

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

**+ FAO No. 406/2010**

**% 17<sup>th</sup> February, 2014**

**SONI DEVI & ORS. ....Appellants**

**Through: Mr. S.K.Vashistha, Adv.**

**VERSUS**

**UNION OF INDIA ..... Respondent**

**Through:**

**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 Railway Claims Tribunal dated 18.8.2010 which has dismissed the claim petition.

2. The claim petition was filed by the appellants, applicants before the Railway Claims Tribunal, as dependants of the deceased Sh. Sanjeev Das, who died in an untoward incident on 8.6.2009 by falling from the train while travelling from Rathdhana to Holambi Kalan.

3. The Railway Claims Tribunal has dismissed the petition by making the following observations:-

### **“Regarding Issue Nos 2,3 & 4**

These issues are clubbed together for the sake of convenience, and also because they are inter-related. The applicant have placed on record the ticket valid from Rathdhana to Holambi Kalan (AW1/8). There is also on record the Jamatalashi Report (AW1/9) which shows that two tickets, one from Rathdhana to Holambi Kalan and another from Holambi Kalan to Rathdhana were recovered from the body of the deceased. However, the respondent’s counsel has argued that although two tickets were available in the pocket of Sh. Sanjeev Das, there is no mention of the train by which he was travelling and that his death was not due to fall from a train but on account of being run over by a train.

Regarding the nature of the incident, to prove that Sh. Sanjeev Dass has fallen from the train, the applicants’ counsel has drawn attention of the court to the statement of Sh. Akash (AW1/5) in which he has stated that the death of Sh. Sanjeev Das was due to fall from a train. However, as rightly pointed out by the Learned Counsel for respondent, the evidence of Sh. Akash cannot be accepted at fact value as he is the brother of Sh. Sanjeev Das and was also not a witness to the incident. Most significant is the police report (AW1/7) in which it run over by some train. It is also significant that the police in the “Brief facts” (AW1/3) has observed that due to being run over, the body of Sh. Sanjeev Das was cut into several pieces. A run over incident would result in complete mutilation of the body of the victim as in this case. The evidence on record clearly points to the fact that Sh. Sanjeev Das was run over by a train and that he was not a victim of an untoward incident. This issue is accordingly decided in favour of the respondent and against the applicant.

Since the evidence on record clearly proves that this is not the case of an untoward incident but it is a case of run over, the present claim application stands dismissed.

In the result, therefore, the claim application filed by the applicant is dismissed. There are, however, no orders as to costs.”

4. In my opinion, the Railway Claims Tribunal has clearly gone off on a tangent although sufficient evidence was available before the Tribunal which showed that the deceased was a bonafide passenger, and he fell down from the train. The following facts emerge from the record and which persuade me to allow this appeal and therefore, the claim petition:-

(i) It is during the jamatalashi of the deceased Sh. Sanjeev Das that tickets were recovered for both to and fro journey clearly showing that the deceased was a bonafide passenger.

(ii) The body of the deceased, badly cut up, was found on the tracks at K.M.P No. 22/4 and 24/6, which is at a place in between the journey from Rathdhana to Holambi Kalan, and the only way in which the deceased could have been found there was if he had fallen down from the train inasmuch as an undisputed position which emerges on record is that the deceased was not living anywhere near the place where his body was found.

(iii) The Tribunal has erred in observing that if the deceased was found dead on account of being badly cut up, it would be only on account of

his being run over by another train, inasmuch as, it is perfectly possible on many occasions that if the deceased gets entangled in the steps of the train while falling down from the train, he can come under the same train in which he was travelling. In the facts of the present case, once a valid journey ticket is found not only for the journey from Rathdhana to Holambi Kalan, but also a valid journey ticket for the return journey and the deceased's body is found at a place which is in between the point of commencement of journey and the point of destination, in the facts of this case the same is proved to be on account of death of the deceased by falling from the train.

5. I may note that the liability of the Railways is a strict liability as per Section 123(c) read with Section 124A of the Railways Act, 1989 and as so held by the Supreme Court in the judgments 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*.

6. I may note that the respondent/Railways have led no evidence whatsoever, much less of an eye witness, that the deceased Sh. Sanjeev Das was run over by another train and that he did not fall from the train in which he was travelling. It bears mention that as per the documents prepared by

the police authorities, and the railways authorities which have been filed as Ex. AW1/3, Ex.AW1/7 and Ex.AW1/9, it becomes clear that the deceased died on account of fall from the train, and which is because his body was recognized at the KMP No. 22/4 and 22/6 by the brother of the deceased Sh. Akash Kumar.

7. In view of the above, the appeal is allowed by setting aside of the impugned judgment dated 18.8.2010. Appellants will be entitled to statutory compensation of Rs.4 lacs alongwith interest at 7 ½ % p.a. simple from the date of filing of the petition till the date of payment. Payments which have to be made to the appellants will be in the proportion of 25% each for each of the four appellants. So far as appellant nos. 2 to 4 are concerned, and who are minors, the amount which will fall to their share shall be deposited in fixed deposits in a Nationalized Bank and only the interest of those fixed deposits will be withdrawn and utilized by the appellant no.1 for the up-keep and maintenance of the minors/appellants 2 to 4. In case, there is an important necessity for encashment of the whole or part of the principal amount, on such a necessity being proved before the Railway Claims Tribunal by filing of an application, the Railway Claims Tribunal may allow withdrawal of the principal amount, to the extent required. The amounts of

the appellants no. 2 to 4 on being deposited in a Nationalized Bank, the concerned authorities including the Manager of the Bank will ensure that the payments are released only on identity being proved of the appellant no.1 and also only in the hands of the appellant no.1, in terms of the present judgment.

8. Appeal is accordingly allowed, leaving the parties to bear their own costs.

**FEBRUARY 17, 2014**  
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**VALMIKI J. MEHTA, J.**