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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No. 368/2013

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29th January, 2014

UNION OF INDIA

.....Appellant

Through: Mr. Jayesh Gaurav, Advocate

VERSUS

SMT. PRATIMA DEVI & ORS.

..... Respondents

Through: Mr. Sashi Mohan, Advocate for Mr.
Shubhanshu Singh and Mr. Suman Kumar,
Advocates for respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenge is laid by the Union of India to the impugned judgment dated 16.5.2013 which has allowed the claim of the applicant-widow, respondent herein, and granted compensation for the death of her husband Sh. Sudesh Sav in an untoward incident on 10.3.2011.

2. The facts of the case are that the deceased Sh. Sudesh Sav purchased a ticket for travel from Delhi to Gaya by Neelanchal Express on 9.3.2011. The body of the deceased was found at the railway track on 11.3.2011. Body was found near the Paraiya Railway Station which is close to Gaya Junction, the destination point of the journey. On the search of the person of the deceased admittedly a railway ticket was found and this is so mentioned in the GRP report Ex. AW-1/9 conducted on behalf of the appellant itself. Therefore, the deceased was undoubtedly a *bona fide* passenger travelling on a valid train ticket and he died in an ‘untoward incident’ because the Railway Claims Tribunal has rightly noted that it is not required for the dependents of the deceased to reconstruct the chain of events giving the complete details of the journey and how the accident happened inasmuch as such dependents who did not travel with the deceased cannot know such sequence of events leading to the untoward incident. The Railway Claims Tribunal, in my opinion, has rightly in this regard given the necessary findings while dealing with issue nos. 1 & 2 and the same read as under :

“ **Issue Nos. 1 & 2** ”

These two issues are inter-linked and hence they are being considered together. The case of the applicant is that the deceased boarded the train Neelanchal Express at Delhi to go to Gaya after purchasing a ticket at Delhi on 9.3.11. The body of the deceased was found at railway track on 11.3.11. Since the body was found near Paraiya Railway Station, which is close to Gaya Jn., the first respondent would contend that this Tribunal has no territorial jurisdiction to entertain this application. It is not disputed that the body of the deceased was found near Paraiya Railway Station, which is within the limits of East Central Railway zone. Though, this Railway was impleaded as the second respondent, no written statement is filed by them. The applicants have filed Ex. AW1/2, a copy of the railway ticket issued at Delhi for travel to Gaya. It is significant to note that the number of the railway ticket is found mentioned in the report dated 12.3.11, issued by GRP, Gaya. In the said report, it is further stated that the ticket was recovered from the pant pocket of the deceased and it was for travel from Delhi. The deceased was travelling from Delhi to Gaya. The said incident is state to have occurred on the night of 10.3.11 and the body was found on 11.3.11 at 1.15 P.M. The deceased and the applicants are residents of Santhua, PS Rafiganj, Distt Aurangabad, Bihar. There is nothing on record to show that the deceased or the applicants were residents of any locality nearby Gaya. The case was registered as UD 17/11 on the basis the complaint given by Sh. Vinay Kumar, father-in-law of the deceased on 11.3.11 vide Ex. AW1/4. It cannot, therefore, be said that there was any possibility of the ticket being planted on the person of the deceased. The fact of recovery of the ticket from the pant pocket of the deceased duly nothing the number of the ticket in the GRP Report, Ex. AW1/9 vouches safe the genuineness of the ticket.

The learned counsel for the respondent would contend that the ticket Ex. AW1/2 shows that it was

purchased on 9.3.11 at 22.33 hrs. for a journey commencing on 9.3.11. According to the applicants, the deceased was travelling by Neelanchal Express, which starts at Delhi in the morning and reaches Gaya by night. In support of this contention, he produced a copy of the relevant Time Table to show that New Delhi-Puri Neelanchal Express 2876 via Tata Nagar would leave New Delhi at 06.30 hrs and reach Gaya at 00.30 hrs. In the claim application, the train number noted as 12816 is also New Delhi-Puri Express via Adra and it leaves New Delhi on Monday, Wednesday, Thursday and Saturday at 6.30 a.m. and reaches Gaya at 9.05 p.m., whereas New Delhi-Puri Neelanchal Express via Tata Nagar 2876 leaves New Delhi on Tuesday, Friday and Sunday at 6.30 a.m. reaches Gaya at 00.30 hrs. There is another train 2802 New Delhi Puri Purshottam Express, which is a daily train leaving New Delhi at 22.20 hrs and reaching Gaya at 13.35 hrs. It is to be noted that none of the applicants was accompanying the deceased and the deceased was traveling alone. The ticket purchased by the deceased was a general ticket, by which he can travel in a general compartment of any of the trains from New Delhi up to Gaya. The applicants had no personal knowledge as to by which train, the deceased left New Delhi and at what time. The body of the deceased was found on the railway track near Paraiya Railway Station on 11.3.11 at about 1.15 p.m. As seen from the Postmortem Report, Ex. AW1/7, the body was taken to the hospital for post mortem at 4.00 p.m. The approximate time of death is noted as 06.00 to 24.00 hrs prior to the Postmortem examination. As seen from Ex. AW1/7, rigor mortis was present all over the body. The possibility of purchasing the ticket at 20.33 hrs on 9.3.11 and boarding the train Purshottam Express at 22.20 hrs and falling from the train near Gaya on the afternoon of 10.3.11 cannot also be ruled out. No doubt, the applicants have stated in the application that the deceased was travelling by Neelanchal Express, but the said information, as admitted by AW-1, was based only on hearsay and the applicants had no

personal knowledge as to by which train the deceased was travelling.

Even otherwise, assuming that the deceased was travelling by train 2876 Neelanchal Express, which left New Delhi at 06.30 hrs on the morning of 10.3.11, the untoward incident occurred on the night near Gaya and the body was noticed on the next day i.e. 11.3.11. The Learned counsel for the respondent would submit that the ticket issued on 9.3.11 was not valid for travel on 10.3.11, but no authority is placed before this Tribunal to show that there is any such invalidity attached to the ticket. Thus, viewed from any angle and once it is shown that the deceased had purchased the ticket for his travel from New Delhi to Gaya and boarded a train at New Delhi, whatever be the train, and a ticket was recovered from the body of the deceased, which was lying near the track unattended for a long time and the possibility of any planting of the ticket having been ruled out, it must be held that the deceased was a bonafide passenger on the train having started journey from New Delhi to go to Gaya. As the evidence on record shows that the ticket was purchased at New Delhi and the deceased boarded the train at new Delhi, this Tribunal at Delhi has not territorial jurisdiction to entertain and try the present claim application. Issue No. 1 is answered accordingly. On Issue No. 2, it is held that the deceased was bonafide passenger with a valid ticket for his travel from New Delhi to Gaya.

Issue No.3

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The Postmortem Report, Ex.AW1/7 shows that the body was severed at lower chest abdomen with countused lacerated and irregular and retracted margins and crush of the underlying organs. From the mere fact that the dead body was found several at the lower abdomen, it cannot be inferred that it was a case of run over. The nature and extent of the injuries and their intensity and impact would

depend on various circumstances obtaining at the time of fall and the place of the fall. When a person falls from a fast moving train and hits against a rough terrain, there is every possibility of sustaining multiple injuries including crush injuries on the abdomen even to the extent of a portion of the abdomen getting severed. It does not necessarily lead to any conclusion that such injuries are possible only when the person is run over by the train, but not otherwise and once it is shown that the deceased was travelling on the train with a valid ticket, the possibility of his crossing the railway track and getting run over by the train, as suggested by the respondent, gets ruled out. There is nothing on record to show that the deceased suffered the injuries because of his own negligence or because of any other circumstances envisaged in the exceptions contained in the proviso to Section 124-A of the Railways Act, 1989 so as to exonerate the respondent from its liability to pay the compensation.

(underlining added)

3. The Tribunal, in my opinion, has also rightly observed that merely because the body was cut and run over by the train cannot mean that the deceased would have died by running over from a train inasmuch as Tribunal rightly observed that merely because the body is cut up it is not necessary he would have been run over by another train on a railway track. I also agree with this conclusion because in my opinion sometimes a person can get entangled in the steps of the train in which he is travelling and, therefore, the body of the deceased can be cut up.

4(i) At the outset, learned counsel for the appellant wanted to argue the issue of territorial jurisdiction, however, since train ticket was purchased from Delhi the Tribunal had the necessary jurisdiction in view of the Rule 8 of the Railway Claims Tribunal (Procedure) Rules, 1989, and therefore, the issue of territorial jurisdiction was not pressed.

(ii) So far as the aspect that it is impossible for the dependents of the deceased who were not travelling with the deceased to reconstruct the chain of the events I completely agree with the Tribunal and disagree with the arguments urged on behalf of the appellants that the deceased died because he was run over by another train.

5. The liability under Section 123(c) read with Section 124A of the Railways Act, 1989 is a strict liability of the Railways in view of the judgments of the Supreme Court 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* and once the deceased was found to be a *bona fide* passenger with a valid train ticket, onus of proof has shifted to the Railway to show that the death was not on account of ‘untoward incident’. Appellant did not lead any evidence and it cannot argue that there was no fall from a train on assumptions and

presumptions on the basis of merely a body found cut up. In my opinion, in the facts of the present case as stated above, there cannot be such assumptions and presumptions.

6. So far as the argument of body of the deceased found more than a day later and for which purpose a Time Table of the Neelanchal Express train was relied upon in which the deceased was travelling, I cannot agree with such argument and agree with the conclusions of the Railway Claims Tribunal that once a person dies it is not possible to exactly find out and reconstruct the chain of events to exaction as no dependent was travelling with the deceased. Tribunal rightly noted that once the deceased was a *bona fide* passenger compensation has to be given because the deceased was found on the railway track, and delay in finding of the body or reporting of the incident cannot take away the incident from being an 'untoward incident', and consequently the liability of the appellant/Railways.

7. In view of the above, there is no merit in the appeal, and the same is, therefore dismissed, leaving the parties to bear their own costs.

JANUARY 29, 2014
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VALMIKI J. MEHTA, J