

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

+ **FAO No.167/2012**

% **7th May, 2014**

SH. SURENDRA PRASAD VERMA & ANR. Appellants
Through: None.

Versus

UNION OF INDIA Respondent
Through: Mr. Sandip Kumar, Advocate.

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 18.10.2011 which has dismissed the claim petition filed by the parents of the deceased Sh. Rajesh Kumar Nidhi who died in an untoward incident on 1.6.2009.

2. The facts of the case are that the deceased Sh. Rajesh Kumar Nidhi, a student aged 19 years, resident of Village Ajwan, Police Station Naubatpur, District Patna (Bihar) had purchased a Super Fast Journey Ticket from Patna Jn. to New Delhi on 1.6.2009 and had boarded the train

no.2391 UP Sharamjeevi Express. The train, after commencement of
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journey, halted at the Buxar Railway Station and after the train started from Buxar Railway Station, the deceased Sh. Rajesh Kumar Nidhi who had got down at the station to purchase some eatables and drinking water, on account of the rush in the train was forced to stand near the door of the train from where he fell down due to jerk in the train and push of the co-passengers. The subject claim petition was accordingly filed.

3. The case of the respondent before the Tribunal and before this Court was that the deceased was not a bonafide passenger. It is contended that no train ticket was recovered and therefore the deceased was not a bonafide passenger. It is also argued that there is a difference of about two hours between the time of the departure of the train at Buxar Railway Station and the finding of body and thus there is no untoward incident of a fall from the train. It is accordingly argued that claim petition was misconceived and has been rightly dismissed by the Tribunal.

4. Tribunal has given the following observations for dismissing the claim petition:-

“7. All these Issues, being inter-connected, are being taken up together. Applicant’s case is that Sheri Rajesh Kumar Nidhi (deceased) was travelling by Train No. 2391-Sharamjeevi Express with a valid Super Fast Journey Ticket from Patna Jn. To New Delhi on 01.06.2009; that when the said train halted Buxar Railway

Station, he got down from the train and after purchasing some eatables and drinking water, he boarded the said train, but due to heavy rush in the compartment, he was unable to go to his seat and was compelled to stand near the door of the compartment; that due to sudden jerk of the train and pressure of the co-passengers, he fell down from the running train and succumbed to his injuries. On the other hand, relying on the extract of Station Diary annexed with the Inquiry Report, Ld. Counsel for the respondent argued that Train No. 2391-Sharamjeevi Express was running late and reached and departed from Buxar Railway Station at 23.26 and 23.28 hrs. Respectively on 01.06.2009, while as per the Memo dated 02.06.2009, annexed with the Inquiry Report (Exh.R-2), the Dy. Station Manager informed the GRP Police officials of Buxar Railway Station at 01.25 hrs. About a body of a person having been found lying cut on Up Loop Line No. 4 of Buxar Railway Station i.e. about 2 hours after departure of Sharamjeevi Express Train. This, the respondent argued, does not happen in actual practice that a person falling down from a train keeps lying on track for almost 2 hours unnoticed at a busy station like Buxar. Moreover, in such cases, the fellow passengers invariably stop the train. In this case, a passenger has informed the Dy. Station Supdt./Buxar based on which Dy. S.S./Buxar issued a Memo (Exh.R-2) as under:-

8. No journey ticket has been found with the deceased while mobile phone, telephone numbers etc., were recovered from his possession (Exh. AW-1/9). There is no evidence whatsoever that the deceased was travelling by Sharamjeevi Express and fell down from this train. On the other hand, as pointed out by the respondent, the timings of the train at Buxar and receipt of first information by the railway staff contradict the facts submitted by the applicants. I have carefully

perused all the documents filed by the respondent and the applicants, which fully support the contention of the respondent. The applicants have failed to prove their case. This Bench is, therefore, constrained to conclude that the deceased Sheri Rajesh Kumar Nidhi was neither a bona fide passenger nor fell down from the alleged train. Based on the above, Issue Nos. 2 & 3 are decided in the negative against the applicants and in favour of the respondent and Issue No.4 is decided in the affirmative in respondent's favour. Issue No.1, about jurisdiction, does not need any further elaboration after the main Issues have been decided."

5. In my opinion, the impugned judgment of the Tribunal is clearly illegal and is bound to be set aside. Firstly, the Tribunal ought to have taken note of the fact that no doubt the train ticket is in these cases required to be proved for showing that the deceased was a bonafide passenger and no ticket was found on the person of the deceased Sh. Rajesh Kumar Nidhi in this case, however, it has also been held by the Courts in innumerable judgments that facts of each case have to be seen to determine as to whether not finding of the ticket on the person of the deceased is enough for holding that the deceased was not a bonafide passenger inasmuch as it is very much possible that in a train accident in which a passenger falls from a train, the ticket is and can be lost. Therefore, merely because no train ticket has been filed or proved will not be determinative of the fact that deceased should be held not to be a bonafide passenger.

6. The most important aspect in this case is that the deceased was a resident of Patna and his body was found near the Buxar Railway Station on the railway tracks. It is not the case of the respondent that the deceased had some reason to have been found at the tracks near Buxar Railway Station inasmuch as the deceased neither had a place of residence nor any reason to be at the tracks near the Buxar Railway Station where the body has been found. Merely because there is said to be about a two hour difference in finding of body by GRP police officials is not determinative of the fact that there is no fall from the train inasmuch as bodies can lie on the tracks sometime for hours without the same being reported, and more so in this case when the falling from the train is roughly at about 11.30 at night and the body being found about 1.30 A.M. Therefore, the finding of the Tribunal is erroneous that as a result of timings of the train and the finding of the body, it should be held that the deceased was not a bonafide passenger.

7. I may note that the Tribunal for some reason has chosen to ignore two important and vital documents which were filed by the appellant in this case. First document is the document Ex.AW1/4 and which shows that the body was lying on the tracks. As per this report Ex.AW1/4, once the body is found to lie on the tracks, then as per the facts of the present case a

presumption does arise of the fall of the deceased from the train. Whatever doubt remains of the fall of the deceased from the train is removed from the FIR filed as Ex.AW1/9 and which records the statement of maternal uncle of the deceased one Sh. Vasgit Verma who has stated that he had accompanied the deceased Sh. Rajesh Kumar Nidhi, a student, to the railway station at Patna where the deceased Sh. Rajesh Kumar Nidhi had purchased the train ticket for travelling to Delhi because he was going to take tuitions at Delhi. There is a red marking by pen in this portion of the document Ex.AW1/9, and which must surely be by the Tribunal, but the Tribunal has, for some strange reason, not mentioned this relevant part of the document, Ex.AW1/9 in the impugned judgment. There is no reason to disbelieve the natural statement of Sh. Vasgit Verma made to the police.

7. A conjoint reading of the documents Ex.AW1/4 and Ex.AW1/9 leads to the conclusion on preponderance of probabilities that the deceased Sh. Rajesh Kumar Nidhi was a resident of Patna in Delhi and for the purpose of taking tuitions was travelling to Delhi by the UP Sharamjeevi Express after purchasing a ticket on 1.6.2009, when he fell from the train near Buxar Railway Station, where his body on the tracks could only have been found if he was travelling in the train. I may note that the Supreme Court in the cases

of *Jameela & Ors. Vs. Union of India (2010) 12 SCC 443* and *Union of*
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India Vs. Prabhakaran Vijaya Kumar and Ors. (2008) 9 SCC 527 has held that liability of the Railways is a strict liability and which is supported by the wording of Section 124-A of the Railways Act, 1989. Supreme Court has held that even if the bonafide passenger is guilty of negligence, yet, liability will be of the Railways unless the negligence is criminal negligence or a case of self-inflicted injuries/suicide. In the present case, circumstances show that the strict liability of the Railways must be held to exist and it is held that the deceased Sh. Rajesh Kumar Nidhi fell from the train while undertaking a train journey from Patna to Delhi.

9. Accordingly, the appeal is allowed. Claim petition of the appellants/claimants will be allowed by granting them statutory compensation of Rs.4 lacs alongwith interest @ 7½% per annum simple from the date of filing of the petition before the Tribunal till the date of payment. Parties are left to bear their own costs.

Since no one appears for the appellant, the Registry of this Court will send to the appellants a copy of this judgment by registered post AD and also through the process server of the concerned district of the residence of the appellants so that they have knowledge of the present judgment. Respondent is also directed that it should within a period of six weeks from today send to the appellants a copy of the present judgment

through its official posted at the railway station nearest to the residence of the appellants/claimants.

MAY 07, 2014
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VALMIKI J. MEHTA, J.