

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

+ **FAO 406/2012**

23rd May, 2014

ANJU

.....Appellant

Through: Mr. Yogesh Swaroop, Advocate.

VERSUS

UNION OF INDIA

..... Respondent

Through: Mr. Kumar Rajesh Singh, Advocate.

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 is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 31.5.2011 which has dismissed the claim petition filed by the appellant, who was the widow of the deceased Mahesh Kumar who died in an untoward incident of a fall from a train on 05.5.2010.

2. The facts of the case are that the deceased Mahesh Kumar aged about 37 years, resident of Ghaziabad, was travelling by train HS-4 EMU from Ex-Shakur Basti to Hazrat Nizamuddin on 05.5.2010. Since there was heavy rush in the train, and when the train was between the Naraina Vihar and Inderpuri

railway stations, on account of jerk in the train, the deceased fell down from the moving train and sustained grievous injuries. The deceased Mahesh Kumar was declared 'brought dead' at the BEHL Nursing Home in Delhi.

3. The respondent contested the claim petition and pleaded that the deceased was not a bonafide passenger and did not fall from the train.

4. The Tribunal has dismissed the claim petition of the appellant by making the following observations:-

“7. These Issues, being inter-connected, are being taken up together. Ld. Counsel for the applicant argued that Mr. Mahesh Kumar (deceased) was travelling by HS-4 EMU Train on a valid journey ticket ex-Shakur Basti to Hazrat Nizamuddin on 05.05.2010; that the train was overcrowded; that when the said train was running between Naraina Vihar and Inderpuri Railway Stations, it gave a sudden jerk, due to which he fell down from the moving train and sustained grievous injuries all over his body; and that he had been removed to BEHL Nursing Home, Delhi, where the doctors declared him “brought dead.” On the other hand, it was argued on behalf of the Respondent that the deceased was not a bona fide passenger of the train in question nor fell down from the train in question. Relying on the statement of Mr. Brijpal Singh, Guard of the train in question, Ld. Counsel for the respondent further argued that the arrival & departure of the train in question were 11.23 hrs. at Inderpuri Halt Railway Station on 05.05.2010, while the injured was brought in BEHL Nursing Home at 02.45 p.m as per the MLC (Exh. AW-1/8). This delay of more than 3 hours is unexplainable, particularly in view of the statement of eyewitness Sh. Ramesh given to the police (Exh. AW-1/6) that he saw the deceased falling from the Train No.HS-4 and he took him to BEHL Nursing Home, which is also in Naraina Vihar, where the incident is reported to have occurred. Police also got the first information on 05.05.2010 at about 02.10 p.m. (Exh. AW-1/4). There is no record of the Railway, in which there is any mention about this incident. The police also were

not involved in any activity related to Railways. Moreover, no journey ticket has been produced by the applicant in this case. All these facts as brought out by the respondent create a strong suspicion and doubt whether the deceased Mahesh was a passenger at all of the Train No.HS-4, leave apart being a bona fide passenger.

8. The applicant cited a case, titled as *Smt. Akhtari Vs. Union of India, 2009 (1) T.A.C.644 Allahabad High Court (Lucknow Bench)*, to support his case. I have gone through the contents of the said judgment and the contents of that case are totally different from the applicant's case.

9. While there are apparent contradictions in the case as explained above, it is important to point out that the case nowhere gets related to the Railway. The whole case of the applicant is founded on the statement (Ex.AW1/6) of the so-called eyewitness of the case Shri Ramesh gave to the police, which is not supported by any evidence or any document whatsoever.

10. In view of the above, I tend to agree with the respondent Railway's arguments regarding logical and apparent contradiction in the facts of the case and lack of any supporting evidence on the part of the applicant. Thus, it is held that the alleged incident is not covered under the definition of "untoward incident" as defined under Section 123(c) of the Railways Act, 1989. Issues No.2&3 are decided in the negative against the applicant and Issue No.4 is decided in the affirmative in favour of the respondent."

5. I have had an occasion to make observations in many of the judgments against judgments passed by certain Members of the Railway Claims Tribunal, because such judgments do not refer to the most important document or documents which would be decisive for determining the claim petition. This appeal is a stark reminder of that position.

6. In the present case, the Railway Claims Tribunal has not referred to the most important document being the statement of an independent/neutral eye witness, who saw the deceased Mahesh Kumar falling from the train, who thereafter tried to revive him and who thereafter as a good samaritan took Mahesh Kumar to the nursing home where Mahesh Kumar was declared 'brought dead'. This independent/neutral person is one Ramesh who made a statement to the Railway Police mentioning the facts as stated above. I am, indeed, surprised as to how the Tribunal can decide a claim petition without giving the details of the statement and merely by giving a lip service to this statement of Sh. Ramesh which has been proved as Ex.AW1/6. The Tribunal, if it wanted to reject the document being Ex.AW1/6 being the statement given by Sh. Ramesh to the police, the details of the statement should have been given and thereafter, a detailed reasoning should be given as to why such statement is being rejected. This is not done by the Railway Claims Tribunal. In my opinion, if the judgments as such the impugned judgment are allow to stand, it would mean that those persons who are good samaritans will be discouraged from helping the people in need such as the deceased Mahesh Kumar who had fallen down from the train and who was sought to be revived by the eye witness Ramesh Kumar and thereafter taken to the nursing home by

the eye witness Ramesh. I therefore hold that the deceased Mahesh Kumar fell down while undertaking travel as a bonafide passenger of the train.

7. In view of the above, the appeal of the appellant is allowed and the impugned judgment of the Tribunal is set aside. Statutory compensation of Rs.4 lacs is awarded to the appellant with pendente lite and future interest @ 7½% per annum simple from the date of filing of the petition before the Tribunal and till the date of payment. Parties to bear their own costs.

8. Copy of this judgment be sent to the Chairman, Railway Claims Tribunal for necessary information.

MAY 23, 2014
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VALMIKI J. MEHTA, J.