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

+ **FAO 219/2014**

Decided on 3rd December, 2014

SMT. LALITA DEVI & ORS

..... Appellants

Through

:Mr. S.N. Parashar and Ms. Monika Phartyal, Advs.

Versus

UNION OF INDIA

..... Respondent

Through

: Mr. Paritosh Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(ORAL)

1. Appellants are parents, widow and children of Late Shri Ram Auttar @ Rangdar Paswan. They filed an application under Section 16 of the Railway Claims Tribunal Act, 1987 before the Railway Claims Tribunal, Principal Bench, Delhi, seeking compensation of Rs.8,00,000/- in respect of death of Late Shri Ram Auttar due to the injuries sustained in an “untoward incident” on 20th January, 2011 relating to the EMU train at New Delhi railway station. After trial, Tribunal has dismissed the claim application by the order dated 4th February, 2014, which has been impugned in this appeal.

2. Appellants alleged in the application that on 20th January, 2011 deceased was returning to his native village in Bihar from Delhi. He was to

board a train from New Delhi railway station. Since he was having sufficient time, he went to Sadar Bazar to meet his friends. After meeting them, he boarded EMU train at Sadar Bazar railway Station for going to New Delhi railway station. At about 2:15 pm train reached near New Delhi railway station therefore, deceased came at the gate of compartment when train jerked violently while changing the tracks. As a result of this jerk deceased fell down from the moving train and his both legs came under the wheels. Journey ticket and money were lost in the incident. Deceased was removed to J.P.N. Hospital after the incident, where he died on 8th February, 2011. DD No. 22-A dated 8th February, 2011 was recorded in this regard. Since deceased died due to “untoward incident” appellants were entitled to compensation.

3. Respondent denied the happening of incident. Respondent denied that deceased was travelling in the EMU train from Sadar Bazar railway station to New Delhi railway station with his luggage. Respondent denied that deceased fell down from the compartment on account of violent jerk of the train at New Delhi railway station and sustained injuries. Respondent alleged that deceased was not a bonafide passenger of an EMU train as no journey ticket was recovered from him. As per the respondent, incident did

not fall within the ambit and scope of Section 123 (c)(2) of the Railways Act, 1989 (“the Act”, for short), amounting to an “untoward incident”, thus, appellants were not entitled to compensation under Section 124 –A of the Act. Respondent claimed that deceased died due to his own criminal negligence, which amounted to self-inflicted injury.

4. Following issues were framed by the Tribunal:-

“i) Whether the deceased Shri Ram Auttar @ Rangdar Paswan S/o Shri Ashok Paswan was a bona fide passenger of an EMU train (train name and number not mentioned) from Sadar Bazar railway station to New Delhi railway station as on 20.1.2011?

ii) Whether the death of Shri Ram Auttar @ Rangdar Paswan was caused due to an untoward incident as defined in Section 123(c) read with Section 124 – A of the Railways Act, 1989?

iii) Whether the applicants are the sole dependents of the deceased Shri Ram Auttar @ Rangdar Paswan and are entitled to get compensation as claimed?

iv) Relief?”

5. Father of the deceased Shri Ashok Kumar Paswan stepped in the witness box as AW1 and corroborated the averments made in the claim application. Brother of deceased Shri Jitender Paswar entered the witness box as AW2. He proved his statement recorded by the police as Ex. AW1/8. He also proved the statement of deceased allegedly recorded by the police as Ex. AW1/7. As against this, respondent produced DRM's report. Tribunal scrutinized the evidence, which had come on record and held as under:

“8. The incident is said to have occurred at about 2:15 PM near New Delhi railway station. Admittedly, no report was given to the railway authorities or to the railway police of New Delhi railway station about any such incident. AW-2, the brother of the deceased is said to have arrived at New Delhi railway station on January 22, 2011 after receiving the information from the police. Even after his arrival, he has not given any report to the railway police authorities at New Delhi railway station. As per the DRM report, exhibit R-1, no information was received by the railway authorities regarding any such incident, and therefore, no entry was also made in the untoward incident register. Exhibit AW1/5 is the communication sent by DCP, Crimes on January

20, 2011 to the SSP, Vaishali stating that one person, namely Rangdar Paswan was injured by a train accident at New Delhi railway station and was admitted in JPN hospital and his family members may be informed. Exhibit AW1/10 is the MLC of LNJP Hospital, New Delhi, which shows that the deceased was admitted in the hospital at 2:46 PM and was brought by one Head Constable Shri Jitendra Singh of PCR. The history of the incident was noted in exhibit AW1/10 as railway accident at platform number 5 and 6 yard, New Delhi at 2:11 PM, as told by the Head Constable, who accompanied the deceased. It is not known who informed the PCR and when the PCR police arrived on the spot. Since no information was received by the station authorities, there is no occasion for any memo being issued by the Station Supt. to the GRP or RPF. If really, the incident has occurred in the station yard, it is highly improbable that the same was not brought to the notice of the station authorities or the GRP personnel, who would be available in abundance in an important and major station like New Delhi railway station. The shifting of the deceased from the alleged place of incident to the hospital is thus shrouded in mystery, Shri Jitendra Singh, H.C. of

the PCR not having been examined. No doubt, in exhibit AW1/10, the hospital authorities have noted that the incident took place in the railway yard of New Delhi railway station, as stated by the H.C., who accompanied the deceased. What all exhibit AW1/10 states as the alleged history is that it was a railway accident, and nowhere, it is stated that it was a case of an accidental fall from the train. In the death report, exhibit AW1/11 prepared on February 8, 2011 on which date, the deceased died, the cause of death is noted as train accident only. In exhibit AW1/12, in the request for post-mortem, which was issued on February, 9, 2011, recording of the history of the case it was stated that while the EMU train was changing the track, there was a sudden jerk and the deceased fell down and came underneath the wheels. Exhibit AW1/12 was signed and issued by one Shri Jagmal Singh, the IO and it is not known how and through whom he came to know about the history of the case.

9. That learned counsel for the applicant would rely upon the statement, exhibit AW1/7 stated to have been recorded from the deceased. The said statement does not bear the date on which it was

recorded. According to AW-2, the brother of the deceased, he reached Delhi on January 22, 2011 and that his statement was recorded on February 9, 2011 by the police under exhibit AW1/8. He further stated that the statement of the deceased was also recorded in his presence under exhibit AW1/7 on January 22, 2011. Exhibit AW1/7 does not disclose that AW-2 was present when the said statement was recorded from the deceased. The signature of the Medical Officer is also not obtained on Ex. AW1/8. The investigation reports or the final report of investigation are not filed to establish that on conclusion of investigation, it was found to be a case of accidental fall from the train. When AW-2 arrived at New Delhi station on January 22, 2011, no steps were taken to give any report to the railway authorities or the railway police though the deceased was alive till February 8, 2011. Between the date of the alleged incident on January 20, 2011 and the date of death of the deceased on February 8, 2011, except the message, exhibit AW1/5, issued by the DCP, Crimes to the SSP, Vaishali, there is no other document in the form of any DD entry or report of investigation by the police or in the form of any memo issued or entry made in any of the station registers by the

railway station authorities. Even in exhibit AW1/5 message, what all stated is that the deceased got injured by a train accident. The genuineness of the statement, exhibit AW1/7 alleged to have been recorded from the deceased is rendered suspicious since it does not bear any date and the person who recorded this statement is not examined and no report of investigation is filed to show that such a statement was, in fact, recorded from the deceased. Even otherwise, assuming for a moment that the said statement, exhibit AW1/7 is genuine, even according to the deceased, when the train was about to reach the platform, he came to the gate with an intention to get down, and at that time, there was a jerk and he fell down and came underneath the wheels of the train. When local EMU passenger train was reaching the platform, it can be reasonably presumed that it must have been going at a slow pace. It is highly improbable and hard to believe that a person hitting and falling from the train would be coming underneath the wheels of the train, which was going at a low speed. Any person falling from the train going at a low speed would certainly fall away from the track and would not come underneath the wheels of the train. The claim of the deceased and exhibit

AW1/7 statement that he came underneath the wheels due to fall from the same train is hard to believe apart from the fact that the genuineness of the said statement itself is rendered suspect.

9. The specific case of the applicants and also the deceased and exhibit AW1/7 was that he was travelling by EMU train from Sadar Bazar to New Delhi railway station, but in the cross-examination, AW-1, the father of the deceased has stated that his son was coming from Faridabad to New Delhi. The said testimony of AW-1 does not fit in with the case of the applicants that the deceased was coming from Sadar Bazar to New Delhi. Be that as it may, the DRM report exhibit R-1 and the CMI report, exhibit R-2 would show that on January 21, 2011, the EMU train 64013 from Sadar Bazar to New Delhi arrived at 14:25 hours on platform number 1 at New Delhi railway station and left at 14:27 hours. It is further stated in exhibit R-1 and R-2 that on that day, between 13:00 hours and 14:30 hours, no EMU train arrived on platform number 5 and 6 as per the official records. In exhibit AW1/10, the MLC, it is noted that the accident occurred in the yard of platform no. 5 and 6. The case of the applicants is

that while the EMU train was arriving on platform no.5 and 6, the deceased came near the entrance with a view to get down, and at that time, he fell down due to a jerk on account of change of track. The question of the train changing the track just before arriving on the platform does not simply arise and such a change of track can occur much earlier before the train enters the station precincts. Secondly, the claim of the applicants that the train was arriving on platform no. 5 and 6 is falsified by the reports exhibit R-1 and R-2, wherein, it is stated that no EMU train arrived on platform no. 5 and 6 at the relevant time. It is obvious that the incident did not occur at the time or the place or in the manner alleged by the applicants.

10. Of course, the deceased suffered injuries and he was taken to the hospital by the PCR police. Even as per the hospital record, the alleged history was only a railway accident. The case of the respondents is that the deceased might have suffered the injuries due to some railway accident while unauthorisedly crossing the track, in the railway yard, and the same was not due to any accidental fall from a train. Every railway accident does not tantamount to accidental fall from a train.

Before seeking compensation under Section 124-A of the Railways Act, the applicants have to necessarily establish that the injuries or the death was due to an untoward incident, as defined in Section 123(c) of the Act, which expression includes an accidental fall from the train carrying passengers. In the absence of such categorical evidence and the applicants having failed to discharge the burden heavily lying on them in that regard, the applicants cannot seek compensation for the death of the deceased even if he suffered injuries in a railway accident.

11. Admittedly, the journey ticket is not produced and according to the applicants, it was lost. It was not a case of instantaneous death immediately after the incident, where it can be reasonably presumed that the journey ticket might have been lost as the body would be lying unattended for hours. The deceased is said to have been shifted to the hospital in an injured condition almost immediately after the incident and he was alive for more than 18 days thereafter. There is nothing on record to show that any report was given by the deceased or his brother AW-2 regarding the alleged loss of the ticket or other

belongings of the deceased to the railway police. In these circumstances and in the absence of the journey ticket for travel from Sadar Bazar to New Delhi or further travel from New Delhi to Vaishali. It is held that the deceased is not shown to be a bona fide passenger on –board any train on January 20, 2011 and the death of the deceased is not established to be due to accidental fall from any train amounting to an untoward incident. The issues are answered accordingly.”

6. I have heard learned counsel for the parties and perused the Tribunal’s record carefully. Admittedly, there is no eye witness to the incident. A perusal of MLC shows that deceased was got admitted in J.P.N. Hospital on 20th January, 2011 at 2:46 pm by Head Constable Jitendra Singh. Alleged history of incident has been mentioned as “railway accident at platform number 5 and 6 yard, New Delhi at 2:17 PM. However, the fact remains that no information was sent to the local police station as no DD entry was recorded on 20th January, 2011 by the police station either on the basis of information of Head Constable Jitendra Singh or on the basis of information of Duty Constable posted in the hospital. Head Constable Jitendra Singh was not produced in the witness box. Even in the MLC it has not been mentioned that deceased fell down from the running train. Train accident

also includes cases of run over by the train while crossing the tracks. It is not uncommon that people do cross the tracks including at the railway stations. Thus, MLC alone is not sufficient to conclude that deceased fell down from the running EMU train.

7. As per AW2, he reached Delhi on 22nd January, 2011. However, he did not lodge any police report with regard to the incident, inasmuch as his statement was not recorded by any police official till 9th February, 2011. His statement was recorded only after the death of deceased. Statement of the deceased, allegedly recorded by the police officer does not contain any date, inasmuch as name and designation of such official is not legible. Though, AW2 has claimed that statement of deceased was recorded on 22nd January, 2011 but the fact remains that no such inference can be derived from the alleged statement. It is also highly doubtful that statement of the deceased would have been recorded by the police official on 22nd January, 2011 since, admittedly, statement of AW2 was recorded by the police for the first time on 9th February, 2011. Even first DD entry has been recorded in the police station on 8th February, 2011, that is, only after the death of deceased. Thus, it is doubtful that Investigating Officer would have reached the hospital on 22nd January, 2011 in absence of any information/DD entry.

8. Even otherwise, the version of deceased as given in his statement that he fell down from the EMU train due to sudden jerk, is suspicious for the simple reason that said train passed through platform no. 1 between 14:25 hours to 14:27 hours. As per the record of respondent produced before the Tribunal, EMU 64013 train from Sadar Bazar railway station reached New Delhi railway station at 14:25 hours and departed at 14:27 hours from platform no. 1. A specific report has been given that no EMU train from Sadar Bazar railway station passed through platform nos. 5 and 6 between 13:00 hours to 14:30 hours. As per the MLC, deceased sustained injuries in railway accident at platform nos. 5 and 6 yard of New Delhi railway station at 2:17 PM. Platform nos. 5 and 6 are away from platform no. 1. Thus, probability of deceased falling from a local EMU train near the yard of platform nos. 5 and 6 is not there, more so, when the said train passed through the platform no. 1 much after the time of incident as mentioned in the MLC.

9. In view of the above referred discrepancies, non-recovery of journey ticket assumes importance. As per the appellants, deceased was to board a train for Bihar from New Delhi railway station and he was carrying luggage with him. However, in the alleged statement of deceased there is no

reference of any luggage. In the said statement, deceased has not stated that he was carrying any luggage with him and the same was lost in the incident. What has been stated therein is that ticket and money had fallen from the pocket. It has also not been mentioned as to which train deceased was to board from New Delhi railway station for going to his native village in Bihar. Accordingly, non-recovery of ticket makes the story as propounded by the appellants highly suspicious more so, when local EMU train did not pass through platform nos. 5 and 6 yard, where deceased was found lying in injured condition. In the facts of this case, it appears that deceased was run over by some train near platform nos. 5 and 6 yard while crossing the tracks. Such incident of running over would not fall within the ambit and scope of “untoward incident” as defined under Section 123(c)(2) of the Act so as to grant compensation under Section 124 – A of the Act.

10. For the foregoing reasons, I do not find any illegality or perversity in the impugned order. Consequently, appeal is dismissed.

A.K. PATHAK, J.

DECEMBER 03, 2014

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