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HIGH COURT OF DELHI AT NEW DELHI

F.A.O. No.365/2015

Decided on: 28th March, 2016

MOHD. MUKHTAR & ANR. Appellants
Through: Mr. Anshuman Bal, Advocate.

Versus

UNION OF INDIA Respondent
Through: Mr. J.K. Singh, Standing Counsel for
Railways with Mr. Praveen Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellants against the judgment dated 29.04.2015 passed by the Division Bench of the Railway Claims Tribunal, Principal Bench, Delhi by virtue of which the application of the appellants for grant of compensation of Rs.10 lacs on account of death of Shri Maleen in an untoward incident of railways on 28.07.2012 was dismissed.
2. The case which was set up before the Railway Claims Tribunal was that the deceased as a bona fide passenger and travelling on a valid train ticket bearing No.32128 from Taj Nagar to Delhi Cantonment. It was alleged that the victim fell accidentally from the train due to a sudden jerk between Patli railway station and Jasola railway station and died instantaneously. Because of this untoward incident, the appellants had claimed damages to the tune

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of Rs.10 lacs. The Railway authority filed its written statement and denied their liability for the death of the deceased caused because of the untoward incident. The *bona fide* of the deceased as a 'passenger of Railways' was also questioned. On the pleadings of the parties, following issues were framed:-

"1. *Whether this Bench of the Tribunal has territorial jurisdiction to entertain and try the present claim application?*

2. *Whether the deceased was travelling by the train in question and was a bona fide passenger?*

3. *Whether the death of the deceased has occurred on account of an untoward incident as defined under Section 123 (c) read with Section 124-A of the Railways Act, 1989?*

4. *Whether the applicants are the dependents of the deceased and are entitled to receive compensation?*

5. *To what amount of compensation if any are the applicant entitled?"*

3. The appellants herein examined Smt. Sabila Khatoon as AW-1 and proved documents Ex.AW-1/2 to AW1/6 and Ex.A-7 to A-11. The respondents did not adduce any evidence except DRM report which was marked as Ex.R-1. The learned Tribunal after examining the testimony of AW-1 and the DRM report came to the conclusion that the accident had taken place between Patli and Jasola Railway station. However, it was denied that he was a bona fide passenger. It was on the other hand stated that the DRM report as Ex.R-1 which showed that the ticket bearing No.32128 which is purported to have been the ticket under which the deceased was travelling and which according to them was recovered from the

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jamatalashi of the deceased was actually issued after the departure of the train on 29.07.2012 and thus, it returned a finding of the ticket being procured one.

4. With regard to issue No.3 also the Tribunal examined the evidence and came to the conclusion that the injuries which were purported to have been received by the deceased as a consequence of which he died, clearly indicates that he himself was negligent and the injuries could be categorized as clearly self inflicted injuries because his body was lying severed on two different tracks at a distance from each other. Because of these reasons the Tribunal did not treat it to be an untoward incident within the definition of Section 123 (c) read with Section 124-A of the Railways Act, 1989 so as to warrant the grant of any compensation. It will be worthwhile to reproduce herein the observations of the Tribunal as recorded with regard to the aforesaid two relevant issues:-

"9. According to the applicants, while the train was proceeding between Patli and Jasola railway stations at K.M. 52/3-4, the deceased suffered an accidental fall resulting in his death on the spot. Admittedly, the applicants, who are the parents of the deceased, had no personal knowledge of the incident since none of them was accompanying the deceased. They also did not adduce any other evidence to show that the deceased, in fact, boarded any train at Taj Nagar to go to Delhi Cantonment. Exhibit A-4, the death report merely states that the cause of death was railway accident. The rough sketch of the scene of incident appended to exhibit A-4 shows that the trunk portion of the body was found in between up line and down line tracks, whereas the head was found severed and lying away from the trunk and in between lines of the track. Thus, the head and remaining

portion of the body were found totally severed at the neck level and the two parts were found lying separately at some distance in between. The post-mortem report, exhibit A-8 also states that there was a traumatic amputation of head from trunk at cervical level crushing of all neck structures and crush laceration with the traumatic amputation of right forearms lower 1/3 and multiple fracture of all arms and forearms bones. The nature of the injuries and the extent of damage caused to the different organs due to multiple fractures and more particularly the traumatic amputation of head from the trunk at the next level is indicative more of a cause of getting run over due to fall under the train rather than a fall from the train, in which event, normally the body would be lying by the side of the track without any such total amputation of the head from the trunk. The English index, a copy of which is placed on record also states that the death was due to railway accident. Under exhibit A-8, the post-mortem report also, the history is noted as railway accident. The applicants have not filed the final report of investigation by the police showing the conclusion reached by them as to the cause of death. None of the documents filed by the applicants would show that it was or could have been a cause of accidental fall from the train, as alleged.

10. On the other hand, the DRM report, wherein, it is stated that the deceased while trying to board a moving train near the railway gate unauthorisedly came underneath the train and died. A copy of the Control Register enclosed to the DRM report would show that the Gateman by name Om Prakash manning the Gate number 39/C informed the Station Master at 15:50 hours that one man run over by train number 54411 Dn passenger at KM 52/4-3 at Taj Nagar halt between Jasola and Patli and the head was lying in the down track and body lying near down line between up and down tracks. The statement of the Gateman, Shri Om

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Prakash is also enclosed to the DRM report, wherein, he stated that train number 54411 passed through Gate number 39/C at 15:50 hours and three unknown persons came and informed him that one person trying to board a train going towards Delhi fell down and came underneath the train and that he informed the Station Supt. about the same. The statement of Shri Mahabir Prasad, the Station Supt of Patli railway station is also enclosed to the DRM report, wherein, he confirmed about receiving the information from the Gateman Om Prakash regarding the incident of run-over by train. The statements of Shri Mewa Ram, Gangman and Shri Surya Singh, another Gangman to the same effect are also enclosed to exhibit R-1. Based on the investigation conducted by them, the Inspector, RPF in his report stated that the deceased while trying to board a moving train number 54411 near the railway gate fell down and came underneath the train and died. Based on the report of investigation by the RPF, the DRM also concluded in R-1 that it was a case of unauthorized entry into the railway premises and getting run over while trying to board a running train near railway gate. That the railway gate is situated near the scene of incident is borne out by the rough sketch appended to the death report, exhibit AW1/4 also. It is to be noted that the deceased was attempting to board the running train at an unscheduled stop where the train was not supposed to halt. In fact, the train did not halt and it was in running condition when the deceased made an abortive attempt to board the train unauthorisedly. Such a case does not fall within the ambit of fall from train. The case of a person falling from the train while boarding the same at a railway station having scheduled halt is clearly distinct and different from a case like the present one, where the deceased approached the track unauthorisedly and made an unsuccessful attempt to board a running train and suffered the fall. The present case, therefore, cannot be construed to be a case of accidental fall from the train

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amounting to an untoward incident within the meaning of Section 123 (c). It is clearly a case of unauthorized act besides being one of supine negligence and rashness with full knowledge of its dangerous consequences. The injuries sustained and the death resulting therefrom is clearly self-inflicted in the circumstances of the present case. Clause (b) of the proviso to Section 124-A of the Railways Act, 1989, therefore, gets attracted duly exonerating the respondent Railways from liability to pay compensation. The principle of strict liability underlying the respondents' liability to pay compensation notwithstanding the negligence on the part of the passenger does not apply to the facts of the present case since the deceased was not a passenger and the attempt made by him to board the running train at an unscheduled place is clearly unauthorized and the injuries leading to his death are clearly self-inflicted. Under these circumstances, it is held that the death of the deceased was not due to an accidental fall from the train amounting to an untoward incident within the meaning of Section 123 (c) read with Section 124-A of the Railways Act. The issue is answered accordingly."

5. A perusal of the aforesaid analysis of evidence and the DRM report clearly shows that the view which has been formed by the Tribunal is legal, justifiable and perhaps the only view which could be taken by the Tribunal. This has been noted in almost all cases of Railway accidents that although the deceased may not be a *bona fide* passenger or the accident may have taken place because of his own negligence yet the family of the victim who are invariably from the lower strata of the society try to file the claim petition in the vain hope that they might be able to get some compensation which will get them financial respite. But the Tribunal and the

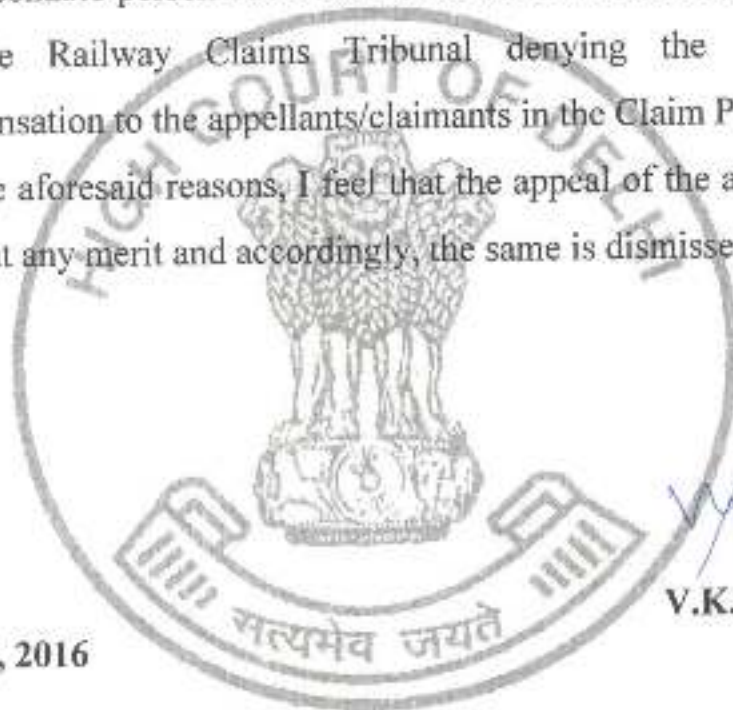
Courts examining are not to be swayed by humanitarian consideration alone. It is the responsibility to see that the claim is legally sustainable.

6. The learned counsel that the respondent in the instant case has not been able to establish that the deceased was a *bona fide* passenger. The contention of the learned counsel for the appellant that the ticket on the basis of which the deceased was purportedly travelling was a genuine ticket and the said ticket was recovered by the officials in the presence of a gangman of the railways from the person of the deceased and therefore, no person could doubt the intention of the Claimants in lodging the report is unacceptable because the ticket was issued after the departure of train.
7. I have considered the submissions made by the learned counsel. The question which arises for consideration is as to whether the testimony of the gangman in whose presence the recovery of ticket is purported to have been made is worth credence or not. My answer to this question is obviously in negative because the gangman's oral testimony cannot be considered to be good enough to dislodge the documentary evidence produced by the railway authorities, namely, the respondents which clearly shows that the ticket on the basis of which the travel is purported to have been undertaken by the deceased was issued by the railways after the departure of the train. There is no reason to doubt this evidence produced by the respondents. This evidence could be dislodged by the appellant only by requisitioning the record of the booking station from where the ticket is purported to have been issued.

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This was not done and therefore, an adverse inference can be conveniently drawn against the appellants. It is very unfortunate that the deceased lost his life in an accident but merely because the accident had taken place within the line of railway authorities does not *ipso facto* become a ground for grant of compensation.

8. I have gone through the reasoning for disallowing the application of the appellants given by the Railway Claims Tribunal. I find that no reasonable person could find fault with the discussion recorded by the Railway Claims Tribunal denying the benefit of compensation to the appellants/claimants in the Claim Petition.
9. For the aforesaid reasons, I feel that the appeal of the appellants is without any merit and accordingly, the same is dismissed.




V.K. SHALI, J.

MARCH 28, 2016

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