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

+ **FAO No. 507/2011**

% **8th January, 2014**

GURCHARAN SINGH & ORS. Appellants

Through: Mr. N.K. Gupta, Advocate

versus

UNION OF INDIA Respondent

Through Mr. P.S. Vimal, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this first appeal under Section 23 of the Railway Claims Tribunal Act, 1987, the claimants/appellants pray for setting aside of the impugned judgment of the Railway Claims Tribunal dated 30.8.2011 whereby the claim petition filed by the appellants seeking compensation was dismissed.

2. The claim petition was dismissed as the Railway Claims Tribunal held that the claimants/appellants failed to prove that the deceased was a *bona*

fide passenger. The relevant findings and observations of the Railway

Claims Tribunal read as under :

“After perusal of record, I observe that in the documents i.e. AW1/6 to AW1/9, placed on record by the applicants, it is no where mentioned that (deceased) fell down from the train and died. The burden of proof rests entirely upon the applicants to prove the untoward incident, within the meaning of section 123 (c) read with section 124-A of the Railways Act. In this connection, a reference may be made to a decision of Hon’ble Delhi High Court titled as **Jamirul Nisha and another Vs. Union of India, 2009 ACJ 1393**, wherein it is held in para no.34 & 35 of the decision as under:

“34. From the perusal of section 123 c 92) & 124 A, it is clear that “sine qua non” for claiming compensation, on account of death or injury sustained in a train accident is that the victim of a train accident, or his dependents as the case may be, must first establish that the victim or the deceased had accidentally fallen from the train.”

“35. In the instant case, applicants have failed to establish that the deceased had accidentally fallen from the train, therefore, the question of the proof by the Railways that the death of the deceased was not the result of untoward incident does not arise.”

Hence, it is clear that the applicants miserably failed to prove the untoward incident by way of documents placed on record by them & it is also relevant to mention that in the police final report i.e R5 (based on inquest report & other documents), submitted by the respondent, it is clearly mentioned by Sh. Zile Singh SHO/ODRS dt.24.05.2008 in his report as under:-

“On 20.03.2008, on receipt of information, IO reached the place of occurrence i.e KM pole no. 9/01-9/03 Vivek Vihar railway line & there he found lying one male dead body of an old man, who was identified as Gurumukh Singh S/o Sardar Mohan Singh R/o H. No.20/97, Kalyanpuri Delhi. Statements of the witnesses were recorded, who told that the deceased met with train accident, while he was crossing the railway line. Post Mortem was got conducted, cause

of death was train accident. No foul play suspected, inquest may please be filed.”

Sd/-
Zile Singh
SHO/ODRS
24.05.2008

Filed.
Sd/-
Mahendra Kumar
Sub Divisional Magistrate
Kotwali

The aforesaid report was sent to Sub Divisional Magistrate Sh. Mahendra Kumar, who endorsed & accepted it. The evidence of witness AW2 Sh. Rajeev is also not convincing, because he did not submit any positive proof that he was travelling with Sh. Gurmukh Singh as there was no reference of AW2 in the claim application & so the story put forth by the applicants, is an after thought & not well convincing. The copy of document R5(based on inquest report & other documents), submitted by the respondent, was given to the applicants through their Counsel, but nothing was adduced in rebuttal on behalf of the applicants. Hence, adverse inference goes against the applicants. It is also relevant to mention that the documents i.e. AW 1/6 to AW1/9 submitted by the applicants & R5 submitted by the respondent, were prepared in the ordinary course of duties by the Govt. officials and the veracity of the documents, cannot be doubted.

Hence, it is clear that the incident occurred, while Sh. Gurmukh Singh (deceased) was crossing the railway track on 20.03.2008 at KM pole no.9/01-9/03 Vivek Vihar railway line & met with the train accident, due to his own negligence & for that Railway Administration is not responsible as the present case falls under the exceptions of section 124-A of the Railway Act. I also observe that no journey ticket was recovered either from the possession of the deceased or from the site of the incident and in this regard, I find momentum of force, when the Ld. Counsel for the respondent states that the story put forth by the applicants, is a mere concoction only to get false compensation and now a days, it is a simple tendency of some people by adopting other means by quoting that the deceased was travelling, on the strength of

valid railway journey ticket and the ticket lost in the incident. However, the legal position of law is very much clear as it has been held in **Dinesh Kumar Singh Maurya Vs. Union of India, vide FAO no.1023 of 2010, decided on 28.8.2010 by the Hon'ble Allahabad High Court (Lucknow Bench)**, wherein it is observed as under:-

“True, may be in certain cases the ticket of bonafide passenger is lost, snatched or taken away by some criminal and unscrupulous persons but there cannot be a presumption that the ticket of every deceased necessarily is taken out or it is lost or mutilated. In case ticket is not found from the body of the deceased or from its vicinity, the presumption would be that such a person was not a bonafide traveler, of course, evidence can be led to prove otherwise. If any untoward incident takes place within the meaning of Section 124-A of the Railways Act, initial burden lies on the Railways to prove that the passenger was not a bonafide passenger, but the same having been discharged, onus shifts on the person claiming compensation, to establish by some believable evidence, that such a passenger was a bonafide passenger, more so when contrary admissible evidence is produced by the Railways.”

The authority titled (supra) is applicable in the present case. I find momentum of force in the submissions of Ld. Counsel for the respondent and there is no modicum of merit in the submissions of Ld. Counsel for the applicants. The authorities submitted by Ld. Counsel for the applicants, is not applicable in the present case as the facts are to some extent different. It is also relevant to mention that when there is a conflict between oral evidence and documentary evidence, in such circumstances, the documentary evidence will prevail.

Hence, I record my findings on Issue no.1 & 2 against the applicants and in the favour of respondent.”

3. The facts of the case show that as per the case of the claimants/appellants, the deceased was travelling by train to the Old Delhi Railway Station from Meerut and he died on account of fall from the

Ambala Passenger Train bearing No. 306 near the flyover of Vivek Vihar station at Delhi. The death took place as per the appellants/claimants on account of falling from the train around Vivek Vihar railway station under the fly over and the deceased got cut from another train which came from the opposite side and which is pleaded to be an untoward incident as per Section 123(c) and Section 124A of the Railways Act, 1989 for the appellants/applicants to be entitled to the compensation.

4(i) Learned counsel for appellants/claimants impugns the findings of the Railway Claims Tribunal by placing reliance upon the Division Bench judgment of the Kerala High Court in the case of *Union of India vs. Leelamma and Ors.*, 2010 ACJ 566 to argue that onus of proof that the deceased was not a *bona fide* passenger of the train inasmuch as the deceased had no ticket is on the railways and not on the appellants/claimants. Reliance is also placed for the same purpose upon the judgment of the learned Single Judge of this Court reported as *Union of India vs. Krishan Lal, 1 (2010) ACC 279*.

(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to

untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a learned Single Judge of this Court in the case reported as ***Pyar Singh Vs. Union of India 2007 (8) AD Delhi 262*** which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of ***Leelamma (supra)***.

5. In the case before the Kerala High Court the deceased died at Trichy Railway Station on a journey from Chennai to Trichy and, therefore, onus upon the claimants was held to be discharged in that case.

6. In the case of *Union of India vs. Krishan Lal & Ors.* (supra) it is noted that the train tickets were specifically proved as Exh. AW-1/3 to Exh. AW-1/8. In such circumstances, the onus of proof with respect to the deceased person being *bona fide* passenger was discharged. There is no specific ratio laid down in the case of *Krishan Lal (supra)* that claimants do not have initial onus to prove their case and onus is on Railways to disprove that a deceased is not a bonafide passenger. Therefore, the ratio of the case of *Union of India vs. Krishan Lal & Ors.* (supra) does not apply to the present case.

7. In the present case, the deceased was a resident of Kalyan Puri in Delhi and which is just about few kilometers from the Vivek Vihar Railway Station. In my opinion, just because there is a report of a death on account of person being found badly cut up on account of train cannot mean that Courts have to necessarily hold that the deceased was in fact travelling in the train. Trial court has exhaustively dealt with this aspect and referred to the documents of the railway authorities to hold that the deceased cannot

be said to have been a *bona fide* passenger of the train and therefore appellants/ claimants are not entitled to compensation.

8. I may note that there exists certain grave/peculiar facts in the present case, and which possibly show the fraudulent nature of the claim. The first is that the witness Sh. Rajeev who appeared on behalf of the appellants as AW-2, his existence was not known till the affidavit by way of evidence was filed. The name of this witness is not mentioned in the report of the accident. There is no mention of the name of this witness even in the claim petition. This witness is thus not a genuine witness and has been rightly so held by the Railway Claims Tribunal. Another aspect to be also noted is that this witness AW-2 Sh. Rajeev has not filed and proved any ticket to show that he was travelling with the deceased on the date of the alleged death of the deceased.

9. There is another aspect which shows that the case set up by the appellants is not correct inasmuch as even as per the appellants/claimants the deceased got cut up by another train with which he came into contact, however, railway authorities have not been given a report by the train driver of the so called other train about occurrence of any such accident and which

reporting ordinarily takes place by a driver of a train if a man is crushed under the train which that driver was commandeering.

10. This Court is of the opinion that really the deceased, who was not living not too far away from the place of the incident, was in fact trying to cross the railway track on that fateful day and he unfortunately was run over by a train.

11. In view of the above, I do not find that the Railway Claims Tribunal, in any manner committed an error in denying the claim of the appellants/claimants. Deceased has rightly been held not to be a bona fide passenger who was travelling by the train.

12. The appeal is therefore dismissed. Though the present is a fit case for imposition of costs, however, I am not imposing any costs because the husband /father of the appellants/claimants had died in the accident.

13. Let the copy of this judgment be sent to the Chairman Railway Claims Tribunal for being circulated so that the legal position of the onus of proof is known.

JANUARY 08, 2014
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VALMIKI J. MEHTA, J