

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

+ **FAO 136/2014**

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8th May, 2014

UNION OF INDIA

.....Appellant

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

VERSUS

SANJEEV ARORA & ORS.

..... Respondents

Through:

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 18.12.2013 which has allowed the claim petition filed by the husband and minor children of the deceased Amita, who died in an untoward incident on 17.10.2009.

2. Before referring to the facts of the case, I must note that Railways/Union of India must eschew from filing wholly unnecessary appeals. Once in the facts of the case it is proved on record that the body is found lying on the tracks, in the jamatalashi/search of the deceased tickets

were recovered, the husband who could not find the wife after sometime when she went to washbasin had made desperate enquiries in the compartment and then looked in the whole train and then came to know of the unfortunate incident at the destination station as a body of a lady was found lying on the tracks, yet, Railways should not feel that an appeal should be filed against the exhaustive judgment which shows proving beyond any doubt the happening of the untoward incident.

3. The facts of the case are that the deceased Amita with respondent no.1/ her husband and two minor children/ respondent nos. 2 and 3 was travelling by Punjab Mail from Raja Ki Mandi, Agra to Hazrat Nizamuddin. When the train was passing between Faridabad and Tuglakabad, the deceased went near the toilet and washbasin but she did not return to the seat. After waiting for some time, husband/respondent no.1 searched for her in the compartment but in vain and in the meanwhile, the train reached Hz. Nizamuddin and respondent no.1 made search of the entire train but could not find the deceased and on an enquiry from railway officials he came to know on the next morning that a dead body of a lady was found on the tracks between Faridabad and Tuglakabad. The

respondent approached the GRP at Faridabad and identified the dead body as that of his wife Amita.

4. Before the Tribunal, respondents filed and proved on record the documents Ex.AW1/2 to Ex.AW1/7, and which documents are complete record with respect to the untoward incident, jamatalashi report, railway police officials documents and other official documents showing the untoward incident. The Tribunal has given the following valid findings and conclusions to allow the claim petition.

“7. The case of the applicants is that they along with the deceased were travelling from Raja Ki Mandi to Hz. Nizamuddin on 17.10.2009 by Punjab Mail after purchasing valid journey tickets for two adults and the incident occurred between Faridabad and Tugalkabad. The applicants produced Ex.AW-1/11, the journey tickets bearing no. 43693359 for two adults for travel from Raja Ki Mandi to Hz. Nizamuddin on 17.10.2009 and superfast ticket bearing no. 43680518. It is pleaded in the application and also deposed by the first applicant, AW-1, in his evidence affidavit that they have boarded the train no. 2137 Punjab Mail at Raja Ki Mandi. Ex. Aw-1/10 is the Jamatalashi Report wherein the recovery of the above two tickets from the person of the deceased is noted. The learned counsel for the respondent pointed out that in the DRM’s Report, it is stated no journey ticket was found on the person of the deceased by the RPF. As seen for Ex.AW-1/10, Jamatalashi was conducted by the GRP on 18.10.2009 itself and the journey ticket along with some other items were recovered from the person of the deceased. In

view of the Ex.AW-1/10, coupled with the tickets, Ex. AW-1/11, it can be safely inferred that the applicants and deceased were travelling with the aid of journey tickets since the genuineness of the said ticket is not disputed by the respondent. In these circumstances, it is held that the deceased was a bonafide passenger along with the first applicant and boarded Punjab Mail on 17.10.2009.

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8. As these two Issues are inter-related, these are considered together.

9. According to the applicants, after the train crossed Faridabad, the deceased went towards the toilet and washbasin at the entrance of the compartment and when she did not return and the first applicant made frantic search for the deceased but in vain and meanwhile, the train reached Hz. Nizamuddin and the deceased was not found anywhere in the train. It is in the evidence of AW-1 that he has been making search throughout the night at different places and only on the next morning, he came to know from the police that dead body of a lady was found laying on the track between Faridabad and Tugalkabad and the first applicant went to the spot and identified the dead body as of the deceased. Ex.AW-1/3 is the memo issued by the Station Master, Fardiabad on 18.10.2009 at 06:10 hrs. The Station Master is examined as RW-1 and he deposed that the driver of the Punjab Mail no. 2138 by name Ali Hasan gave information that a dead body was found lying at Km. 1510/13 of down main line. Based on the said information, RW-1 issued Memo, Ex.AW-1/3 and made an entry in the Untoward incident Register in Ex.RW-1/3 and also in the Station Diary R-2. Ex.RW-1/1 to RW-1/4 coupled with the evidence of RW-1, station master, would show that dead body of a female and found lying at Km.

1510/13 on the down main line at 06:10 hrs. Based on the Memo issued by RW-1, the police registered a case in DD no. 60 at 06:35 hrs. And investigated. Ex.AW-1/2 is the inquiry Report wherein the opinion as to the cause of death is recorded as due to the railway accident and due to fall from the train. In Ex.AW-1/7, the Death Report, also it is stated that the death was due to railway accident. Ex. AW-1/14, the Postmortem Report shows that the injuries are ante mortem and are sufficient to cause death and they are possible due to railway accident. According to the applicants, they were travelling by 2137 Dn. Punjab Mail. It is in the evidence of RW-1 and is borne out by Ex.R-1 that the said train arrived at Faridabad at 20:55 hrs. And left at 20:57 hrs. The other t4rain 2138 Up Punjab Mail coming from Nizamuddin arrived on 18.10.2009 at 06:10 hrs. and left at 06:12 hrs. The information about the dead body was given by the driver of the said train 2138 Up, Punjab Mail, which passed through up main line. The dead body of the deceased was found on the down main line through which the Punjab Mail, 2137 Down from Agra arrived on the previous night. The site plan attached to the Death Report, Ex.A-3, Ex.AW-1/7 also shows the location of the dead body on the Up main line.

10. The learned counsel for the respondent would contend that since the dead body was found in between the rails, as can be seen from Ex.AW-1/7, the site plan, and the legs were found cut and severed, from the inquest Report, Ex. AW-1/2 and Postmortem Report, ExAW-1/15, it could not have been a case of fall from the train and the deceased must have been run over by some train while she was unauthorizedly crossing the track. The material on record would establish that the applicant and deceased were residents of Agra at that time and they were travelling from Raja Ki Mandi to Hz. Nazamudin with a valid journey ticket. It is not

the case of the respondent, nor is there any evidence on record to indicate that the deceased was residing at any place nearby to the scene of incident or that she had any occasion to move around at that place on the night of 17/18.10.2009. Under those circumstances when the deceased is found to be a bonafide passenger on board the train, the finding of the dead body on the track would necessarily lead to the inference that it was a case of accidental fall from the train. The above inference is fortified by the evidence of AW-1, who testified that he was accompanying the deceased during the travel and other the train crossed Faridabad and was about to reach the destination, the deceased had gone to the toilet and washbasin and she did not return. The testimony of the applicant is not discredited in any manner. Under those circumstances, simply because the body was found on the track and the legs were found severed, it is not safe to conclude that it was a case of run over by train. Admittedly, the driver of any train has not given any intimation to the Station Authorities at Faridabad or Tugalkabad that there was any incident of run over. When the probabilities and circumstantial evidence are duly tested and weighed, the plea of the applicants that it was a case of accidental fall sounds more plausible and acceptable than the theory of run over propounded by the respondent when the deceased is found to be a passenger on long distance travel, the finding of a dead body in the mid section, necessarily indicates that it was a case of a fall from the train since it is not shown by the respondent that the deceased had any occasion to move around at the place of incident on that night. In these circumstances, it is held that the death of the deceased was due to accidental fall from the train amounting to untoward incident within the meaning of Section 123(C) read with

Section 124-A of the Railways Act. These Issues are answered accordingly.” (emphasis added)

5. A reading of the aforesaid paras shows that in the jamatalashi/search of the person of the deceased Amita, and with respect to which the report is Ex.AW1/10, two tickets of travel were found showing that the deceased was a bonafide passenger. Once the tickets of travel are found, the deceased was a bonafide passenger. The documents on record as also the evidence led on behalf of the respondents including that of the husband AW-1 established, in my opinion beyond doubt and at least on preponderance of probabilities that there did occur an untoward incident of a fall from the train of the deceased Amita.

6. It has been consistently held by the Supreme Court that even if a bonafide passenger is guilty of negligence, Railways are liable for payment of statutory compensation. The only way in which Railways can avoid liability is to prove that the negligence is not an ordinary negligence but a criminal negligence or a case of suicide or self-inflicted injuries. These judgments of the Supreme Court are *Union of India Vs. Prabhakaran Vijaya Kumar and Ors. (2008) 9 SCC 527* and *Jameela & Ors. Vs. Union of India (2010) 12 SCC 443*. In the facts of the present case, it is more than

clear that the deceased Amita fell down from the train while travelling with her family by Punjab Mail from Raja Ki Mandi, Agra to Hazrat Nizamuddin on 17.10.2009 and the Railway Claims Tribunal has therefore rightly allowed the claim petition.

7. The appeal being without any merit is dismissed, leaving the parties to bear their own costs.

MAY 08, 2014
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VALMIKI J. MEHTA, J.