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

+ **FAO 242/2014**

Decided on 15th October, 2014

SMT. MUNCHUN DEVI & ORS

..... Appellants

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

versus

UNION OF INDIA

..... Respondent

Through : Mr. Rajeshwar Singh and Mr. Dipak Sagar, Advs.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(ORAL)

1. Arguments heard. Entire material placed on record has been perused.
2. By the judgment impugned in this appeal Railway Claims Tribunal, Principal Bench, Delhi has dismissed the claim petition under Section 16 of the Railways Claims Tribunal Act, 1989 of the appellant. Appellants claimed compensation of ₹8 lacs in respect of death of Shri Suchit Kumar Jha (deceased) in an 'untoward incident' occurred on 4th February, 2010 at Ajaibpur railway station in U.P.

3. The case set out by the appellant before the Tribunal, was that deceased boarded Jan Sadharan Express train at about 7.25 pm at Sarai Rohilla railway station for going to Patna after purchasing a ticket. While the train was crossing Ajaibpur railway station, deceased fell down from the train due to sudden jerk and was crushed under the wheels of moving train at platform no. 2, opposite to ASM's office. Luggage of the deceased was taken away by someone and could not be recovered. Only identity card of deceased was recovered by the police officials on the basis whereof brother of deceased, namely Shri Ajeet Kumar was informed about the recovery of dead body. Family members reached Aligarh mortuary on 6th February, 2010. Post-mortem was conducted and dead body was cremated. Appellant no. 1 claimed that deceased was working as a 'Security Guard' at Vasant Kunj. He had taken leave from the Residents' Welfare Association and a certificate issued by the said Association was placed on record.

4. Respondent did not dispute that dead body of deceased was found at Ajaibpur railway station. However, it was alleged that he was run over by some train. According to respondent, incident did not fall within the ambit and scope of an 'untoward incident' within the meaning of Section 123(c) of the Railways Act, 1989 ("the Act", for short), thus, no compensation was

payable under Section 124-A of the Act. It was denied that deceased was working in Delhi and was going to his native village in Bihar by Jan Sadharan Express after purchasing a ticket from Sarai Rohilla railway station. It was denied that incident was witnessed by the public persons and the Station Master. It was denied that deceased fell down at platform no. 2 of Ajaibpur railway station opposite to ASM's office due to sudden jerk of the train and died. As per the respondent, deceased was not a bonafide passenger of Jan Sadharan express train, since no ticket was recovered from his possession.

5. Tribunal has held that appellants had failed to prove that deceased had boarded Jan Sadharan Express train after purchasing a ticket. Tribunal observed that appellants had failed to prove that deceased fell down from the Jan Sadharan Express train at Ajaibpur railway station. Tribunal has concluded that a perusal of memo Ex. AW1/4 of Station Master, Ajaibpur railway station indicated that deceased was run over by some train in front of ASM's office. Police investigation report Ex.AW1/6 also indicated that deceased was run over by some train. Panchnama Ex. AW1/7 also indicated that death of the deceased was due to run over by some train. Since no one had seen the deceased falling from train, it can not be concluded that

deceased fell down from the Jan Sadharan Express train and died. Thus, incident did not come within the ambit and scope of an 'untoward incident'. It has been further held that AW2 Shri Ajeet Kumar did not accompany the deceased to Sarai Rohilla railway station, thus, was not competent to prove that deceased had purchased the ticket and boarded Jan Sadharan Express train. It remained unproved that deceased was travelling as a 'bonafide passenger' in Jan Sadharan Express train, inasmuch as Shri Ajeet Kumar had failed to give the name of the train, which deceased had boarded at Sarai Rohilla Station. Tribunal has found the deposition of AW2 to be unreliable, since he had failed to even give mobile number of the deceased.

6. I am of the view that findings returned by the Tribunal are not in consonance with the evidence adduced by the parties and are perverse. I am of the view that appellants have succeeded in proving that deceased was working in Delhi. AW2 has categorically deposed that deceased was working as a 'Security Guard' with Residents' Welfare Association, Vasant Kunj, Delhi where he was also working as 'Security Guard'. His this oral testimony is supported by the documentary evidence in the shape of Ex. AW2/4, which is a certificate issued by the Residents' Welfare Association stating therein that deceased was working as a 'Security Guard' and on 3rd

February, 2010 he went on leave. Admittedly, deceased was not resident of village Ajaibpur. He was native of Bihar. This fact duly is proved from the statements of AW1 and AW2 Railway Police Form No. 44 shows that one identity card was recovered from the possession of deceased which indicates that deceased was working as 'Security Guard' with the Residents Welfare Association, Sector – 9, Pocket 2, Vasant Kunj, New Delhi. Police officials contacted the said association and came to know that brother of deceased Shri Ajeet Kumar was also working there as a Guard. Accordingly, information was given to him. Thereafter family reached Aligarh mortuary and identified the dead body recovered at Ajaibpur railway station as that of deceased Shri Suchit Kumar Jha.

7. In this context statement of AW2 assumes importance that deceased took leave from the Association and boarded Jan Sadharan Express at Sarai Rohilla Station on 4th February, 2010 for going to Patna in Bihar and in my view is trustworthy and reliable. From the documents placed on record including report of Station Master, it is clear that dead body was recovered at the platform in front of ASM's office. Shri Ajeet Kumar made a statement before the police that deceased was going to his native place in Bihar from Delhi by the Jan Sadharan Express train. Report of Sectional

Commercial Inspector placed on record also indicates that the deceased sustained injuries by Jan Sadharan Express train. Place of incident has been shown as platform no. 2 of Ajaibpur railway station. Date of incident has been mentioned as 4th February, 2010. Train number has been given that of Jan Sadharan Express. It is also reflected that train was going from Sarai Rohilla railway station to Patna. Name of the deceased has also been mentioned in the report. It has also been mentioned therein that on 5th February, 2010, ₹700/- was paid to GRP for cremation of the dead body of deceased. In view of the statement of AW2, supported by the documents on record, it is clear that deceased was working in Delhi and was going from Delhi to Patna on 4th February, 2010, by Jan Sadharan Express. It is not in dispute that Ajaibpur railway station falls on route of Jan Sadharan Express. Had deceased not been travelling in the said train, his presence at Ajaibpur railway station was not possible. This factual circumstance corroborates the statement of AW2 that deceased had boarded Jan Sadharan Express on 4th February, 2010, at about 7.25 pm at Sarai Rohilla railway station for going to Patna and fell down at Ajaibpur railway station. Accordingly, non-recovery of ticket from the deceased, by itself, would not be sufficient to hold that he was not a bonafide passenger of Jan Sadharan Express train. It

is not uncommon that tickets are lost in such major incidents where a person loses his life in as much as his belongings. Luggage of deceased was not recovered. Except identity card, nothing was recovered. It is highly improbable that deceased would have been travelling from Delhi to his native place, that is, Patna, which was around 1000 kms away from Delhi, without any money and luggage. Meaning thereby that somebody had taken away the belongings of deceased and in such a scenario there is every possibility of ticket being lost. In such an eventuality, non-recovery of ticket would not mean that deceased was not a bona fide passenger of said Train.

8. No evidence has been led by the respondent to indicate that deceased had committed suicide or died due to self – inflicted injuries or was under intoxication, thus, was not entitled to compensation in view of proviso to Section 124A of the Act. In the facts of this case death of deceased is to be thus taken as having resulted on account of ‘untoward incident’. It is trite law that liability is a strict liability and compensation can be avoided by the Railways only if death is on account of criminal negligence of the victim or is self inflicted injuries or the case falls under the proviso to Section 124A of the Act. Section 124 A of the Act reads as under:-

“124A. Compensation on account of untoward incident.- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation – For the purposes of this section, “passenger” includes –

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes and victim of an untoward incident.”

9. In this case respondent has failed to prove that deceased died due to his own criminal negligence or that injuries resulting in death were self

inflicted injuries or the death had occurred on account of events as mentioned in the proviso to Section 124A of the Act, thus, Railways Administration cannot avoid payment of compensation.

10. For the foregoing reasons, impugned order is set aside. Appellants are entitled to compensation of ₹4 lacs with interest @ 9% per annum from the date of filing of the petition. Appellant no. 1 is wife; whereas appellant nos. 2 and 3 are children of deceased. Out of the compensation of ₹4 lacs, appellant no. 1 shall deposit ₹1 lac each in FDRs in the names of appellant nos. 2 and 3 till they attain the age of majority. However, appellant no. 1 would be entitled to withdraw interest accrued on the FDRs for upkeep and maintenance of appellant nos. 2 and 3 till they attain the age of majority.

11. Appeal is disposed of in the above terms.

A.K. PATHAK, J.

OCTOBER 15, 2014

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