

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

+ FAO 221/2013

% 22nd May, 2014

MAYA DEVI Appellant
Through Mr.B.K.Ray, Advocate.

versus

UNION OF INDIA Respondent
Through Ms.Rashmi Malhotra, Advocate for
Railways.

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

C.M.No.7462/2013

This is an application for condonation of delay in filing the present appeal. For the reasons stated in the application, the delay of 57 days in filing the appeal is condoned.

Application stands disposed of.

+FAO No.221/2013

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated

27.11.2012 by which the Tribunal has dismissed the claim petition filed by the appellant/applicant, who is the mother of the deceased Anuj Kumar. The facts as pleaded by the appellant/applicant are that her son Anuj Kumar on 15.5.2010 was travelling from ex- Delhi Cantt. railway station to Rewari. When the train reached between Basai Dhankot and Garhi Harsari railway station, on account of a jerk in the train and jostling of passengers, Anuj Kumar fell down from the moving train and died on the spot.

2. The claim petition was contested by the respondent who denied the happening of the untoward incident.

3. The Railway Claims Tribunal has dismissed the claim petition by the following observations:-

“ Issue Nos. 2, 3 & 4:-

These three issues are taken up together for the sake of convenience, as these are inter-related.

The applicant's case is that her son Shri Anuj Kumar while travelling from Delhi Cantt to Rewari on 15.5.2010 fell down between Basai Dhankot and Garhi Harasaru stations at K.M 35/6-7. A copy of the journey ticket of the deceased dated 15.5.2010 has been placed on record (marketed as 'B') by the applicant, though the same does not find mention in either the Panchnama (Ex. AW1/7) or in the list of articles handed over (EX. AW1/8).

Respondent opposed the case and emphasized that facts have been mostly manipulated so as to bring the case within the ambit of Section 123 (c) (2) and 124-A of the Railways Act, 1989 just to get the claim amount. In support, the respondent brought out the following important points:-

- i) Body of the deceased was found on 16.5.2010 at 7.20 a.m (journey on 15.5.2010) by the Keyman of the Railways, who found a body lying in the field 6 or 7 meters away from the Dn. Track (Rewari to Delhi Cantt) while as per the applicant, the deceased was travelling ex-Delhi Cantt to Rewari (Up side) which track is on the left on the Dn track and, therefore, it is not possible that a person fallen down from the Up track would land in the field after crossing the Dn track.
- ii) As per the post-mortem report (Ex.AW1/11), death is reported to have occurred within 12 hours of post-mortem which was conducted at 16.30 on 16.5.2010, which means that death would have occurred after 4.30 a.m on 16.5.2010. As per the applicant, the deceased left for Rewari on 15.5.2010 (no time or train number, by which travelled mentioned). The last passenger train to Rewari, as per respondent, was 54410 (9RD) with Delhi departure at 20.05 hrs, Rewari arrival at 22.40 hrs.
- iii) In Death Report (Ex.AW1/7), marked as 'A' in green, there is a mention on 5th page of the report that the deceased person was suspected to have been arrested in the village in case of theft earlier.

After going through the entire material and evidence placed on record and hearing the arguments of both sides, the Tribunal feels that serious manipulation of facts are suspected to have been done by the applicant in this case, as brought out above by the respondent and that no case of fall from train is

brought out from the facts and evidence on record. The Tribunal, therefore, decides Issue Nos 2 and 3 against the applicant and Issue No.4 in favour of the respondent.

The claim application is dismissed. There is, however, no order as to costs.

(A.K. Goyal)
Member (Technical)”

4. A reading of the aforesaid observations of the Tribunal shows that the claim petition was dismissed because no train ticket was found in the list of articles handed over (Ex.AW1/8). The Tribunal also concludes that the existence of the train ticket is not recorded in the Panchnama (Ex.AW1/7) as well. The Tribunal also then relies upon the fact that the body was found lying in the field 6-7 meters away from the down track and not the up track in which the deceased was travelling to conclude that there was no train travel. The Tribunal then relies upon the post-mortem report to conclude that since the death had occurred 12 hours before the incident, but the post-mortem report states that death took place within 12 hours hence the deceased did not die on account of an untoward incident of falling from the train. Surprisingly, the Tribunal also gives one very strange and irrelevant reason for dismissing the claim petition and which is that the deceased is suspected to have been arrested in the village in a case of theft earlier.

5. In my opinion, the conclusions of the Tribunal are totally perverse. I fail to understand that how the Tribunal can conclude that in the list of articles (Ex.AW1/8), it is not mentioned that the train ticket was not handed over. This conclusion of no train ticket being handed over is a perverse conclusion because even a cursory reading of EX.AW1/8 shows that the ticket of travel of the date of incident from Delhi to Rewari was recovered from the *jamatalashi*/search of the deceased Anuj Kumar, and that ticket has been handed over as per Ex.AW1/8. I fail to understand that how the Tribunal could have with closed eyes read AW1/8 for concluding that the ticket was not found on the *jamatalashi*/search and not handed over as per the list of articles. I note that the report which is prepared by the Railway Inspector on 07.11.2012 and filed before the Tribunal, it clearly stated that on the *jamatalashi*/search of the body of the deceased Anuj Kumar, a ticket for travel from Delhi to Rewari of the date of the incident was recovered. Therefore, the conclusion of the Tribunal of the deceased not being a bonafide passenger because no train ticket is recovered being totally illegal and perverse is set aside and it is held that the deceased was travelling by train on the date of incident inasmuch as the train ticket of the journey was recovered from the *jamatalashi*/search of the dead body of Sh. Anuj Kumar.

Hence it is held that the deceased was a bonafide passenger who died in an untoward incident.

6. The other conclusion of the Tribunal that since the body was lying towards the down track and hence there was no train travel is equally fallacious. Firstly, the Tribunal cannot conclude that merely because the dead body was recovered in the field 6-7 meters away from the down track adjacent to the up-track in which the deceased was travelling, this case will not be a case of a fall from the train. It is very much possible that after falling down from the train, the deceased had that much amount of life and strength to move himself for a few meter before completely collapsing. Merely because the body is found 6-7 meters away from the track cannot mean that the deceased was not travelling on the train. This conclusion of the Tribunal is also therefore quite clearly erroneous and is hence set aside.

7. The Tribunal has relied upon the post-mortem report (Ex. AW1/11) to conclude that the death was not on account of falling from the train because the post-mortem report shows that the death had occurred 12 hours within preparation of the post-mortem report but facts show death earlier than 12 hours. In this regard it requires to be noted that no post-mortem can give the exact timing of death, and observations in the post-mortem report have to be read with other facts of the case to arrive at a conclusion with respect to the

time of happening of the untoward incident. This conclusion of the Tribunal is also, therefore, set aside that the post-mortem report can be conclusive for holding that the deceased did not fall from the train.

8. The final conclusion of the Tribunal, as already stated earlier is a very specious one that the deceased was suspected to have been arrested in the village in the case of theft earlier and this aspect goes against the deceased Anuj Kumar. First of all, how can a stray statement be an indictment of a person for theft is not understood by this Court. Also, merely because a person indicted of a theft cannot take away the liability of the Railways existing as per Sections 123(c) and 124(A) of the Railways Act, 1989 because the sections do not provide that if a person is convicted then in such cases, on account of his death in an untoward incident, compensation will not be paid. I, therefore, am pained to note that the Railway Claims Tribunal is making unnecessary observations and deriving the conclusions on the basis of aspects which have no relevance at all to the issues in controversy.

9. In view of the above, appeal is allowed and the impugned order of the Tribunal dated 27.11.2012 is set aside. The appellant/applicant will be allowed to the statutory compensation of Rs.4 lacs with pendente lite and future interest till payment @ 7½ per month. Parties are left to bear their own costs.

10. Let copy of this judgment be sent to the Chairman of the Railway Claims Tribunal so that it comes to the notice of the Chairman that various members of the Tribunal are ignoring relevant facts/documents while passing the judgments deciding the claim petitions and are referring to totally irrelevant aspects for dismissing the claim petitions.

VALMIKI J. MEHTA, J

MAY 22, 2014
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