

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

+ **FAO No. 380/2013**

% **4th April, 2014**

UNION OF INDIA Appellant
Through: **Mr. Manoj V. George, Adv.**

VERSUS

LEELA DEVI & ORS. Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 8.2.2013 by which the Tribunal has allowed the claim petition filed by the respondents, who are the dependants of the deceased Mahendra Kumar who died in an untoward incident (within the meaning of the expression in Sections 123(c) & 124-A of the Railways Act, 1989) on 10.6.2010.

2. The facts of the case are that Mahendra Kumar, husband of respondent no.1, was travelling ex-Palwal to Ghaziabad in an EMU train

alongwith his son on two valid tickets on 10.6.2010. There was a huge rush in the compartment and the deceased fell down from the train on account of a sudden heavy jerk in the train. The Railway Claims Tribunal has allowed the claim petition by making the following valid observations:-

“These three issues are taken up together for the sake of convenience as these are inter-related. In this case, as per the application, deceased on that relevant day was travelling ex-Palwal to Ghazibad in an EMU Train along with his son on two valid tickets, which were lost during the incident in question. As per the application, there was huge rush in the compartment and the deceased fell down from the moving train on account of a sudden heavy jerk in the train and consequent thrust from inside the train compartment and died.

The applicant has pleaded in the claim application that the tickets of the deceased and his co-traveller son were with the deceased at the relevant time of the incident and that the same were lost in the aftermath of the alleged untoward incident. In support, the applicant has led her evidence confirming loss of the train ticket during the incident in question. As seen from the records, the body of the deceased was badly crushed due to the incident and was found lying without clothes on railway tracks. The loss of railway journey tickets, in such circumstances, as averred in the claim application, can well be understood and explained. The son of the deceased, who was co-traveller has also confirmed the said factum of loss of ticket in his statement recorded by the police concerned. The respondent could not controvert or challenge the factum of either loss of the train tickets or travelling of the said passengers by any cogent evidence by adducing any evidence to the contrary. In the case of Maniben Paljibhai Parmar v. Union of India, 2005(1) RCR (Civil) 255, it has been held that “in case of death of passenger in railway accident, presumption is that the deceased was a bonafide passenger and burden is upon the Railways to prove that he was travelling

without ticket.” Hence, I have no hesitation in holding that the deceased was a bonafide passenger at the relevant time of the incident.

As regards fall of the deceased from the train in question, the respondent has challenged and denied the same on the ground that the body of the deceased was recovered from UP line, whereas the applicant claims that the deceased was travelling from Palwal to Ghaziabad in a train which was on the On line. The respondent has contented that in case the deceased had fallen from the train in question, his body should have been recovered from the On line railway track.

I have perused the entire material on record and having considered the same and the evidence of parties led on record, I am of the opinion that once the deceased has been proved to be a bona fide passenger of train carrying passengers, and his body is recovered from the railway track, the normal presumption that can be drawn is that his death must have taken place on account of an accident fall from the train. Admittedly, there is no eye-witness of the actual incident in this case. The co-traveller son of the deceased also could not witness the incident in question as he was inside the train compartment at the time of falling down of his father from the train and he came to know about the same from the shouting of fellow passengers and he later went to the site of the incident, where the police concerned had arrived to take the victim to the hospital for treatment. The statement of the co-traveller son of the deceased was also recorded by the police as eyewitness to the incident, wherein, he also confirmed about his and his father’s travelling by the train in question and the alleged accidental falling down of his father from the said train enroute. The recovery of dead body from the UP line and not from the On line, whereon the deceased was stated to have been travelling in a train, cannot be the only ground of rejection of this application in absence of any specific and cogent evidence from the side of the respondent in rebuttal. In all probability, it appears that the deceased must have fallen down from the train, in which, he was travelling and may have get rolled over near or on to the Up tracks and consequently might have got run over by another

train coming from the opposite direction. This position is further strengthened by the fact that his body was found without clothes and with crush injuries of lower abdomen, pelvis and upper bilateral thighs, resulting in complete transaction of the body with crushing and laceration of underlying soft tissues, bones, muscles, vessels with loop of intestines exposed to exterior. Such injuries are also suggestive of his getting run over from another train. In support of this observation, a reuling of the Hon'ble Punjab and Haryana High Court reported in 2011 ACJ 1841 (FAO No. 1530 of 2010 (O&M), U.O.I Vs. Sarla and Others is cited, which fully supports the case of the applicant. Moreover, the respondent Railway has not taken any plea seeking exemption under (a) to (e) of the proviso to Section 124-A of the Railways Act, 1989. They have also not produced any evidence to this effect in support of their case.

Thus, in view of the above, and in the light of the discussion held above together with the consideration of entire material and evidence placed on record, the Issue Nos. 2 and 3 are decided in favour of the applicant and Issue No.4 against the respondent.” (underlining added)

3. I find no illegality whatsoever in the impugned judgment because once the body of the deceased is found in a crushed state and that too without clothes, the Tribunal was justified at the arriving that the ticket was lost during the untoward incident. I may also note that the son of the deceased was travelling with him, and he immediately after the incident made statement to the police with respect to the deceased-his father, falling down from the train and that the tickets have been lost in an untoward incident. The Tribunal also rightly holds, and in this regard I reject the

argument of the counsel for the appellant, that the body could have been found at the adjacent tracks inasmuch as it is not conceivable that after fall from the train that the body can roll over or by any other circumstance found at the adjoining tracks. I have also commented in many judgments that the hyper-technical approach adopted by the Railways of requiring that the death must be 'as per the book' i.e as per the expected set of events is a misconceived argument because there is no divine camera by which captures can be made and can be replayed so as to show the exact sequence of events of a fall from the train and thereafter the passenger dying on account of being crushed or cut up etc.

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

APRIL 04, 2014
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VALMIKI J. MEHTA, J.