

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

+ **FAO No.474/2012**

% **2nd April, 2014**

SH. SURAI BESRA Appellant
Through: Mr. Yogesh Swaroop, Advocate.

Versus

UNION OF INDIA Respondent
Through: Mr. Abhishek Yadav, 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 18.5.2012 which has dismissed the claim petition filed by the appellant/petitioner claiming statutory compensation of Rs.4 lacs for the death of his son Sh. Hari Besra in an untoward incident (within the meaning of the expression in Section 123(c) and Section 124-A of the Railways Act, 1989) on 16.8.2010. The untoward incident took place while the deceased Sh. Hari Besra was travelling in North East express train ex-Delhi to Katihar.

2. The Tribunal has given the following reasoning and conclusions to dismiss the claim petition:-

“1. As per the evidence produced by the Respondent, Ex.RW1/2, the Train No.2506, North East Superfast Express passed through Tilak Bridge railway station at 06.48 hours, and as per Ex.RW1/1, this Train passed Sahibabad Railway Station at 07.05 hrs, which means that the train would have passed the spot, where the body of the deceased was first found i.e at Mandavli around 07.00 hrs, while the first information about the body was received by the police at 09/10 hrs (Ex.AW1/6) i.e after a gap of more than two hours. The Respondent pointed that this is incongruent in view of the fact that the eyewitness to the incident Shri Revti Prasad’s statement has been produced by the applicant side as Ex.AW1/8, according to which, he was present at the spot when the deceased fell down from the moving train in question. If a person has seen the incident happening, it is improbable that it will take more than two hours for the police to be informed. This is, therefore, a clear contradiction in the facts and evidence as produced by the applicant side.

2. Both the legs of the deceased got amputated and the head also got crushed, ribs and pelvic of both sides fractured and multiple side as per the post mortem report (AW1/10). Respondent pointed out a person falling down from a running train would not, in all probability, come under the wheels of the same train. There is a case Sanjay Chauhan Vs. Union of India, FAO No.132/2011 decided on 18.8.2011 supported by a recent judgment of Hon’ble High Court of Delhi, wherein, Hon’ble Mr. Justice Valmiki J. Mehta observed as under (relevant portion extracted):-

“4.....(i)..... Because normally, falling from the train has to be few feet away from the train. It is, therefore, improbable that the legs of the appellant were crushed by “falling from train.”

(ii) If a person fall from a train, surely he will not fall legs first. If a person falls from a train because of a jerk, he would be unbalanced and normally would fall either on his head or his side i.e. ordinarily not on his legs.....

(iii) Such self-serving statement, much after the date of the incident, cannot be believed, more so when there is no proof on record of any other serious injury to other parts of the person of the appellant.”

3. Respondent further pointed out that deceased had allegedly purchased the ticket (Ex.AW1/40 from Old Delhi Railway Station for journey ex-Delhi to Katihar, while he boarded N.E. Express train from New Delhi Railway Station.

4. Respondent also stated that there is no mention of any incident like this in the relevant station records of the day in question near the place, where the deceased's body was found. Moreover, in the police documents also, it is nowhere mentioned that the person has fallen down from the train in question (DD No.9-A dated 16.8.10)

After going through all the documents on record and considering the evidence and arguments given, the Tribunal is constrained to state that the applicant side has completely failed to prove the case since the contradictions and deficiencies pointed out by the Respondent as above are convincing and based on official records.

In view of this and taking all the factors and circumstances into consideration, the Tribunal decides Issue Nos2 and 3 against the applicant and Issue No.4 in favour of the respondent.

ORDER

The claim petition is dismissed on merits. No order as to costs.”

3. A reading of the aforesaid paras show that the Tribunal has done gross injustice to the appellant as per the facts which have come on record. Tribunal only notes in a perfunctory manner that the deceased has purchased the ticket however Tribunal has thereafter failed to give its conclusion that the deceased was accordingly a bonafide passenger more so because the ticket was discovered during the jamatalashi/search of the

person of the deceased whose body was found in a very unfortunate condition of the head being crushed, with ribs and pelvic of both sides fractured etc. The aspect of recovery of ticket in jamatalashi/search is specifically mentioned in the documents Ex.AW1/5 and Ex.AW1/9 filed before the Tribunal. AW1/5 is the DD No.9A of the date of the accident i.e 16.8.2010 whereas the AW1/9 is the DD of the same date with respect to short synopsis of the untoward incident. In the face of documents Ex.AW1/5 and Ex.AW1/9 there cannot be any doubt that the deceased was a bonafide passenger.

4(i) Once the deceased is found to have a valid ticket of travel and was a bonafide passenger ordinarily and generally it should be held that the deceased died as a result of an untoward incident on account of a fall from the train, unless, there is evidence led on behalf of the Railways that the place of accident was either near the residence or near the place of work or deceased for some reason was required to be at the spot where his body was found.

(ii) In the present case, it is not the case of the respondent and nor is there any evidence that the body of the deceased was found near his residence or place of work or for some reasons deceased was ordinarily to be at the place where his body was found. Accordingly, once there was a valid

ticket of travel of the same date of the incident from ex-Delhi to Katihar by North East Express train; the body being recovered from the tracks the accident can take place only on account of fall from the train and which is an untoward incident as per Section 123(c) and Section 124-A of the Railways Act, 1989.

5. I note that not only the language of Section 124A, but also the ratio of Supreme Court judgments reported as *Union of India Vs. Prabhakaran Vijaya Kumar and Ors. (2008) 9 SCC 527* and *Jameela & Ors. Vs. Union of India (2010) 12 SCC 443* lays down that the liability of the Railways is a strict liability and liability to pay compensation remain even if it is found that the death takes place on account of negligence of the deceased. Compensation is not payable only if negligence is a criminal negligence or it is clear cut case of self-inflicted injuries/suicide. In the present case applying the law of strict liability taken with the facts of the case where the deceased had a valid ticket of travel of the same date of incident and the body of the deceased had no reason to be found at a place where the body was found, the appellant has, in my opinion, sufficiently discharged the onus of showing that the deceased Sh. Hari Besra died on account of a fall from the train and died as a result of an untoward incident.

6. I note that the Railway Claims Tribunal has in this case, like in
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other cases, gone on the aspect with respect to certain differences in train timings, however as I observed in many judgments, it is not humanly possible to exactly re-create the entire sequence of events in the incident which causes the death of a *bona fide* passenger. I have also in certain other judgments observed that exact re-creation is only possible if there was a divine camera, and indubitably we do not have the divine camera which can be replayed to find out the exact sequence of events.

6. The conclusion of the Tribunal that the nature of injuries show that it is a case of coming under the wheels of the train is once again a misconceived conclusion because the types of injuries are only one aspect which has to be considered alongwith other facts of the case to decide whether the accident is of a fall from the train or injuries were on account of a person being run over by the train. It is not unknown that a body may be badly cut up and crushed after falling from the train either on account of the bonafide passenger getting entangled in the steps of the train and thereafter in the wheels or the other equipments of the train in which he was travelling or that the deceased on account of the fall from the train gets hit by the various equipments of the Railways which are adjoining to the tracks such as poles, signals, wires, junction boxes etc etc. Therefore, in the facts of the present case, in my opinion, the Tribunal was wholly unjustified in giving a

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finding of the death of the deceased on account of being run over simply because of the condition of the body of the deceased Sh. Hari Besra.

7. In view of the above, appeal is allowed. Impugned judgment of the Tribunal dated 18.5.2012 is set aside. Appellant will be entitled to the statutory compensation of Rs.4 lacs alongwith interest @ 7 ½ % per annum simple from the date of filing of the petition before the Tribunal till the date of payment. I may note that the appellant has not given the particulars of the other dependants of the deceased and since compensation has to be paid in equal proportions to all the dependants of the deceased, therefore, the appellant will within a period of four weeks from today alongwith necessary proof file the details before the Railway Claims Tribunal with respect to the persons who were dependants on the deceased at the time of death of Sh. Hari Besra on 16.8.2010, and compensation will be equally divided for being payable to each of the dependants. A copy of this affidavit, in support of the evidence of the dependants, be given to the respondent through its counsel appearing in this Court today.

APRIL 02, 2014
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VALMIKI J. MEHTA, J.