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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No. 308/2011

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8th May, 2014

PARMESHWAR RAM & ANR.

.....Appellants

Through: Mr. S.N. Parashar, Advocate.

VERSUS

UNION OF INDIA

..... Respondent

Through: Mr. A. S. Dateer, 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 24.11.2010 by which, the Tribunal has dismissed the claim petition filed by the appellants/claimants seeking compensation for the death of their son Mithilesh Kumar.

2. The facts of the case are that on 19.5.2009, the deceased Mithilesh Kumar along with his nephew Neeraj Kumar was said to be travelling from

Shakurbasti to Dayabasti Railway Station by a train on a valid train ticket,

when the train reached at Rampura Gate No.5-B, due to a sudden jerk from inside the compartment Mithilesh Kumar fell down from the running train and died as a result of the accident. The respondent contested the case of the appellants and pleaded that the deceased was not a bonafide passenger. It is also pleaded that the deceased was living near the phatak/gate and he would have been hit while crossing the phatak/gate at Rampura.

3. The case of the respondent has been believed by the Tribunal for dismissing the claim petition and reasoning of the Tribunal are given as under:-

“ These three issues are taken up for consideration simultaneously for the sake of convenience, and also as they are inter-related. According to the applicants, the ticket of Shri Mithilesh Kumar was lost in the aftermath of the accident. However, the applicants have produced as witness Shri Neeraj Kumar, AW-2, who they claim purchased the ticket for the deceased Shri Mithilesh Kumar. While in the statement given to the police, Shri Neeraj Kumar has stated that he had purchased the ticket for Shri Mithilesh Kumar, in his affidavit, he has nowhere mentioned the fact that he had purchased a journey ticket for the deceased. Being a nephew of the deceased, it is quite likely that he has given evidence in order to help the family get compensation in the case. However, in view of the contradictions in his affidavit and his statement given to the police, his testimony cannot be believed. There are, therefore, legitimate doubts regarding the bonafides of Shri Mithilesh Kumar as a passenger at the relevant time of the incident. Regarding the nature of incident, the respondent has pointed out that in the Death Report, Ex.AW1/10, it has been clearly mentioned that Shri Mithilesh Kumar's death was due to

run over by a train. Similarly the Postmortem Report, Ex.AW1/13, it has been clearly mentioned that he died due to being hit by a train while crossing the Phatak at Rampura. The applicants, on the other hand, have drawn attention of the Court to the report, ex.AW1/6, in which, it has been mentioned that he had a fall from a train. As stated by the respondent's counsel, it is relevant to mention that Shri Mithilesh Kumar was doing the work of 'kabadiwala' and lived by the side of the rail track near Rampura Phatak, as mentioned by the father of the deceased. It is, therefore, quite apparent that the endorsement made in the Postmortem Report alleging that he died while crossing the Phatak at Rampura, is in fact, what had happened in this particular case. Some police documents, however, mention fall from a train, but this version is based on what has been stated by the nephew of the deceased to the police. However, in view of the other evidence available on record, which specifically points to the contrary, it is apparent that he was the victim of a run over accident and not the victim of an untoward incident, as defined under the Act. These issues are decided accordingly in favour of the respondent and against the applicants."

4. The impugned judgment of the Tribunal is clearly illegal and bound to be set aside for the reason that the Tribunal has ignored the document Ex.A1/9 and which is the statement of the brother of the deceased namely one Shri Upender and which statement is made contemporaneous to the incident on 19.5.2009. Sh. Upender states that deceased Mithilesh Kumar along with his nephew Neeraj had gone to Trinagar for purchasing of clothes and while returning to home from Shakurbasti to Dayabasti, after purchasing a train ticket, the deceased Mithilesh Kumar fell down from the train near Rampura phatak.

5. Admittedly the deceased was a person who used to sell scrap/junk. The financial position and status of such persons is not that they or their family members would in the fact of the case make a false statement about the train travel of the deceased and falling of the deceased because persons are definitely not aware of the Railway Claims Tribunal and the statutory compensation of Rs. 4 lakhs for them to make a false statement of a fall from the train to the police immediately after the incident. The statement which is made by Mr. Upender in the natural course of events immediately after the incident to the police, and which shows the travel of the deceased by train, shows on preponderance of probability that the deceased Mithilesh Kumar fell down from the train while travelling from Shakurbasti to Dayabasti and which travel was undertaken along with his nephew when they had gone to Trinagar for purchasing of clothes. This Court can take note of common course of natural events by virtue of Section 114 of the Evidence Act, 1872.

6. Merely because there is some contradiction in the statement of the nephew Neeraj Kumar cannot mean that the claim petition should be thrown out only on the ground that Neeraj Kumar is an uneducated young man of about 21 years, and definitely not sharp to the judicial process to understand

nuances and distinctions with respect to making of statement of purchase of a ticket.

7. The liability of the Railways is a strict liability in terms of Section 123 (c) read with Section 124(A) of the Railways Act, 1989, and as so held by the judgments of the Supreme Court in the case of *Union of India Vs. Prabhakaran Vijaya Kumar and Ors. (2008) 9 SCC 527* and *Jameela & Ors. Vs. Union of India (2010) 12 SCC 443*. This strict liability is enough to fasten liability upon the respondent/Railways in this case because of the body being recovered on the tracks and the statement of the brother of the deceased namely Upender. I may also note that though there is no eye witness of the incident in support of the case of the appellant, similarly there is even no eye witness of the respondent who has deposed that the deceased was trying to cross the railway tracks. In fact, if the deceased was trying to cross the railway phatak, then surely the gateman of the phatak should have been called in the witness box by the Railways for stating/deposing that the deceased was crossing the railway tracks, but, no gateman of the phatak/gate has been brought into the witness box by the respondent in support of the alleged defence of the deceased being run over while trying to cross the tracks at Rampura phatak.

8. In view of the above appeal is allowed, appellants will be entitled to statutory compensation of Rs. 4 lacs in equal parts. Appellant will also be entitled to interest at 7 ½ % 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.

May 08, 2014
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VALMIKI J. MEHTA, J.