

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

+ **FAO No. 147/2012**

% **27th March, 2013**

ASHA KUWAR & ORS Appellant

Through: None.

VERSUS

UNION OF INDIA Respondent

Through: Mr. A.S.Dateer, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? YES

VALMIKI J. MEHTA, J (ORAL)

1. Though no one appears for the appellant, I have gone through the impugned judgment, as also the record of the Railway Claims Tribunal, with the assistance of the counsel for the respondent.

2. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 20.12.2011 by which the Tribunal has dismissed the claim petition filed by the appellants/applicants. By the claim petition, the statutory compensation of Rs.4 lacs was claimed, on account of death of Sh. Shashi Binay Singh, husband of the appellant no.1 and father of appellant nos. 2 to 4.

3. The facts of the case are that the deceased Sh. Shashi Binay Singh, aged about 45 years, was travelling from Ex-Gaya to New Delhi on 15.7.2010 by Mahabodhi Express Train No. 2397 on a second class journey ticket bearing no.E-07162419. When the train stopped at Kailhat Railway Station, the deceased was trying to get down from the door of the train to urinate, and at that point of time he got caught up in the whiff of the fast moving Rajdhani Express train in the adjoining track, and consequently he was hit by the train which resulted in grievous injuries causing his death.

4. Respondent contested the claim by contending that neither the deceased was a bonafide passenger and nor did he fall down from a train, and that in fact the injuries which were sustained by the deceased were self-inflicted injuries and consequently there is no 'untoward incident' in terms of that expression found in Sections 123(c) and 124-A of the Railways Act, 1989.

5. So far as deceased being a bonafide passenger is concerned, this issue in my opinion cannot at all be doubted because the train ticket no. E-07162419 for travel from Ex-Gaya to New Delhi on 15.7.2010 has been filed/proved and exhibited as AW1/7. In fact, there is not much dispute so far as this issue is concerned that the deceased was travelling on a valid train ticket. Therefore, I hold that the deceased was a bonafide passenger.

6. The only vexed question is that whether it can be held that the deceased died on account of an 'untoward incident' within the meaning of the expression as found in Section 123(c) read with Section 124-A of the Railways Act, 1989. In this regard, it is relevant to note that the liability of the Railways for an untoward incident in terms of Section 124-A of the Railways Act, 1989 is a strict liability, and which cannot be avoided even if it is found that the bonafide passenger was negligent. This issue is no longer res integra and so held in the judgments of the Supreme Court in the cases reported as *Union of India Vs. Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527* and *Jameela and Ors. Vs. Union of India (2010) 12 SCC 443*. In both these judgments Supreme Court has made observations with regard to conditions of travel in the Indian Railways, where not only trains are overcrowded, but there are demanding situations on account of overcrowding of the trains. Keeping this strict liability of Railways in mind, let us see the facts of the present case.

7. In the present case, contents of the claim petition have been proved through Sh. Rabindra Bhagat (AW-2) who was travelling in the same bogie as the deceased Sh. Shashi Binay Singh. This witness has deposed that the general compartment in which deceased Shashi Binay Singh was travelling was jam packed even at the entrance of the toilet room and that is

why the deceased was avoiding to discharge his urine from four stations back. However, when the deceased came to know of stopping of the train at Kalihat Railway Station he could not prevent himself from discharging his urine, and therefore he came to the door of the compartment in order to get down from the train to discharge urine. It is deposed by AW-2 that while the deceased was in the process of getting down from the train, in the adjacent track Rajdhani Express was passing at a great speed, and the whiff created by the fast moving Rajdhani Express resulted in the deceased not only losing his balance and accidentally falling down from the train but also by getting struck against the train causing injuries which resulted in his death. A reading of the cross-examination of this witness shows that there is no dispute with respect to overcrowded condition of the train deposed to by him, and also that the toilet door not being accessible because of overcrowding. In such conditions, if the deceased Shashi Binay Singh, in my opinion, was getting down from the door towards the track where a train may pass, may make him guilty of negligence but definitely not criminal negligence, because, Railways is responsible for creating such conditions whereby the deceased could not go to the toilet in the bogie or cross-over to the other side for getting down on the platform. Therefore, in my opinion, in view of the ratios of the judgments of the Supreme Court in the cases of

Prabhakaran (supra) and *Jameela (supra)* , there is no criminal negligence of the deceased Shashi Binay Singh, for the Railways not to be held liable for grant of statutory compensation.

8. In my opinion the findings of the Railway Claims Tribunal that the deceased died on account of self-inflicted injuries cannot be sustained by holding that the deceased could have got down on the platform or gone to urinate in the coach urinal. These findings of the Tribunal in my opinion are against the facts of the case which show grossly overcrowded conditions in the bogie and for which reason the deceased was not able to go to the platform for urinal which was adjacent to the door on the other side or to the toilet in the coach. Accordingly, the findings of the Railway Claims Tribunal that there is no untoward incident are accordingly set aside and it is held that deceased died on account of an untoward incident.

9. I may note that no one appeared for the appellants on 11.3.2014 and even today no one appears for the appellants. I fail to understand such irresponsibility of advocates.

10. Impugned judgment is set aside and the claim petition is allowed by awarding the statutory compensation of Rs.4 lacs alongwith pendente lite and future interest at 7 ½ % per annum from filing of the petition till the date of payment. Appellants will be entitled to compensation

in equal proportions. Since the appellant no.4 is a minor, 1/4th share which is payable to him will be deposited in his name in a fixed deposit in a nationalized bank and only the interest thereof will be used for up-keep and maintenance of the minor appellant no.4. On the appellant no.4 becoming major the FDR alongwith accrued interest will be paid to him. It is directed that copy of this judgment be sent by registered post AD by the registry of this Court to each of the appellants at the addresses of the appellants in the memo of parties. It is also directed that the respondent through one of its responsible official posted at a station nearest to the residence of the appellants will inform the appellants about this judgment positively within four weeks from today.

MARCH 27, 2014
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VALMIKI J. MEHTA, J.