

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO No.278/2012**
% **7th February, 2014**

SMT. SAVITA Appellant
Through: None.
Versus
UNION OF INDIA Respondent
Through: None.

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 Railway Claims Tribunal dated 10.2.2012 which has dismissed the claim petition filed by the applicant/appellant who is the mother of the deceased Brijesh.
2. The facts as pleaded before the Tribunal were that the deceased Sh. Brijesh on 19.4.2010 early in the morning was returning from Palwal to Faridabad by EMU train when the said Sh. Brijesh fell down from the train, resulting in his death, and therefore the claim petition was filed.

3. A reference to the impugned judgment shows that the Tribunal has gone into great details with respect to variations in train timings ignoring the statement recorded of eye witness Mr. Salim Khan as Ex.AW1/6. As per the DD entry Ex.AW1/4 the death is recorded at 6.15 hours and the Tribunal holds that this timing is suspicious because the trains up and down from this area were earlier at 5.55 hours and 5.20 hours. This is so stated in para 4.1 of the impugned judgment and which reads as under:-

“4.1 Daroga Rai, RW-1, Deputy Station Supdt., Tughlakabad:- He deposed during oral evidence that on 19.4.10, at 6.15 hours in the morning, RPF Constable Rajinder Kumar informed that one dead body was lying at K.M 1518/27. He gave this information to GRP and Section Controller, New Delhi. The first DN train prior to receipt of this information was Train No.2779, which passed through Tughlakabad railway station at 5.55 hours. In the Up direction, 8238 had passed through at 5.20 hours. There was no information from Drivers and Guards of these trains about anybody falling from this train. During cross-examination, he deposed that I.O of this case never met him. He did not give his statement to the police, as nobody had come to take his statement.

RW-1 filed a copy of TSR Record, RW1/1, copy of Untoward Incident, RW1/2 and Station Diary Book, AW1/3, which support the evidence of RW-1.”

4. The Tribunal also holds in para 4.4 that if the deceased was travelling between Palwal and Faridabad, his body could not have been found at Tughlakabad railway station and which is not in between Palwal and Faridabad railway stations. This is so stated in para 4.4 of the impugned judgment and which reads as under:-

“4.4 The applicant has pleaded in the claim application that his son was returning from Palwal to Faridabad by EMU Train. However, as per Exht. RW1/2, RW1/3 and AW1/4, a dead body was found lying at K.M 1518/27 between Junction Cabin-Tughlakabad. Thus, the incident happened between Junction Cabin and Tughlakabad railway station and not between Palwal and Faridabad Railway Stations, as alleged in the claim application.”

5. I have held in a number of cases that it is not possible for the dependents of the deceased to recreate the entire chain of events perfectly and methodologically, including the train numbers on which the deceased had travelled, inasmuch as, the deceased obviously is no longer alive and there is/was no person who was travelling with the deceased. The claim petition is therefore filed on the basis of best available information which is received and therefore the Tribunal cannot weigh facts in a golden scale with strictness as to timings of train once especially there is an eye witness, more so an independent eye witness to the incident. That there was an independent eye witness Mr. Salim Khan to the incident, and who gave a statement which is recorded in DD No.5A (Ex.AW1/5) on the same date of the incident and around the same time, is clear from paras 3.4.2 to 3.4.3 of the impugned judgment which read as under:-

“3.4.2 DD No.5-A dated 19.4.10 (Brief Facts, AW1/5):- It discloses that the deceased could not be identified at spot. His photographs were taken. No item was recovered from the person of the deceased during Jamatalashi. One person, whose name was Salim Khan, told at the spot that the deceased, who was travelling by

EMU Local, fell down from the train, which was going from Faridabad to Tughlakabad. Subsequently, the deceased was identified as Brijesh @ Bunty by his brother Mukesh and maternal uncle Subhash in the Police Station.

3.4.3 Statement of Salim Khan, the alleged eyewitness to the incident (AW1/6):- He stated that on 19.4.10 in the morning, he was going to Pul Prahladpur for his work. At that time, one EMU Train, which was crowded, was coming from Faridabad side and one boy suddenly fell down from the train, sustained grievous injuries and died on the spot.”

6. Clearly therefore there was an independent witness who gave a statement that the deceased fell down from the train. If this statement had to be disbelieved, it was upon the respondent to have summoned this witness and the Tribunal wrongly holds that it was the applicant/appellant who had to summon this witness. Address of the witness was also mentioned in the DD entry and therefore the DD entry being a public document can always be read in evidence especially because none of the dependents of the deceased was travelling with the deceased and the statement of Sh. Salim Khan who was a third person independent eye witness of the incident, and the same should not have been disbelieved. It is settled law that Tribunal is not bound by the strict rules of the CPC with respect to proof of documents and also of the strict procedure under the Evidence Act, 1872 because Tribunal can regulate its own procedures. This is specifically mentioned in Section 18 of the Railway Claims Tribunal Act, 1987.

7. Accordingly, the claimant had proved her case of the untoward incident on account of falling from the train of her deceased son Sh. Brijesh. In the facts of the present case, therefore besides the fact that the deceased died in an untoward incident as per the meaning of the expression in Section 123(c) read with Section 124-A of the Railways Act, 1989, there is sufficient reason also that the train ticket could not have been recovered because it is not unknown that in such circumstances train ticket can be lost. The deceased Sh. Brijesh was thus a bonafide passenger and it is so held.

8. In view of the above, the impugned judgment of the Tribunal is set aside by allowing the appeal. Appellant will be entitled to the statutory compensation of Rs.4 lacs alongwith interest at 6% per annum simple from the date of filing of the petition and till the time the compensation is paid or the amount is deposited before the Railway Claims Tribunal. The payment should be made to the appellant by means of account payee cheque or pay order and the bank which makes the payment to the appellant will ensure the identity of the appellant/applicant before disbursing the amount under the claim. Also, not more than 25% of the awarded amount should be withdrawn in six months in a year and if there is otherwise an urgent requirement to exceed this withdrawal, the appellant can move an appropriate application before the Railway Claims Tribunal which will

examine the urgency of withdrawal of compensation of more than 25% amount in six months period of the year.

9. Appeal is allowed and disposed of in terms of aforesaid observations, leaving the parties to bear their own costs.

FEBRUARY 07, 2014
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VALMIKI J. MEHTA, J.