run over by 2301

Express. In point of fact, this memo gives the name of the two passengers as Shri Kalicharan and Sh. Lal. Dev Prasad S/o Sh. Chotan Mahto. The investigation conducted by the RPF clearly concludes that while Shri Lal Dev Prasad was a passenger of 2381 Express, he was loitering on the line at Davar Station and was run over by 2381 Express. There is no reason to discredit the investigation done by the railways as it is based on the sole evidence in the form of the Station Master's Memo which indicates the names of those run over. This memo, in fact is the Railway's First Information Report regarding the nature of the incident and factually describes the incident. It is quite apparent that the police records have indicated fall from a train either out of a misplaced sense of trying to assist the claimants to get compensation or else, the conclusion drawn in the result of shoddy investigation. In any case, the evidence points to the fact that Sh. Lal Dev Prasad was run over by 2301 Express while loitering on the railway line at Davar Station. This issue is accordingly decided in favour of the respondent and against the applicant."

(underlining added)

4. In my opinion, the Railway Claims Tribunal has clearly committed an illegality in dismissing the claim petition inasmuch as, when we see the memo prepared by the Station Master it does not show that Sh.Lal Dev Prasad was run over while loitering on the tracks. The memo only states that two passengers were run over by a train. Therefore, it is perfectly possible and as was the case of the appellants, that the deceased fell down from the train, and in which process, he could have been run over by a train 2301 Express at Davar Station.

5. It is settled law that the liability of the Railways as per Sections 123(c) and 124-A of the Railways Act, 1989 is a strict liability i.e even if the

passenger is negligent, Railways are liable unless the negligence becomes criminal negligence or is a case of suicide or self-inflicted injuries. That the liability is a strict liability is no longer *res integra* and so held by the Supreme Court in the cases of *Union of India Vs. Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527* and *Jameela and Ors. Vs. Union of India (2010) 12 SCC 443*.

6. In the present case, on the one hand the police report Ex.AW1/3 clearly states that on police enquiry which has shown that the deceased died on account of fall from the train on the other hand, there was a memo of the Station Master, Davar that two passengers were run over by the train. However, as already stated above, the memo of the Station Master does not show that the passengers were run over on account of their loitering on the tracks and which case was pleaded by the respondent. I may state that there is no eye witness whose evidence is led by the Railways that the eye witness had seen or to whom someone said that the deceased Lal Dev Prasad died while loitering on the tracks near the Davar station.

7. Learned counsel for the respondent very vehemently sought to argue that nature of the postmortem report of the head injuries and other injuries show that the deceased was run over, however, in my opinion, this argument

does not have substance for the reason that if a person after falling from the train is run over by another train, postmortem report will necessarily show injuries on account of the passenger being run over. It is not totally unconceivable that after falling from the train, the person comes under another train which is immediately passing by the train from which the deceased is said to have fallen. In certain stations, the distance between the two tracks is of course a specified distance, but in fact if really one completely stretches out his hands while standing and holding the handle at the door of train, it is possible even to brush another train which is passing by. It is thus not inconceivable that Lal Dev Prasad after falling from train in which he was travelling got crushed by another train which was passing by at the Davar station namely 2301 Express.

8. Considering the strict nature of liability of the Railways, and the intention of the legislature to give statutory compensation to a bonafide passenger, and the fact that the deceased Lal Dev Prasad was undoubtedly a bonafide passenger travelling on a valid train ticket, in my opinion, the police report Ex.AW1/3 is to be believed in preference to the memo of the Station Master at Davar Station and which in any case does not state that the deceased died on account of loitering in the tracks.

9. In view of the above, the appeal is allowed. Statutory compensation of Rs.4 lacs will be payable to the appellants and it will be equally divided between the seven appellants/applicants. So far as the minor applicants who are applicant nos. 3 to 5 i.e Master Sikander, Master Rajesh Kumar and Baby Santoshi Kumari, are concerned, their shares will be deposited in a fixed deposit in a nationalized bank and only the interest thereof will be used for upkeep and maintenance of the minors. In case, if there is any urgent necessity or there is a requirement to withdraw a lumpsum amount wholly or in part, on such urgent necessity arising, an application can be moved before the Railway Claims Tribunal which will decide the issue in accordance with law.

The Manager of the bank will ensure that share of the compensation monies only come into the hands of the appellants/applicants and more particularly qua those persons who are minors being the applicants 3 to 5. Parties are left to bear their own costs.

FEBRUARY 28, 2014
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VALMIKI J. MEHTA, J.