

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

+ **FAO No.476/2013**

% **9th January , 2014**

SHAHAJAD AND ORS. Appellants
Through: Mr. S.K. Vashisth, Advocate.

VERSUS

UNION OF INDIA Respondent
Through: Ms. Jyoti Tyagi, 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 Claim Tribunal Act, 1987 impugning the judgment of the Railway Claims Tribunal dated 4.9.2013 by which the claim petition filed by the appellants/applicants was dismissed.

2. Railway Claims Tribunal dismissed the claim on the ground that the deceased late Smt. Firdous was not a bonafide passenger and in fact she died on account of her own criminal negligence and self-inflicted injuries. The relevant findings of the Railway Claims Tribunal contained in paras 5 to 11 of the impugned judgment and the same read as under:-

“5. The applicants claim that on 14.07.2011, their 56 year old mother, who was a vendor of utensils, buying materials regularly at Sadar Bazar, Delhi and selling the same at Aligarh, while travelling by a EMU train from Sadar Bazar with two bundles of utensils to New Delhi/Tilak Bridge, accidentally fell down from the crowded compartment of the running train at the platform itself due to a sudden jerk and died during the course of treatment at RML Hospital, Delhi. According to the applicant, the old lady was to change train either at New Delhi or at Tilak Bridge to go to Aligarh.

6. The police reports, supported by the report of the Departmental Enquiry, conducted by Sr. DSC/RPF, Delhi West (Ext.R-01) confirm that Firdous died while attempting to board the running train after dumping her utensil bundles inside the train. The statement of the train driver and two independent witnesses namely Raj Kumar and Deepak Gupta, reveal that the bundles were heavy and therefore, the old lady lost her balance and went in between the platform and the running train and this resulted in grievous injury, leading to her death.

7. Needless to mention that the incident killed Firdous, can never be compared to the act of an innocent commuter falling from the train at the time of boarding/deboarding. Here is a vendor, who regularly transports bulky items for commercial purposes by passenger carrying trains to save her transport cost. These vendors know it well that carriage of such bulky commercial items inside the passenger coaches are prohibited under the railway rules and it also endangers the safety of train passengers. Yet, they do it hook or by crook, ignoring the interest of everyone else. Firdous was not compelled to run behind the train like an office goer/commuter, anxious to reach his/her home. She had the option of transporting the consignment safely by road from Sadar Bazar to New Delhi, but she did not exercise this option only to save money. So, she was not only attempting to board the train but was also simultaneously loading her bulk packages inside the crowded compartment of the train, causing inconvenience/unsafe conditions for herself as well for others. This is misadventure/deliberate mischief, because she was taking risk to make a fast buck, despite knowing it well that it is dangerous to do so.

8. So, it is contended that her fall from the train was not accidental. She invited it in her own commercial interest. Thus, it is not an untoward incident, as defined US 123 (C)(2) of the Railways Act, 1989. Accordingly, this issue is decided against the applicant.

9. The applicants claim that their mother 'had purchased a valid ticket' from Sadar Bazar to Aligarh and 'put the same in her bundle/bag'. The question here is who gave such details to the applicants. I give no credence to this information because as per the police/Railway report, nothing except two bundles of utensils were recovered from the person of the deceased. Moreover, the applicants are not even aware of where Firdous would have changed her train New Delhi or Tilak Bridge? In this situation, the relatives at Aligarh, had no means to know anything about her journey. Obviously, they are making a claim only to prove a particular point. Further, the applicant states in para 11 of their claim application that the articles carried by the deceased were list in the incident, but this is not true. As per the report of Inspector RPF, both the bundles of utensils were handed over to Sajid, her son by the GRP. This suggests that the applicants are misrepresenting facts to prove that everything including the ticket got lost in the melee that followed her death.

10. The deceased was not authorized to carry such heavy commercial items inside the coach. As per railway rules, he was to book and carry it in the luggage van/vendor's coach. However, she did not book and pay for these bulky items. Had she done it, the items would have never been inside the passenger carrying coach. Vendors often indulge in such practices for reasons explained above and Firdous was no exception. This suggests that she did not buy any ticket for herself too. Even if she bought one, that never permitted her to travel by the train with such large quantity of commercial items. So, she was not travelling with proper ticket at the time of her death. Accordingly, this issue too is decided against the applicants.

Issue Nos.03 & 04.

11. Having decided the main issues against the applicants, I admit that some people subscribe to the view that Sec. 124A, being a beneficial piece of legislation call for a more liberal interpretation and allow compensation to all those, who die or suffers as a result of

accidental death, in railway premises including unauthorized vendors. Such opinions are not based on proper understanding/appreciation of railway working. The Railway is not only the national carrier but it is also the life line of the people. So, it is the duty of each one of us to use the system with a sense of responsibility, but a section of the people including the unauthorized vendors, taking full advantage of inefficiency and corruption, associated with its working, abuse the system for their personal gain. Any attempt to compensate the death of such a person in the name of compassion, departmental inefficiency etc. would give tacit approval to their illegal activities and encourage more and more people to indulge in such antisocial misadventures. Therefore, I am of the firm belief that it would be travesty of justice, if the Railways are asked to pay compensation to the kins of those, who wreck the system for their narrow personal gains.”

(underlining added)

3. A reading of these paragraphs shows that the Railway Claims Tribunal was justified in arriving at a finding that deceased was not a bonafide passenger because whereas the goods/luggage/items were recovered from the spot there was no recovery of railway ticket either from the goods or the person of the deceased. I do not agree that there is no onus of proof at all on the applicants to show that the deceased was a bonafide passenger and that every person who dies in a train accident must be shown as a bonafide passenger. No doubt, as per the facts of a particular case onus may be lightly discharged however initial onus in every civil case including a claim petition filed before the Railway Claims Tribunal has to be on the applicants. There is no provision in the Railways Act or the Railway Claims

Tribunal Act or ratio of any judgment of the Supreme Court that initial onus in a claim petition is not on the applicants but on the Railways. The circumstances of this case show that if deceased was a bonafide passenger there was no reason that the ticket could not be recovered from the person of the deceased or from her goods which were found in the train.

4. Even assuming that the deceased was a bonafide passenger, in my opinion, the facts which are on record before the Railway Claims Tribunal show that the deceased met with accident causing her death as a result of her own criminal negligence or self-inflicted injuries and on which ground Railways are entitled to successfully defend the claim petition. No doubt, the liability of the Railways is strict liability i.e even if there is negligence of the deceased, yet, compensation can be claimed however it has now been clarified by the Supreme Court in the case of *Jameela and Ors. Vs. Union of India (2010) 12 SCC 443* that once there is a criminal negligence or self-inflicted injuries compensation cannot be awarded. Paras 6 to 12 of this judgment are relevant and the same read as under:-

“6. Before the High Court, reliance was placed on behalf of the Railway on the proviso to Section [124A](#) of the Act which provides that no compensation will be payable under that section by the railway administration if the passenger died or suffered injury due to (a) suicide or attempted suicide by him, (b) self-inflicted injury or (c) his own criminal act. A reference was also

made to Section [154](#) of the Act which provides that if any person does any act in a rash and negligent manner, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. It was further contended on behalf of the Railway that the deceased M. Hafeez who was travelling in a negligent manner was standing at the door from where he fell down near the Magarwara Railway Station, where the train does not stop. (It needs to be pointed out that this contention could only be based on speculation, as admittedly there was no eyewitness to the accident). The High Court accepted the contentions raised on behalf of the Railway and allowed the appeal observing as follows:

“On the basis of the law & facts indicated by the learned Counsel for the parties, we find that in the present case the *victim is to be blamed for the incident being negligent* and therefore this case is not covered by the definition of the untoward incident. However, so far as the compensation is concerned the case of the claimant is covered by the provision of Section [124A](#) *as because of his own negligence the deceased had fallen down from the train which caused his death.* Further in the light of the fact that the deceased acted in a negligent manner without any precaution of safety by station going at the open door of the running train which resulted into his death.” (Emphasis added)

7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section [124A](#) of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway that the accident took

place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section [124A](#) of the Act.

8. Chapter XIII of the Railways Act, 1989 deals with the Liability of Railway Administration for Death and Injury to Passengers due to Accidents. Section [123](#), the first section of the Chapter, has the definition clauses. Clause (c) defines "untoward incident" which insofar as relevant for the present is as under:

“123 (c) untoward incident means-

(1) (i) –(iii)

(2) the accidental falling of any passenger from a train carrying passengers.”

9. Section [124A](#) of the Act provides as follows:

“124A. Compensation on account of untoward incident. - When in the course of working a railway an untoward incident occurs, 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 the dependant of a passenger who has been killed 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, or injury to, a passenger as a result of such untoward incident:

Provided 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.

Explanation - For the purposes of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”(Emphasis added)

10. It is not denied by the Railway that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a "passenger" for the purpose of Section [124A](#) as clarified by the Explanation. It is now to be seen, that under Section [124A](#) the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. **But the proviso to the section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in Clauses (a) to (e).**

11. **Coming back to the case in hand, it is not the case of the Railway that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or**

he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

12. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in Clause (c) to the proviso to Section [124A](#). A criminal act envisaged under Clause (c) must have an element of malicious intent or mens rea. **Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act.** Thus, the case of the railway must fail even after assuming everything in its favour.”

5. The facts of the present case show that the deceased was carrying two bundles of vessels for selling them. Railway Claims Tribunal rightly notes that there is improper use of the train because actually commercial items such as two bundles of vessels could not be carried in a passenger bogie but ought to have been taken in the goods section of the train. The Railway Claims Tribunal is also justified in holding that on account of the deceased trying to board the moving train while throwing the two bundles of vessels in the train, in that process she lost her balance and consequently came in between the train and the platform resulting in her death. These aspects have been duly proved by the various documents filed

by the Railway Authorities and the appellants/applicants did not lead any
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other credible evidence which in my opinion can be said to rebut the evidence led on behalf of the Railways.

6. Learned counsel for the appellants argued that the Railway Claims Tribunal wrongly records the bundles as heavy although there was no proof that bundles were heavy however, in my opinion, once there are two bundles of vessels surely they would not be light, if not very heavy, and it was sufficiently proved as per the facts of the present case that trying to board the moving train by also carrying those bundles of vessels which were thrown in the train while trying to board the train, resulted in the death of the deceased. Whether heavy or not heavy but the fact is that there were two bundles of vessels tied to each other and therefore in the facts of the present case it is quite clear that the deceased died on account of her criminal negligence or self-inflicted injuries.

7. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 09, 2014
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VALMIKI J. MEHTA, J.