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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 282/2012

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13th March, 2014

MOOLA RAM

.....Appellant

Through: Mr. Raj Kumar Rajput, Mr. Ajit
Rajput, Advocates

VERSUS

UNION OF INDIA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

Yes

VALMIKI J. MEHTA, J (ORAL)

1. This matter was passed over on the first call when no one appeared for the respondent. Even on the second call no one appears for the respondent. I have hence heard counsel for the appellant and after perusing the record am proceeding to dispose of this appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the impugned judgment dated 7.3.2012 passed by the Railway Claims Tribunal, Principal Bench, Delhi by which the claim of the appellant/applicant has been dismissed.

2. The facts of the case are that Kulra Ram @ Sonu, who used to do the job of boot polishing, son of appellant/applicant, died in an untoward incident on account of a fall from a train on 17.8.2010. The deceased Sonu had purchased a valid train ticket No. 70892008 dated 17.8.2010 for travelling in Delhi from Adarsh Nagar (workplace) to Narela (home). When the station of Narela was about to be reached, on account of jostling of passengers in the train, the deceased fell down from the train and succumbed to his injuries.

3. Respondent Railways denied the claim and contended that actually the case is a case of run over by a train and not a fall from the train. Though, during the Jamatalashi/search of the body of the deceased the valid train ticket No. 70892008 dated 17.8.2010 (i.e the date of the accident) was recovered, the Railway Claims Tribunal has held that since deceased died on account of being run over, and not because of fall from the train, accordingly the deceased was not a *bona fide* passenger and hence the compensation petition was dismissed.

4. Railway Claims Tribunal has dismissed the claim petition essentially on two counts. First is by not believing of the witness Jeetu who deposed as AW-2, and who was traveling with the deceased Sonu, on account of

contradictions which according to the Tribunal existed in his evidence. Related with this aspect is a contradiction in the statement/deposition of the appellant/applicant as to how he first came to know of the incident. The second count is that since the body was found within the railway track, the same showed that it could not have been on account of fall from a train, and that finding of the body within the track is suggestive of the case that the deceased was run over by a train.

5. The prima facie appealing observations of the Railway Claims Tribunal of dismissing the claim petition are contained in paras 3.2 to 3.6 of the judgment and the same read as under :

“3.2The evidence of Jeetu, AW-2, and the alleged eyewitness to the incident is examined as under:-

- i) There is no averment in the claim application that Jeetu, AW-2, the alleged eyewitness to the incident was also travelling in the same train i.e. DPM on the day in question. Further, no amendment application has been moved by the application for including the name of the alleged eyewitness in the claim application.
- ii) The name of Jeetu does not appear in any of the police documents, AW1/3, AW1/4 and AW1/9.
- iii) The statement of AW-2 given before the police is un-dated, while all the other statements i.e. AW1/5, AW1/6 and AW1/8 are dated 17.8.10. This itself creates a reasonable suspicion that his statement has been taken later on for the purpose of this case.

iv) In Para 1 of his affidavit, AW-2 stated that he was an eyewitness to the incident and was well-conversant with the facts and circumstances of the case. He, however, contradicted himself, during his cross-examination that he had not seen the incident.\

v) During cross-examination, AW-2 deposed that he alone and nobody else had given the information about the incident to the applicant. The same is, however, contradicted by the applicant, AW-1 in his statement, AW1/6, given to the police at the spot that he was informed about the incident by the women staying in neighborhood, who collect garbage.

In view of the above, AW-2 appears to be a chance or interested witness, and adducing of his evidence appears to be an after thought and the same is thus devoid of credence.

3.3 The documents, placed on record and as indicated in Para 1.2 above are examined as under:-

3.3.1 Exht. AW1/2: - It reveals that ASM, Narela, Suresh Chand informed at 2.15 p.m. that one dead body is lying at K.M Pole 25/1 up Line between Narela and Holambi Kalan.

3.3.2 Exht. AW1/3: - It discloses that the I.O on reaching the spot of accident found a person lying dead of injuries sustained inside the up Line track at K.M Pole 25/1, due to hit by train.

3.3.3 Exht. AW1/4: - It discloses that the deceased had injuries on his head and his left leg below knee was crushed. During Jamatalashi of the deceased, one railway ticket bearing No. 70892008 dated 17.8.10 ex Adarsh Nagar Railway Station to Narela of fare Rs 3/- was recovered. From the circumstances and statements at the spot, the death is stated to be due to falling down from the train and hit by the train.

3.3.4 Exht. AW1/5 & AW1/6: - These are statements of Sunder Lal, Uncle and Mool Chand, father of the deceased given to the police. They identified the dead body to be of Kulra Ram @ Sonu. They are not eyewitnesses to the incident. Hence, their evidence regarding the version of events is based on hearsay.

3.3.5 Exht. AW1/7: - It is a statement of Jeetu given to the police, which is undated. As discussed in Para 3.2 above, Jeetu, the alleged eyewitness to the incident appears to be a chance or interested witness, and his evidence has been held to be an after-thought for the purpose of this case.

3.3.6 Exht. AW1/8: - It discloses that at 2.30 p.m. on-duty ASM called him in his office and informed that one person was run over at Km. 25/1 up line and he was sent to the site. On reaching at K.m 25/1, up Line, he found one person lying dead due to train accident inside the track.

3.3.7 Exht. AW1/9: - It reveals that the apparent cause of death of the deceased is due to the injuries sustained on being hit by train. The map of the site of accident shows that the dead body was found inside the up Lint track.

3.4 The respondent's evidence is examined as under:-

3.4.1 Suresh Kumar Bunkar, RW-1, ASM/Narela deposed that he was informed by the Driver of 4673 that one dead body was lying at K.M 25/1. During cross-examination, he deposed that he was informed by the Driver of 4673 at 14.40 hrs. Prior to this 3-DPM Train had passed. 3-DPM arrived Narela at 13.55 hrs and left at 13.56 hrs. He had not gone to the spot. On getting the information from the Driver, he had informed the GRP. On being questioned by the court, he deposed that the incident spot is about 1 K.M from Narela platform towards Delhi. He placed on record the TSR Record, Rw1/1, Copy of Control Book Register, RW1/2 and Copy of Untoward Incident, RW1/3, which support the evidence of Rw-1.

3.4.2 RW-2, the then Guard of 4-DPM deposed that there was no incident by his train on 17.8.10 between Delhi and Panipat Railway Stations. His train arrived Narela at 13.55 hrs and left at 13.56 hrs. During cross-examination, he deposed that he did not have any information nor anybody gave him such information about any incident. On being questioned by the Court, he deposed that there is a glass window in the rear of the Guard's Coach. If there is any incident, they come to know of it as the track would be seen up to a considerable distance. He

also placed on record a copy of Guard Memo Book. There is also no mention of any Untoward Incident in the same on the day in question. It is pertinent to mention here that the DPM Train passed between Holambi Kalan and Narela stations in the afternoon and the Guard could easily see the track from the glass window in the rear of the Guard's coach. Thus, there is reason to doubt on dispute the evidence of RW-2.

3.5 There are contradictory averments about the version of events in the police documents on record. In the Brief Facts, it is mentioned that the deceased stated to have died due to falling down from the train and hit by the train. However, in the document, AW1/3, it is mentioned that one person was found lying dead of injuries sustained due to hit by train. In the Death Report, AW1/9 also, the apparent cause of death of the deceased has been mentioned as due to hit by train, and there is no averment that he fell down from the moving train.

3.6 As per the sketch plan of the spot of accident, drawn by the I.O. concerned in the Death Report and also the averment in Para 1 of the Death Report, the dead body of the deceased was found inside the up line track. Further, as per evidence of RW-1, the incident spot was 1 k.m. from Narela platform.

This Tribunal has been deciding the cases of falling down from trains on almost daily basis. It is common observations if a person falls from a running train, he is thrown outside the track and there is no probability of his body being found inside the track. The same appears possible only when a person is either walking on the track or is crossing the railway line or is knocked down by a train in any other manner.”

6. Firstly, with regard to the aforesaid findings it bears mention that there is no dispute that a valid train ticket of the same date of travel from Adarsh Nagar to Narela station was found from the person/body of the deceased and this is clear from document Ex. AW-1/4 which has been

referred to by the Tribunal. In my opinion, once a valid train ticket is found from the person of the deceased it has to be held that the deceased was a *bona fide* passenger on the date in question i.e 17.8.2010 – the train ticket being a valid train ticket of the same date as the untoward incident of the death of Sonu. I, therefore, hold that the deceased Sonu was a *bona fide* passenger and set aside the findings of the Tribunal that the deceased was not a *bona fide* passenger.

7(i) Let me now turn to the issue as to whether there are any contradictions in the evidence of the witness Jeetu AW-2 and which alleged contradictions have been very heavily relied upon by the Tribunal to reject the deposition of AW-2.

(ii) In my opinion, the alleged contradictions which are found by the Railway Claims Tribunal to exist for discarding the testimony of the witness Jeetu are clearly misconceived because no doubt in his deposition (filed by way of an affidavit) the witness Jeetu states that he was an eye witness, however, in the same statement it is also clearly stated that he was travelling in the same train with the deceased Sonu and that he after getting down at the station at Narela came to know that someone had fallen from the train and when he went on the spot he found that the person who had fallen from

the train was his friend Sonu and who had travelled with him in the same train from Adarsh Nagar to Narela. Merely, because the witness Jeetu in the first line of his deposition states that he was an eye witness, really what he was stating was that he was travelling on the same date of the incident along with the deceased Sonu and he found as an eye witness that body of the deceased Sonu was near the Narela station after he got down from the same train in which the deceased so was travelling. Therefore, Railway Claims Tribunal has taken an unnecessary hyper-technical interpretation of the expression “eye witness” as stated in the examination-in-chief/affidavit by way of evidence and really not too much turns upon by the use of expression “eye witness” because this has been further dilated upon in the deposition of the witness Jeetu by stating that he was in fact traveling on the same train in which the deceased Sonu died and when he went back to the spot he found the body of the deceased Sonu.

(iii) I also reject the conclusion of the Tribunal by rejecting the testimony of Jeetu on the ground that the name of the deceased Sonu is not mentioned in the documents Exs. AW-1/3, AW-1/4 and AW-1/9, and which according to the Tribunal showed that Jeetu was not a genuine eye witness, however, I note that the Tribunal has most surprisingly ignored the document Ex.AW-

1/7 and which is the statement under Section 174 Cr.P.C. of Jeetu of the same date of the incident, and which obviously is contemporaneous with the incident, and therefore, Tribunal has committed a gross injustice to the appellant/applicant by ignoring this document Ex. AW-1/7.

(iv) I therefore hold that it cannot be said that the witness Jeetu AW-2 is not a genuine witness of the incident in question.

8. So far as the contradiction in the statement of the father that he was first informed by rag picker ladies about the incident as stated in Ex. AW-1/6, but his contrarily stating in his deposition that it was the witness Jeetu who first told of the incident, will only show some contradictions, but in my opinion the same are not enough to otherwise disbelieve the case of the appellant/applicant in its entirety. Assuming some inconsistencies exist in the statement of the father AW-1, yet, one cannot forget that the appellant/applicant and the deceased Sonu were of very deprived sections of the society being engaged in the job of boot polishing, and that such persons who would not have been exposed to legal process. Thus some contradictions, not major, is not sufficient to deny statutory compensation although a valid train ticket of travel of the same date of the incident was found during Jamatalashi/search of the person of the deceased Sonu. In such

a case of death of a *bona fide* passenger would be to do grave injustice, and which I refused to do, and more so when as per Sections 123 (c) and 124-A of the Railways Act, 1989 the liability of Railways is a strict liability.

9(i) The second main reason given by the Tribunal to hold that the case is a case of run over and not of a fall from a train is on account of finding of the body of the deceased Sonu within the tracks. The Tribunal concluded that finding of the body within the tracks is an indication of a person being run over and not because of a fall from a train and which would have been running on a different track. *Prima facie*, again this conclusion of the Tribunal was appealing, but when the same is examined in a dispassionate manner, it will be found that Tribunal has again unnecessarily acted by adopting a hypertechnical approach. The conclusion of the Tribunal that the case is a case of run over is incorrect because if the deceased Sonu was run over on account of being within a track, then the body would have in fact been found in various pieces or in a badly crushed position. This is admittedly not so. The body of the deceased has been found intact and the death of the deceased is on account of injuries to the head, legs and crushing of his left leg below the knee. These injuries are consistent with fall from a train. Possibility of the deceased after his fall being hit by another train,

which could have been at that time passing on the adjacent track, also cannot be ruled out. Further, in the alternative, it is very much possible and this actually would have happened, that the injuries would not be on account of being hit by a train in an adjacent track, but by the deceased being hit against by different equipments of the railways which are found adjacent to the track such as the electronic signals, electronic boxes, poles etc etc. After being hit by the equipment it is perfectly possible that at the time of falling the deceased would have fallen finally in the adjacent track. It cannot be ruled out that after falling from the train in which he was travelling, and thereafter being hit by railway equipments that much life/energy existed within deceased's body that he could have taken a few steps for falling within the adjoining track, and consequently the body, therefore, being discovered within the track and which explains the fact that the body of the deceased has been found within the track. There cannot be only one conclusion when a body is found within a track that it is a case of run over. My conviction and belief is confirmed by the fact that if the deceased was run over by another train surely the driver/guard of the other train which would have run over the deceased Sonu would have made a report of the accident and admittedly there is no such report of any guard or driver of any other train that a person had come under that train, and which would be the deceased

Sonu in this case. Therefore, there being not any report of any other train driver or a guard of a person being run over by a train, shows that it cannot be held that merely because the deceased's body was found within the tracks it would be a case only of run over and not because of a fall from a train.

(ii) At this stage, one is reminded of the observations of the Supreme Court in its two land mark judgments which deal with cases of untoward incidents as found in Section 123(c) read Section 124-A of the Railways Act, 1989. These are the judgments of Supreme Court in the cases 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*. Both these judgments refer to the very testing conditions of travel by Indian Railways. Passengers who travel in trains undoubtedly travel in extremely overcrowded conditions. These judgments reiterate the law that liability of the Railways is a strict liability and compensation cannot be denied even if the *bona fide* passenger is negligent. Compensation can only be denied if the *bona fide* passenger is found to be criminally negligent and that the death is because of self-inflicted injuries and suicide.

(iii) In my opinion, on the preponderance of probabilities in the facts of the present case, and simultaneously applying the law of strict liability

taken with the fact that the deceased undoubtedly had a *bona fide* ticket of travel and hence was not a trespasser, it is held that the death of Sonu is on account of an 'untoward incident' within the meaning of the expression under Section 123(c) and Section 124-A of the Railways Act, 1989.

10. In view of the above, the appeal is allowed and impugned judgment dated 7.3.2012 of the Tribunal is set aside. Appellant will be entitled to the statutory compensation of Rs. 4 lakhs along with interest @ 7.5% per annum from the date of the filing of the petition till the date of the payment. Payment should be credited to the bank account of the appellant and the Bank Manager will ensure that the moneys are not taken out in huge lump sum and whatever moneys are taken are directly paid in the hands of the appellant/applicant only after proper identification. Parties are left to bear their own costs.

MARCH 13, 2014
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VALMIKI J. MEHTA, J