

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

+ **FAO 172/2011**

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22nd May, 2014

JUHI PARVEEN & ANR. Appellants
Through **Mr.Aruna Mehta, Advocate**

versus

UNION OF INDIA Respondent
Through **Mr.Amit Dubey, Advocate.**

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 Tribunal dated 15.9.2010 by which the Tribunal dismissed the claim petition filed by the appellants/applicants, who are the widow and the minor child of the deceased Mohd. Akhtar.

2. The facts as pleaded by the appellants/applicants were that on 16.5.2009, the deceased Mohd. Akhtar was travelling by train no.4650,

when the train was passing through Khudi Ram Bose Pura railway station, on account of jostling of passengers and sudden jerk in the train, Mohd Akhtar fell down from the train and thereby sustaining grievous injuries. Mohd. Akhtar died on the way to the hospital.

3. The respondent contested the claim petition and stated that Mohd. Akhtar was not a bona fide passenger of the train in question, and, therefore, happening of an untoward incident is denied.

4. The Tribunal has dismissed the claim petition by making the following observations:-

“ Regarding Issue Nos 2, 3 and 4:-

These three issues are taken up for consideration simultaneously for the sake of convenience, and also as they are inter-related, According to the applicants, the ticket of the deceased was lost in the aftermath of the accident. The respondent Railway Administration has questioned the fact that Shri. Mohd. Akhtar was a bonafide passenger at the relevant time of the incident on the grounds that in the main plaint, it has been indicated that he was travelling by 4650 DN Saryu Yamuna Express on the fateful day, however, the application have placed on record certain document, ex. AW1/4, which indicates that Shri Mohd. Akhtar's body was found in train No. 5212 Express in Coach No. 078715, ex. AW1/4. The respondent Railway Administration has also raised doubts regarding the nature of the incident, as the document, ex. AW1/4 indicated that the body of Shri Mohd. Akhtar was found inside one of the coaches of 5212 Express. It is,

therefore, apparent that he had not died due to a fall from a train, as in that event, the body of the deceased would have been found by the side of railway tracks and not inside a coach. The respondent has also pointed out another serious discrepancy in the case. The Postmortem Report on record, ex. AW1/8 does not give the identity of the dead person. Moreover, the post-mortem was conducted on 16.5.09, and the time of death indicated in the Postmortem Report has been shown as '*within 36 hours*', which would mean that the post-mortem was done about one and a half days after the alleged incident. In the plaint, the date of the accident has been shown as 16.5.09. It is, therefore, clear that the Postmortem Report that has been placed on record was not that of Shri Mohd. Akhtar or alternatively, the accident did not occur on the date mentioned in the plaint. Considering the several discrepancies in the case, it is apparent that Shri Mohd. Akhtar was not a victim of an untoward incident. These issues are decided accordingly in favour of the respondent and against the applicants.

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

5. Reference to the aforesaid paras shows that the Tribunal has dismissed the claim petition on the ground that the body of Mohd. Akhtar was found in a different coach of train no.5212 Express and not of the train as stated by the appellants/applicants in which the deceased was travelling. Tribunal also concludes that once the body is found in a coach, the same would not be a case of falling from the train. There is also some conclusion

in favour of the respondent drawn by the Tribunal because of the post-mortem report Ex.AW1/8.

6. The law with respect to the liability of the Railways for an untoward incident under Section 123(c) and Section 124(A) of the Railways Act, 1989 is well settled and has been pronounced by the Supreme Court in the judgments *Union of India Vs. Prabhakaran Vijaya Kumar and Ors. (2008) 9 SCC 527* and *Jameela & Ors. Vs. Union of India (2010) 12 SCC 443* holding that even if a bonafide passenger is guilty of negligence, Railways are liable for payment of statutory compensation. The only way in which Railways can avoid liability is to prove that the negligence is not an ordinary negligence but a criminal negligence or a case of suicide or self-inflicted injuries.

7. In the present case, in my opinion, the Tribunal has committed a gross-illegality in ignoring the report of the DRM dated 08.2.2010, which was filed by the respondent itself before the Commissioner. Though the Commissioner concludes that compensation cannot be paid because railway ticket was not found from the search of the person of the deceased and that, the train number which is given by the appellants/applicants is not correct, however, there is a clear-cut mention in this report that an employee of the railways itself, namely, one Himender who was posted at the railway

crossing no. 64 informed the station master at Khudi Ram Bose Pura railway station that a passenger had fallen down from the train near the railway crossing gate.

8. It could not be and is not disputed by the respondent that the body which is stated to have fallen down from the train by Sh. Himender, the railway employee, could be of any one else than that of the deceased Mohd. Akhtar. One another train no.5212 Express thereafter came and stopped at the site where the injured passenger namely, Mohd. Akhtar was lying and he was brought to Samastipur by the train 5212. Mohd. Akhtar was declared as brought dead in the hospital.

9. Therefore, in my opinion, the Tribunal ought not to have confused the issue of difference in train numbers to conclude that since the applicants have stated a different train number in which deceased Mohd. Akhtar was travelling and consequently, there is no untoward incident. I fail to understand how the Tribunal can ignore the fact that no other than a railway employee of the respondent saw a person falling from the train and who was none other than the deceased Mohd. Akhtar and also that another train no.5212 Express was stopped at the site to take the injured passenger to Samastipur railway station. In my opinion, nothing further remains to be proved of the travelling of the deceased Mohd. Akhtar by the train in

question in view of the specific admission of abovestated facts in the DRM report of the respondent.

10. So far as the issue of the deceased Mohd. Akhtar being a bonafide passenger is concerned, it cannot be held that the deceased was not a bonafide passenger inasmuch as the train ticket can always get lost in such an incident. It has been held by this Court or various other Courts in thousand of these cases that a ticket can get lost and it cannot be held that a deceased is not a bonafide passenger merely because a train ticket is not recovered and which has to be examined as per facts of each individual case. I, therefore, hold that the deceased Mohd. Akhtar was, in fact, a bonafide passenger.

11. In view of the above, the appeal is allowed. The claim petition of the appellants/applicants is allowed for the statutory compensation of Rs.4 lacs with pendent lite and future interest till payment @ 7½ per month. The compensation amount will be equally divided between both the appellants/applicants. Since the appellant no.2 is a minor, her share shall be put in a fixed deposit in a nationalized bank till her majority. The appellant no.1 can use the interest of the deposit for the upkeep and care of the minor. In case, a lump sum of the deposit or the lesser of the lump sum deposit is

required for any urgency of the minor, the appellants can approach the Railway Claims Tribunal, which can take an appropriate decision.

12. Let copy of this judgment be sent to the Chairman of the Railway Claims Tribunal so that it comes to the notice of the Chairman that various members of the Tribunal are not referring to the relevant facts while passing the judgments disposing of the claim petitions.

VALMIKI J. MEHTA, J

MAY 22, 2014
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