

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

+ **FAO 535/2011**

% **23rd May, 2014**

PRAHLAD SINGH & ANR Appellants
Through: **Mr. N.K.Gupta, Advocate.**

VERSUS

UNION OF INDIA Respondent
Through: **Mr. Nitish Gupta, 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 10.10.2011 which has dismissed the claim petition filed by the appellants, who are the parents of the deceased Prabhat @ Parul.

2. The facts of the case as pleaded by the appellants are that their son Prabhat was travelling from Agra Cantt to Hazrat Nizamuddin by train no. 8237 Bilaspur-Chhattisgarh Express. It was further the case of the appellants that during the course of the journey in between Raja Ki Mandi and Bad, near Farrah railway station, the deceased Prabhat fell down from

the moving train due to sudden jerk and jolt of the train. The case of the incident is between Agra from where the journey commenced and Mathura, which is the next major station. The deceased Prabhat as a result of the injuries caused on account of the incident of fall from the train died on the spot. It was the case of the appellants that a ticket for travel was purchased by the appellant no.1/father for his son Prabhat at the Agra Cantt station and this ticket was put in a bag along with other papers of Prabhat, who was a student aged 16 years. The bag is stated to have been lost in the incident.

3. The respondent contested the claim petition and contended that there was no incident of a fall from the train and also that the deceased Prabhat was not a bonafide passenger because no train ticket has been recovered from the person of the deceased Prabhat.

4. The Tribunal has dismissed the claim petition by holding that since the ticket has not been recovered, the deceased was not a bonafide passenger. The Tribunal has observed in this regard in para 6.3 of the impugned judgment that the ticket was kept by the deceased Prabhat in his bag along with other papers and, therefore, there was no reason why the ticket could not have been recovered from the person of the deceased. The

Tribunal has also held that there is no proof of the fact that the incident was an incident of fall from the train.

5. Before me on behalf of the respondent, reliance is placed upon the DRM report (Ex.R-1), which concludes that as per the enquiry, the deceased would have either been run over by a train while crossing the tracks or the deceased would have committed suicide.

6. In my opinion, the impugned judgment of the Tribunal is clearly erroneous and is bound to be set aside. The reasons are given hereinafter.

7. At the outset, it needs to be noticed that liability of the Railways is a strict liability as per the provisions of Section 123(c) and Section 124(A) of the Railways Act, 1989. In Section 124(A) of the Railways Act, it is specifically provided that compensation has to be granted on account of an untoward incident even if there is negligence of the bonafide passenger. This aspect has been pronounced upon by the Supreme Court in its 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 44*, and which held that even if a bonafide passenger is guilty of negligence, yet, compensation has to be granted in this regard. The only

way in which Railways can avoid liability is to prove that the negligence is not an ordinary negligence but the case is a case of criminal negligence or a case of suicide or self-inflicted injuries.

8 (i) Let us examine the facts of the case in view of the legal position as stated above. Firstly, the issue is as to whether the deceased was a bonafide passenger travelling on a train, that is, whether the deceased had purchased a ticket and had fallen down from the train during the course of the travelling in the train. In this regard, it has to be noted that the site of the incident is neither near the residence of the deceased nor a place where the deceased had a reason to be found. The body of the deceased was found near Farrah railway station and which is not only far away from Delhi but it is also far away from Agra Cantt., where the deceased along with his father/appellant no.1 had gone to visit the mother of the appellant no.1. Once therefore the body is found lying on the tracks far away from the residence of the deceased or at a place which has no connection where the deceased should be, the incident will have to be taken as an incident of fall from the train.

(ii) In the present case, it is undisputed on record that the body of the deceased was found lying on the tracks by a linesman/pointsman, namely, Charan Singh. This is so specifically mentioned in the

Panchayatnama (Ex.AW1/4) filed by the appellants. There may be some confusion as to the name of the linesman/pointsman, Charan Singh, however, respondent does not dispute that the body of the deceased Prabhat was found lying on the tracks by the railway employees, who as per the DRM's report is stated to be one Dinesh as also Prem Chand.

(iii) The conclusion of the above is that the body of the deceased Prabhat was found on the railway tracks and there is no reason why the deceased Prabhat would be found at the railway tracks at Farrah railway station between Agra to Mathura, unless the incident was of a fall from the train. Therefore, I hold that the incident in question is an incident of fall from the train.

9 (i) That takes us to the issue of whether the deceased was travelling with a valid train ticket. The Tribunal has disbelieved the case of the appellants on the ground that only a mobile phone was recovered from the person of the deceased and no ticket was recovered i.e effectively holding that if a mobile phone was recovered then there was no reason why the train ticket should not have been recovered. The Tribunal has held that as per the case of the appellants the deceased had put the ticket in his pocket and therefore ticket ought to have been recovered with the mobile phone.

(ii) The Tribunal has in this regard erred in holding so in para 6.3 of the impugned judgment because it is not the case of the appellants as per the para 5 of the affidavit filed by the appellant no.1 that the ticket was put in the pocket, and on the contrary when we read para 5 of the affidavit by way of evidence filed by the appellant no.1/AW-1 in this regard , it is found that it is stated that the ticket was put in a bag. There is, therefore, a complete mis-reading by the Tribunal of para 5 of the affidavit by way of evidence filed by the appellant no.1 before it.

(iii) No doubt, the bag has not been found at the site, but, it is very much possible that the small bag which the deceased Prabhat was carrying with him could have been left behind in the train. In this regard, I have observed in many cases that there is no divine CCTV camera which could be replayed before the Courts for knowing the exact sequence of events or exact facts to completely put all the pieces of the puzzle in their places. Surely, it is inconceivable that each and every fact can be properly tied together in cases such as the present case once there is no eye witness of the fall from the train of the deceased. The fact that the deceased was travelling with a valid train ticket, in my opinion should be presumed in favour of the appellants because in the facts of this case it is doubtful that being a student of 16 years he would undertake the risk of a reasonably long journey from

Agra to Delhi without a train ticket, and suffer from consequences of ticketless travel. Also, AW-1 has deposed that he had come to the Agra railway station and a ticket was purchased by the deceased from the amount which was given by the appellant no.1/father of the deceased. Nothing to the contrary has been elicited in the cross-examination of the father/appellant no.1 by the respondent, and therefore, I hold that the deceased was travelling as a bonafide passenger with a valid train ticket and that ticket was lost in the incident because the bag which contained the ticket was not recovered.

10(i) The learned counsel for the respondent vehemently argued on the basis of the DRM's report/R-1 that the case was a case of run over or of a suicide and that the DRM's report must be believed. I refuse to accept this argument that by junctures and surmises arrived at by the DRM it can be held that the case is a case of run over by the train or committing suicide by a boy. If self-serving conclusions in DRM's report are accepted, then, the Courts will have to dismiss the compensation claim cases on account of surmises and junctures which are arrived at in the DRM's report. It is obvious that this cannot be done because Courts have to weigh the entire evidence which is available, and thereafter on the preponderance of the probability arrive at a conclusion in a case.

(ii) In fact, I fail to understand that as to how a respondent/DRM can give a report that the deceased Prabhat would have committed suicide inasmuch as from where such a conclusion is arrived at is not at all stated in the DRM's report, and which reason can otherwise also never be stated because no such reason as per facts exists. Also, the present case is not a case of a run over because I have already discussed above in detail, there is no reason for the deceased Prabhat to have been found lying on the tracks at the place where the body of the deceased Prabhat was found.

11. In view of the above the appeal is allowed and the impugned judgment dated 10.10.2011 is set aside. The statutory compensation of Rs.4 lacs is granted and which will be equally divided between the appellants. Appellants are also granted simple pendente lite and future interest @ 7½% per annum from the date of filing of the claim petition till the date of payment. Parties are left to bear to their own costs.

MAY 23, 2014
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VALMIKI J. MEHTA, J.