

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

+ **FAO No. 332/2013**

% **16<sup>th</sup> January, 2014**  
**RAJ KUMARI DEVI & ORS.** ..... Appellants  
Through: Mr. Rajnish K. Jha, Advocate.

**VERSUS**

**UNION OF INDIA** ..... Respondent  
Through: Mr. Baldev Malik and Mr. Arjun  
Malik, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not? **Yes**

**VALMIKI J. MEHTA, J (ORAL)**

1. This first appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Railway Claims Tribunal dated 5.11.2012 by which the claim petition has been dismissed.

2. Before I refer to the observations of the Railway Claims Tribunal I am pained to note as to how Railway Claims Tribunal in certain cases takes an unnecessary and irrelevant hyper technical approach so as to find out some or the other fault in a claim petition for dismissing of the same. This I am constrained to observe inasmuch as the whole purpose of the Railway

Claims Tribunal is defeated by the judgments such as the impugned judgment, when, the object of law is to award compensation to a bonafide passenger on account of an untoward incident happening as per Sections 123(c) and 124-A of the Railways Act, 1989 and the liability of the Railways is a strict liability as consistently held by the Supreme Court.

3. In the present case, admittedly, from the deceased Sh. Davender Sahni a second class ticket of travel from Muzaffarpur to Delhi was recovered, and that too in a state when the deceased was in the position that his legs were crushed by a train at Gaziabad. Surely, a person in such a state could not have been thereafter gone and purchased a ticket, that too from a different station at Muzaffarpur for travel to Delhi. It is also an undisputed fact that the deceased was travelling alone when his legs were crushed at the Ghaziabad Station in U.P. Not only the fact that the deceased was a bona fide passenger, but the fact of the matter is that the Railways have not produced evidence of even a single witness, much less an eye-witness, and for it to be held that the deceased was trying to get up or get down from a moving train. Assumption with respect to fall from a moving train is arrived at by the Railway Claims Tribunal only on account of the dependants of the

deceased giving a wrong train number. In my opinion, it is too much to expect the dependants of the deceased to exactly re-create not only the sequence of events but also the number of the train in which the deceased was travelling once a fact beyond doubt stands admitted/established that a genuine railway ticket was found with the deceased and that ticket was a general second class train ticket for travel from Muzaffarpur to Delhi and not of a particular train only.

4. In view of the aforesaid observations let us now refer to the relevant observations of the Railway Claims Tribunal for dismissing the petition and which reads as under:-

“As per the affidavit filed by the applicant (AW-1), the deceased was allegedly travelling by UP Saptkranti Express train, which he boarded on 30.10.2011 from Muzaffarpur. Respondent stated that this train starts from Muzaffarpur at 9.10 a.m while the journey ticket placed on record shows time of purchase as 13.21 hrs. on 30.10.2011, which is a clear contradiction of facts. Another contradiction pointed out was that this train passed run through Ghaziabad at 3.40 a.m on 31.10.2011 (as it does not stop at Ghaziabad) while the incident has been first reported to Station Master, Ghaziabad at 13.55 hrs. on 31.10.2011, which is not possible as injured person will not keep lying at the spot for more than 10 hours from 3.40 a.m to 1.55 p.m without having been noticed by anybody at a busy station like Ghaziabad. **Applicant side could not controvert this in any manner except to say during arguments that there may be some other train by which the deceased would have been travelling.** This guess of the applicant side was further got analyzed by the Tribunal in which it came out that the only stopping train which received on Platform No.3 (where body was first found) near about 1.55 p.m on 31.10.2011 from Darbhanga side

was 15279 Up Poorabia Express, which arrived Ghaziabad at 13.10 and left at 13.12 hrs, but this train was found to be running via Hazipur route and does not even touch Muzaffarpur, from where the deceased allegedly boarded. The fallacy of the case as put forth by the applicant is thus clearly established, respondent asserted.

ii) As per statement of Shri Mahesh Sahni, nephew of the deceased (annexed to DRM Report, page 11), it has been stated that in Jamatalshi, done by GRP/Ghaziabad, one Nokia mobile, Rs.346/- cash and one cloth bag containing food items were recovered and handed over to him, which in turn, he handed over to the wife of the deceased. Respondent pointed out that as per the evidence of Shri Krishna Chandra , RPF Constable (RW-2), another set of articles has been shown to have been recovered i.e. Rs.300/- cash, one Cheque of Rs.5057/- and one ticket No. 19049903. This is also a contradiction as in the Jamatalashi by GRP, there is no recovery of the journey ticket and other articles are also different. Respondent concluded that based on the above contradictions, it is established that the facts of the case has been distorted by the applicant side so as to bring this incident under the definition of an Untoward Incident, as defined under Section 123(c) (2) of the Railway Act, 1989. Applicant side also cited judgment of the Hon'ble Supreme Court (2010) 12 SCC 443 and two judgments of the Hon'ble High Court of Andhra Pradesh i.e 2005 ACJ 535, and AIR 2005 Andhra Pradesh 106. These judgments have been gone through in detail. The Tribunal, however, finds that the facts of these cases as cited above are different from the present one and therefore, unable to support the case. I have gone through the entire material placed on record, evidence, both documentary and oral as well as heard arguments on both sides and find that the respondent, through the official record, brought out credible evidence and logical arguments to controvert the facts as given by the applicant side. Not only the applicant failed to prove their case in any satisfactory manner, a doubt has arisen that facts have been distorted as brought out above by the respondent. The Tribunal is therefore, constrained to decide issue nos. 2 & 4 against the applicant and issue no.3 in favour of respondent.

### **ORDER**

The claim application is dismissed. There is however, no order as to costs.”

5. A reading of the aforesaid findings and conclusions of the Railway Claims Tribunal shows that the entire emphasis which is placed by the Railway Claims Tribunal is on the fact that the appellants/applicants gave travel of the deceased by U.P. Saptkranti Express Train which had a different train timing then the timing of the accident in which the deceased late Sh Davender Sahni expired in an untoward incident. At best, in my opinion, mentioning by the applicants of a wrong train number will mean that they did not have proper knowledge and same cannot mean that the deceased did not die on account of an untoward incident. I say so because the entire case which is made out on behalf of the Railways of the deceased trying to get down from a running train is not supported by even a whisper of evidence, much less of an eye witness. In my opinion, if the impugned judgment of the Railway Claims Tribunal is sustained it will be destructive of the legislative intention and the ratios laid down by the Supreme Court in the judgments in the cases of *Union of India Vs. Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527* and *Jameela and Ors. Vs. Union of India (2010) 12 SCC 443* which state that the liability of the Railways is a strict liability and even if there is negligence of the bonafide passenger, yet, compensation claim has to be awarded unless it is found that the deceased died not only on account of negligence but also his own criminal negligence

or such self-inflicted injuries, such as an attempted suicide etc; which would have caused his death. In the present case, the record existing before the Railway Claims Tribunal, and more particularly the fact that the entire case set up by the Railway Claims Tribunal is not based on any evidence but on assumptions and presumptions, it was unacceptable for the Railway Claims Tribunal simply to bring about certain inconsistencies in the name of the train and the ticket purchased and some discrepancies as to amount of money with the deceased, so as to dismiss the claim petition. The most important aspect to be noted, and which the Railway Claims Tribunal seems to have missed out on account of trying to create technicalities, is that, the ticket was purchased on 30.10.2011 at around 13.21 hrs. in the afternoon and the accident had taken place around the same time on the next date i.e on 31.10.2011 viz after a gap of about 24 hours. Therefore, Railway Claims Tribunal has in my opinion laid unnecessary emphasis with respect to issuing of the ticket, timings and the name of train as put forth by the appellants/applicants. I must also at this stage state that the original train ticket was found from the deceased on the very first contact with the deceased after the accident when he was lying with crushed legs on the station platform and the fact that the original ticket of travel of the deceased

from Muzaffarpur to Delhi is also admitted to have been purchased by the deceased at Muzaffarpur as mentioned in the DRM report of the respondent.

6. In view of the above, the appeal is accepted. The impugned judgment of the Railway Claims Tribunal dated 5.11.2012 is set aside. The appellants no.1 to 5 will be entitled to a total compensation of 4 lacs and which will be distributed by  $1/6^{\text{th}}$  between each of the appellants. Appellants will also be entitled to interest at  $7\frac{1}{2}\%$  per annum simple from the date of filing of the claim petition on 16.2.2012 till the amount is paid/deposited in terms of the present judgment. Cheques/Pay orders will be drawn only in the name of each of the appellants and deposited in their bank accounts and with direction to the bank manager to ensure that the awarded amounts are received/encashed and paid only in the direct hands of the appellants/applicants. So far as those applicants who are minors are concerned, the compensation amount which will fall to their share will be deposited by the respondent/Railways in a fixed deposit and the FDR given to appellant no.1/mother, and the mother/Smt. Raj Kumari Devi/appellant no.1 will be entitled to use the interest only which accrues on the fixed deposit for the welfare and benefit of the minors. On the minors attaining majority, the fixed deposit receipts alongwith accrued interest if any thereon

will be encashed and paid to that appellants/applicants on his/her attaining majority. It is further clarified that if for any exigency or emergency FDR has to be encashed during the minority of any of the minor appellants/applicants, then, necessary application will be filed before the Railway Claims Tribunal, who on being satisfied of the facts and circumstances requiring an early encashment of the FDR will pass the appropriate orders in accordance with law. The total compensation of 4 lacs, to be equally divided between the appellant nos. 1 to 5, be paid to the appellants by depositing with the nationalized bank, and fixed deposit receipts as regards minors be handed over to the appellant no.1, all within a period of six weeks from today. Parties are left to bear their own costs.

**JANUARY 16, 2014**  
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**VALMIKI J. MEHTA, J.**