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

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*Judgment delivered on: 15.01.2018*

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**FAO 214/2014**

SUSHILA SHARMA

..... Appellant

Through: Mr. Yogesh Swaroop and Mr. Alok  
K. Palai, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Rakesh Mittal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J (Oral)**

1. This appeal impugns an order dated 28.04.2014 dismissing the appellant's claim for compensation of Rs. 8 lacs along with the interest thereon.

2. The claim was that on 09.09.2010, the deceased Anil, while travelling from Delhi to Gurgaon by an EMU train, accidentally fell down from the crowded compartment of the running train and died on the spot. The Railways contested the claim. The following issues were framed:-

- i) Whether the death of the deceased had occurred as a result of an untoward incident, as defined u/s 123 (c) (2) of the Railways Act, 1989?
- ii) Whether the deceased was a bonafide passenger of train on the relevant day?

iii) Whether the application of Smt. Sushila Sharma is maintainable?

iv) To what order/relief?

3. On the basis of the police report, the claimant – widow of the deceased, had supported her case only by her affidavit, as no known person had accompanied the deceased on the tragic day. However, according to the police and railway records, it was revealed that the mutilated body of an unidentified male aged 35-36 years was found by the railway gateman at location Km 29.03-04 between Gurgaon and Bijwasan stations at 22.10 hours on 09.09.2010. The mangled/mutilated body was lying on the Down Line but the hand and the foot were found strewn on both sides of the track, at a distance of 15-20 feet away from the body. The body remained 'unknown' at the time of autopsy on 10.09.2010 at 12.50 hrs and was cremated by the police on 13.09.2010. The police reports of GRPS Gurgaon confirm that the relatives of the unknown deceased, including his wife – Smt. Sushila, identified the deceased as Anil from the photographs at GRPS Gurgaon on 17.09.2010. So, the statement of the applicant to the Tribunal on 18.09.2012, that she received the news regarding her husband's death by accident from his employer, three days after the incident is quite doubtful, if not entirely untrue. Her own statement to GRPS Gurgaon confirms that she came to know about the death of the deceased only on 17.09.2010 i.e. eight days after his body was recovered near the track.

4. The Tribunal did not find the claimant's version credible insofar as she claimed that the deceased had purchased a valid ticket to travel from Delhi to Gurgaon and had boarded the train; there was a huge rush inside the train compartment; he had got enough standing space near the gate and was well inside the train compartment; when the train jerked violently, Anil

received a thrust from inside the crowded compartment and he fell down from the running train resulting in his death.

5. It was contended by the learned counsel for the appellant that the body was discovered few days after the demise, hence, it cannot be ruled out that the ticket had been lost as the body of the deceased was severed into many parts. In this regard, the Tribunal went on to observe that:-

*“What is the source of her information that Anil was travelling with a ticket? he asked. The Ld. Counsel for the applicant, placing reliance upon the judgment of the Hon'ble Kerala High Court in the case of Union of India Vs Leelamina and others 2010 ACJ 566, contended that onus of proof that the deceased was not a bonafide passenger is on the railway and not on the claimant. Reliance is also placed for the same purpose upon the judgment of Hon'ble Delhi High Court in the case of UOI Vs Krishan Lal I 2010 ACC 279.*

*10. I do not agree with the contention of the Ld. Counsel for the applicant, because to my mind, there must be some reason to believe that the applicant was travelling by train. The question of placing the onus on the railways comes only after establishing the above belief. It is a fact that in certain cases, the journey ticket is lost or taken away by petty criminals, but there can be no sweeping presumption that in all cases the ticket of every deceased is necessarily lost. In this context the observation of Hon'ble Allahabad High Court in the case of the Dinesh Kumar Singh Maurya Vs UOI FAO No. 1023 of 2010 is relevant.*

*'In case ticket is not found from the body of the deceased or from its vicinity, the presumption would be that such a person was not bonafide traveler, of course, evidence can be led to prove otherwise. If any untoward incident takes place within the meaning of Section 124-A of the Railways Act, initial burden lies on the Railways to prove that the passenger was not a bonafide*

*passenger, but the same having been discharged, onus shifts on the person claiming compensation, to establish by some believable evidence, that such a passenger was a bonafide passenger, more so when contrary admissible evidence is produced by the Railways'.*

11. In a recent judgment in the case of Gurucharan Singh & Others Vs UOI, FAO No. 507/2011, delivered on 08.01.2014, the Hon'ble High Court of Delhi has observed as follows.

*'the initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bonafide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of learned Single Judge of this Court in the case reported as **Pyar Singh Vs. Union of India 2007 (8)AD Delhi 262** which holds that it is the claimant upon whom the initial onus lies to prove his case.'*

12. Non availability of ticket tends to prove the theory of run

*over, which is the conclusion drawn in the report of Departmental Enquiry conducted by the respondent. Since, Run over by a train and accidental fall from a train are two types of accidents in the Railways, at this stage it is necessary to understand/appreciate the difference between the two”.*

6. The learned counsel for the appellant further submits that according to the first intimation recorded by the railway/police, the body was found between the Up and Down lines and not on the tracks of the Down line, therefore, evidently, the body had been shifted between the two lines so as to make it appear that the deceased had been run over while he was crossing the tracks. However, the learned counsel for the respondent – Railways refutes the same and contends that the police records cannot be disbelieved on such mere conjecture and unfounded doubts.

7. In this regard, the impugned order reasoned as under:-

*“13. "Run Over" is an accident in which a person, not normally a rail passenger while trespassing railway track gets knocked down by a speeding/shunting train. In most cases the victim of a run over case is a local resident, who either unmindfully walks on the track to take a short cut or jumps before the train to commit suicide. The body of a run over victim gets mutilated badly due to the entire or a part of the train passing over him. The sharp wheel flanges of the train often cut the limbs severing them from the body. In most cases of run over, the body lies in between the track or very near to the track. Run over cases are normally reported to the railway authorities in a routine/casual manner by nearby residents or railway personnel. In most cases information comes much after the incident unless it is reported by the accident involved train crew. Needless to mention that 'run over' has not been defined as untoward incident in Section 123 of the Railways Act, 1989. In fact, run is a self-inflicted injury caused by a negligent/willful act, as mentioned in Section 124A (b) of the*

*said Act.*

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19. *In the light of the facts recorded above, I have no doubt in my mind that Anil, who was not a bonafide rail passenger on 09.09.2010, did not fall from train, as claimed, but died on that day, after being run over by an unidentified train, while trespassing the track, which is not an untoward incident, as defined US 123 (c) (2) of the Railways Act, 1989. Accordingly, the above issues are decided against the applicant.*

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22. *It is argued by some that the line of difference between 'run over' and 'accidental fall' is too thin and the Railways should pay compensation to all the victims, treating both at par. This line of argument is not based on correct assessment of Railway working. A train engine having 10 to 20 coaches behind, needs to travel 400 to 600 meters distance before it comes to a halt. Therefore, the railways can hardly do anything to curb the tragic cases of run over by the trains. In fact, run over cases are similar to those, where irresponsible road vehicle drivers, cause avoidable tragedies, by crossing the unmanned level crossing in a hurry, in face of an approaching train, in violation of the provisions of the Motor Vehicle Act. Thus, it would be travesty of justice, if Railways are asked to compensate the loss of those lives which are lost on account of willful negligence/deliberate violation of the provisions of law. Any attempt to do so would only encourage more and more such unlawful conduct/practices leading to more tragedies. It is due to this reason that Section 123 (c) (2) and section 124A of Railways Act, 1989, is so clear in its letter and spirit, to provide compensation only to those who suffer as a result of accidental fall. There is no provision to provide relief to those who cause self inflicted injury, in the Railways Act, 1989. So, in this case too the applicant is not entitled to receive any compensation from the respondent Railway”.*

8. In the aforesaid circumstances, the Tribunal did not find any merit in the claim, hence it was dismissed.

9. The Court would note that the post-mortem report records as under:-

*“ 1) MULTIPLE ABRADED BRUISES 15 x 11 cm TO 10 x 7 CM B/L CHEST AND LATERAL SURFACE OF BOTH ARMS AND THIGHS, WITH BLACKENING, DUST SEEN STICKING OVER IT AND DARK PED CLOTTED BLOOD  
2) CRUSH LACERATION WITH TRAUMATIC AMPUTATION OF BOTH FOREARMS LOWER 1/3 MULTIPLE FRACTURES OF ALL ARM & FOREARM BONES.  
3) CRUSH LACERATION WITH TRAUMATIC AMPUTATION OF BOTH LEGS LOWER 1/3 MULTIPLE FRACTURES OF ALL LEG & THIGH BONE.*

10. The remarks by the Medical Officer in Part-VI of the PMR reads as under:-

*“THE CAUSE OF DEATH IN THIS CASE IS SHOCK & HAEMORRHAGE FOLLOWING ANTE MORTEM BLUNT FORCE IMPACT, CONSISTENT WITH RAILWAY TRACK ACCIDENT.”*

11. This report was made on 10.09.2010 at 12.50 hours and the time between the death and the post mortem examination was approximately 12-18 hours. The distance at which the limbs of the deceased were found i.e. 15 to 20 feet away from the body, which was mangled and mutilated between the tracks of the Down line could lead to the conclusion, as the Tribunal did, that the deceased was hit by a train when he was between the tracks, resulting in the unfortunate severance of all the limbs and their strewn about on both sides of the track. The non-availability of a valid ticket for travelling or a valid platform ticket, would not bring the deceased in the presumptive category of ‘passenger’ under Section 124A of the Act,

since the attending circumstances do not support the claimants case. It is not shown how the claimant came to know that the deceased had a ticket or of the manner of his alleged accident i.e. after falling from a running train consequential to its jolting and a sudden thrust from inside the crowded rail compartment.

12. In view of the aforesaid, the Court finds no merit to interfere with the impugned order. Accordingly, the appeal is dismissed.

**JANUARY 15, 2018**  
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**NAJMI WAZIRI, J**



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