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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO 313/2014**

Decided on 27<sup>th</sup> October, 2014

SANGEETA AND ANR. .... Appellants  
Through: Mr. Yogesh Swaroop, Adv.

Versus

UNION OF INDIA ..... Respondent  
Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE A.K. PATHAK**

**A.K.PATHAK, J.(ORAL)**

1. Appellant filed an application under Section 16 of the Railway Claims Tribunal Act, 1987 before the Principal Bench of Railway Claims Tribunal, Delhi (for short, hereinafter referred to as the 'Tribunal') seeking compensation of ₹8 lacs on account of death of Shri Krishan Kumar Chourasia (deceased) in an 'untoward incident' relating to a train on 16<sup>th</sup> July, 2012. Claim application has been dismissed by the Tribunal by the order impugned in this appeal.

2. Appellant alleged that Shri Manoj Kumar (nephew of deceased) along with the deceased went to Ballabharh Railway Station from where he purchased a ticket for the deceased for going to Nizamuddin Railway

Station, Delhi from Faridabad Railway Station. He handed over the ticket to deceased and dropped him at Faridabad Railway Station. Thereafter, deceased boarded a train from Faridabad Railway Station for going to Nizamuddin Railway Station. Due to heavy rush in the compartment deceased was standing near the gate. On account of sudden jerk deceased fell down from the moving train at platform no. 2 of Faridabad Railway Station and died. From the jamatalashi of deceased two reservation tickets, ₹4,500/- in cash and one Pan Card were recovered. Deceased was carrying a bag with him which was lost after the incident. Ticket was kept in the said bag and was lost.

3. Respondent denied its liability to pay compensation to appellant. It was alleged that deceased was not a 'bona fide passenger' of any train. Deceased did not die on account of accidental fall from the train amounting to 'untoward incident'. In fact, deceased died on account of his own acts and omissions. It was alleged that respondent was not liable to pay any compensation to the appellants.

4. Following issues were framed by the Tribunal :-

- 1) Whether the deceased Shri Krishan Kumar Chourasia was a bona fide passenger with a valid ticket for his travel from Faridabad to Nizamuddin railway station on 16.7.12?

- 2) Whether the deceased met with an untoward incident, as alleged in the claim application?
- 3) Whether the applicants are the legal heirs of the deceased?
- 4) Whether the applicants are entitled for the compensation? If so, to what extent?
- 5) Relief if any?

5. Appellant stepped in the witness box as AW-1. She also examined Shri Neeraj and Shri Manoj Kumar as AW-2 and AW-3 respectively. She proved certain documents as Ex. A-1 to Ex. A-19. As against this, respondent examined Shri A.K. Goyal as RW-1. Certain documents were proved as Ex. R-1 to Ex. R-4. Tribunal scrutinized the entire oral as well as documentary evidence which had on record and has held that deceased did not die on account of accidental fall from the train, inasmuch as he was not a 'bona fide passenger' in any train. Deceased was going from platform no. 2 to platform no. 1 by crossing the railway track and was run over by a high speed train which was passing through platform no. 2. Statement of AW3- Shri Manoj Kumar has been disbelieved. Tribunal has held thus :-

8. In this case, the body was lying in the middle of the down line track on which the train in question passed. Therefore, it is difficult to believe that the death of the deceased was due to accidental fall from train as alleged. Moreover, the deceased is alleged to be boarding the train at platform No.2 where the incident occurred. If really the deceased had an accidental fall

from the train, he would have fallen on the platform or in between the platform and the train if any gap was there. In the application and also in the evidence affidavit, the applicants have stated that the deceased had fallen on the platform. When the train had started from the platform after the scheduled halt, it must have been moving at a slow speed. It is improbable that any person falling from the train moving at a slow speed and on the platform would be sustaining such major injuries of the nature and extent noted in the relevant medical records and the death report. It is reasonable to infer that such injuries are possible when a person is hit by the train and run over. The fact that the body of the deceased was found in between the lines of the track belies the contention of the applicants that the deceased had an accidental fall from the passenger train on platform No.2. The position, in which the dead body was found and its mutilation can only occur in the case of a person having been run over by a train while crossing the railway lines. In fact the incident recorded in the DCR register of RPF on the day of the incident, copy enclosed with the DRM report, Ex.R-4, clearly states that the deceased was going from platform No.2 to platform No.1 with luggage and was run over by a train passing through platform No.2 at high speed. It also records that Manoj, who deposed as AW-3 had told that he had left his uncle, the deceased on PF No.2 for going by Dehradun Express. But when the train was announced to arrive on PF No.1, he was going from PF No.2 to PF No.1 by crossing the railway tracks and got run over by a train going through at high speed from PF No.2. This is corroborated by the entries in the TSR, Ex. R-3 which shows that 19019 Dehradun Express was dealt with on III line, platform No.3 having arrived at 05.11 hours and departed at 05.13 hours. It also shows that on the main line, platform No.2 following trains were handled; Malwan Express arrived at 4.36 hours and left at 4.38 hours, 12447 Sampark Kranti Express passed through at 5.04 hours and 12415 Intercity arrived at 5.16 hours and left at 5.18 hours. In his cross examination Shri Manoj Kumar has stated that he had reached the railway station at about 4.45 hours, i.e. after Malwan Express had left the station. There after 12447

Sampark Kranti passed through at 5.04 hours on the main line, platform no.2. The Station Master issued the memo at 5.15 hours and the incident must have occurred sometime before that. Since 12415 Intercity arrived at 5.16 hours on platform no.2, i.e. after the issue of memo by the ASM, the deceased could not have fallen from this train. The fact that 19019 Dehradun Express was dealt with on platform no.3 having arrived at 05.11 hours corroborates the entry in the DCR register that the deceased was going from platform no.2 to platform no.1 with luggage crossing the railway track and was run over by a train passing through platform no.2 at high speed. The DRM report, Ex.R-4 and the report of Inspector, RPF annexed to it have also reached the same conclusion after investigation in the incident.

9. The learned counsel for the applicant then relied upon a recent judgment of the Honorable High Court of Orissa reported in 2013(4) T.A.C. 485 (Ori), Sri Satya alias Atulya Tripathi Vs. Union of India, wherein also, it was held that when the deceased fell down on tracks between the gap of train and platform, it amounted to an accidental fall. In the above case, the claim was rejected by the Tribunal on the ground that the deceased was not a bona fide passenger and holding that he was only a vendor of water bottles. In the appeal, the claim was allowed holding that the Tribunal failed to take note of the oral evidence of the father of the deceased, who was applicant No.1 regarding purchase of electronic journey ticket for the travel of himself and his deceased son and reiterated the well established legal position that appreciation of evidence in the claim for compensation under the Railways Act should be on the basis of preponderance of probabilities and proof beyond reasonable doubt like any criminal case should not be insisted upon. There cannot be any dispute regarding the position of law laid down in the above decision. However, the decision cited is not applicable to the facts of the present case for the simple reason that there is no iota of evidence on the applicants' side to show that the deceased had an accidental fall from the passenger train, as claimed. On the other hand, the material on record including some of the documents filed by the applicants

themselves clearly show that it was a case of run-over while trying to cross the railway lines unauthorisedly.

10. There is nothing on record to show that the deceased purchased a valid journey ticket for his alleged travel from Faridabad to Nizamuddin. According to AW-3, he purchased a journey ticket for travel from Faridabd to Nizamuddin and gave it to the deceased. Ex.A-5 is the Jamatalashi Report, which has been filed on record by the applicants showing recovery of the belongings/items received from the person of the deceased during search. The said report shows recovery of two railway tickets, a pan card and cash of Rs.4,500/-. The said two tickets do not pertain to the journey in question i.e. from Faridabad to Nizamuddin railway station. The said journey ticket is not produced and is stated to have been lost. When so many items were found intact, it is difficult to appreciate that the relevant journey ticket alone was to be missing. Non-recovery of the journey ticket from the person of the deceased raises doubt about the statement of AW-3, particularly in the light of the fact that other journey tickets for onward travel, pan card and cash amount etc., were recovered from the person of the deceased except the relevant journey ticket.

11. No doubt, it is well settled in a catena of decisions of various Honorable High Courts that the burden lies on the respondents to prove that the deceased was not a bona fide passenger. The respondents may not be able to produce any direct evidence to prove the said negative factor but they can certainly rely upon the evidence available on record, direct and circumstantial to disprove the claim of the applicants that the deceased was a bona fide passenger. Each case depends on its facts and circumstances and the evidence placed on record, based on which, it has to be ascertained whether in a particular given case, the deceased could have been a bona fide passenger or not. When once it is shown that it was a case of run-over, the version of the applicants that the deceased was a bona fide passenger of a passenger train gets ruled out. In fact, there is no basis from the record, on which, the applicants can claim that the deceased was travelling by any passenger train since the applicants have no personal knowledge and no one has

witnessed the occurrence, as alleged by the applicants and the record of investigation by the police does not also indicate that the deceased was travelling by any train. The claim of the applicants that the deceased was travelling by some train and he had an accidental fall from the train, therefore, remains a mere surmise. It is true that while appreciating the evidence in the matter like the present one, which is a claim for compensation filed under the beneficial provisions of the legislation, a liberal approach is to be adopted without allowing any technicalities to come in the way. If there is some evidence on the part of the applicants, which is indicative or suggestive of the theory of accidental fall from the train, by adopting a liberal approach, the claim can be upheld notwithstanding other weaknesses or deficiencies. When the evidence on record does not support the version of the applicants at all, and on the other hand, shows that it was clearly a case of run-over by train; it is difficult to uphold the claim of the applicants.

12. For the foregoing reasons, it is concluded that the applicants have failed to prove that either the deceased was a bona fide passenger of the train in question at the relevant time of the incident or that his death has taken place on account of an untoward incident, as defined under the Act. These issues are decided accordingly.

6. I have heard the learned counsel for the appellant and perused the Tribunal's record and do not find any illegality or perversity in the view taken by the Tribunal which is based on the evidence adduced on record by the parties. Admittedly, no journey ticket was recovered in the jamatalashi of deceased. It is not the case that nothing was recovered from the deceased. Two railway reservation tickets, one Pan Card and cash of ₹4,500/- were recovered. Thus, it is highly improbable that only journey ticket from

Faridabad to Nizamuddin was lost. Story propounded by the appellant and AW-3 is not convincing. Deceased was to board train from Faridabad Railway Station where tickets were available. Accordingly, it is quite unnatural that AW-3 would have first gone to Ballabgarh Railway Station to purchase the ticket; more particularly when he has claimed that he had accompanied the deceased upto Faridabad Railway Station. AW-3 appears to have been introduced later on as an afterthought. Tribunal has rightly held that in the facts and circumstances of this case non recovery of journey ticket raised serious doubt about the statement of AW3 more particularly, in the light of the fact that other journey tickets for onward travel, Pan Card and cash were recovered. That apart, DRM report (Ex. R-4) cannot be ignored which clearly shows that deceased was going from platform no. 2 to platform no. 1 and was run over by a train passing through platform no. 2. Report of Inspector of Railway Protection Force is also to the same effect.

7. In a case of run over by a train while crossing the railway track an injured person or dependents of deceased, as the case may be, will not be entitled to any compensation. In all cases of 'accidents' or 'untoward incidents' the injured or dependents of deceased are not entitled to compensation. Section 124 of the Railways Act, 1989 (hereinafter referred

to as ‘the Act’) provides that when in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident. Admittedly, this is not a case of train collision or derailment or other accident to a train.

8. Section 124-A of the Act provides compensation in respect of ‘untoward incidents’. Proviso to Section 124-A further envisages that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to (a) suicide or

attempted suicide by him; (b) self-inflicted injury; (c) his own criminal act; (d) any act committed by him in a state of intoxication or insanity; (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said ‘untoward incident’. Section 123 (c) of the Act defines ‘untoward incident’. Section 123 (c) (2) provides that accidental falling of any passenger from a train carrying passengers amounts to ‘untoward incident’. In this case, compensation was claimed in respect of ‘accidental fall’ of deceased from a train carrying passenger amounting to ‘untoward incident’. However, appellant has failed to prove that deceased died on account of ‘accidental fall’ from a train carrying passenger. On the contrary, it is established that deceased was run over by a train while crossing the track, thus, in my view is not entitled to any compensation under Section 124 A of the Act.

9. In view of above discussions, appeal is dismissed being devoid of merits.

**A.K. PATHAK, J.**

**OCTOBER 27, 2014**

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