

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

+ **FAO No. 352/2012**

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8th May, 2014

LAL CHAND SAH & ANR.

.....Appellants

Through: None.

VERSUS

UNION OF INDIA

..... Respondent

Through: Mr. Arun Kumar Singh, Adv.

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 Tribunal dated 6.6.2012 by which the Tribunal has dismissed the claim petition filed by the appellants seeking statutory compensation for the death of their son Mr. Ayush Ranjan in an untoward incident on 28.10.2010.

2. The facts of the case are that the deceased Ayush Ranjan on 28.10.2010 was said to be travelling in a train from New Delhi to Panipat. During the course of the journey Mr. Ayush Ranjan accidentally fell down between Sonipat and Sandhal and succumbed to his injuries. It is pleaded

that the deceased was a bonafide passenger as he was travelling on a valid train ticket.

3. Respondent contested the case of the appellants and pleaded that the deceased was not a bonafide passenger. It is also pleaded that there is no untoward incident of a fall from the train because in such a case it cannot be that only the head is severed and which is found at a distance from the body. Before this Court it is also argued by the counsel for the respondent that there is no eye witness to the fall from the train, and therefore, the claim petition was rightly dismissed.

4. The Railway Claims Tribunal has given the following reasons for dismissing the claim petition.

“8. These two issues are taken up for consideration simultaneously for the sake of convenience and also as they are inter-related.

9. At the outset, I must make it clear that there is no serious challenge during the course of evidence regarding the accidental death of the deceased. According to the claimant, the deceased accidentally fell down from the running train and succumbed to the injuries. Whereas, the respondent denied the entire allegations and categorically stated that the deceased died due to self-inflicted injury. In view of this specific defence, initial burden lies upon the applicant to prove the deceased accidentally fell down from the train. Applicant No.1 Lal Chand Sah who is the father of the deceased categorically admitted that he was not an eye –witness to the incident,

therefore, his evidence is not sufficient to establish that the deceased accidentally fell down from the train. The applicant further relied upon the Memo which shows that the dead body was lying upon the track. In the instant case, driver of the train reported that one dead body was lying. During the course of investigation body was found without neck and subsequently the neck was found in a shrub away from the track. The Ld. Counsel for the respondent submitted that from the topography of the spot it is highly impossible that the deceased fallen down from the train and it is a case of run over by certain train. Considering the peculiar circumstances, the evidence of the applicant does not inspire confidence that the deceased fell down from the running train. Not only this, CMI report and Station Master report clearly suggest that no 'untoward incident' reported. In such situation, merely because the body was found nearby the track, this itself is not sufficient to jump to the conclusion that the deceased might have fallen down from the train, more particularly when the dead body was found without neck on the track. Suffice to say that applicant failed to establish untoward incident and the possibility of self inflicted injury cannot be ruled out. Hence, my findings on Issue no.2 is in negative and my finding on issue No.3 is in the affirmative.

Regarding Issue No.1:

10. In-so-far-as bona fide passenger is concerned according to the applicant; the deceased was travelling with a valid ticket and copy of the same is placed on record. However, I have already observed that applicant failed to establish that on the relevant day deceased accidentally fell down from the train, therefore, the question of bonafide passenger does not arise. Hence, my finding on this point is negative.”

5. A reading of the aforesaid paras shows that the Tribunal has held that because of the topography of the spot it is highly impossible that the deceased could have fallen down from the train and therefore it is held that the case is a case of run over by a train. Tribunal also holds that

evidence led by the appellants does not inspire confidence and which is to be taken with the fact that there is no report of an untoward incident to any railway official. Tribunal concludes that merely because the body is found near the tracks is not sufficient to arrive at a conclusion of an untoward incident as per Section 123(c) read with Section 124A of the Railways Act, 1989.

6. I may note that the Tribunal has given a finding in favour of the appellants that the deceased was a bonafide passenger. This finding is given in para 10 of the impugned judgment and which reads as under:-

“Regarding Issue No.1:

10. In-so-far-as bona fide passenger is concerned according to the applicant; the deceased was travelling with a valid ticket and copy of the same is placed on record. However, I have already observed that applicant failed to establish that on the relevant day deceased accidentally fell down from the train, therefore, the question of bonafide passenger does not arise. Hence, my finding on this point is negative.”

7. The findings of the Tribunal with respect to issue no.1 in para 10 where it holds that the deceased was a bonafide passenger is surely in total conflict and an antithesis to the conclusions arrived at in paras 8 and 9 that there is no fall from the train. Once the deceased is held to be a bonafide passenger in the train and the body is found lying on the tracks,

surely it would be a case of an untoward incident. In fact, most important aspect which somehow has not been mentioned by the Tribunal, and which this Court has found from the reading of the record of the Tribunal, is that on jamatalashi/search of the person of the deceased Ayush Ranjan vide report Ex.AW1/6, it is mentioned that the train ticket was found of the same date of travel when the body of the deceased was found lying on the tracks. In my opinion, this is a clinching piece of evidence and the Tribunal has done grave injustice by not referring this fact in the impugned judgment. This document Ex.AW1/6 which states that a train ticket of travel was recovered from the body/person of the deceased, and which was of the same date of the incident of recovery of the body from the tracks, and which clearly shows on preponderance of probabilities that the deceased died on account of fall from the train while he was undertaking the train journey. It is not unknown that in many cases of fall from a train incidents are not reported, and merely because an incident is not reported to the railway officials, is not sufficient to hold, more so in the facts of the present case, that there was no fall of the deceased from the train.

8. In view of the above, the appeal is allowed and appellants are held entitled to statutory compensation of Rs. 4 lacs alongwith pendente lite

and future interest till payment at 7 ½% per annum simple. Since no one has appeared for the appellants, copy of this judgment will be sent by the Registry of this Court by registered AD post as also through process server of the district to the residence of the appellants so that the appellants have knowledge of the present judgment. Respondent also through its official posted at the railway station nearest to the residence of the appellants, will within a period of six weeks, serve a copy of this judgment upon the appellants. Parties are left to bear their own costs.

MAY 08, 2014
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VALMIKI J. MEHTA, J.