

\$~23

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

+ **FAO 195/2015**

UNION OF INDIA

..... Appellant

Through: Ms Shipra Shukla, Adv.

versus

SUNITA DEVI & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

03.07.2015

%

1. This is an appeal filed against the judgement dated 24.03.2015, passed by the Railway Claims Tribunal, Principal Bench, Delhi (in short the Tribunal).
2. Learned counsel for the appellant, in the course of her submission, has submitted that there are two errors in the judgement. First, that the Tribunal has failed to take into account the Divisional Railway Manager's (DRM) report, wherein a conclusion was reached, after an inquiry, that the deceased Balwan Singh, had entered the railway premises in an illegal manner and, thus, was run-over. Second, that the deceased Balwan Singh was not a bonafide traveller, in as much as, he did not carry a railway ticket. Incidentally, this aspect also finds a mention in the DRM report.
3. In order to appreciate the two contentions raised by the learned counsel for the appellant before me, the following facts are required to be noticed.

3.1 The deceased Balwan Singh, who was admittedly employed as a constable in Border Security Force (BSF), was engaged, it appears, on election duty at New Cooch Behar. Apparently, the deceased Balwan Singh was accorded three (3) months leave on 14.04.2011.

3.2 It is, for this purpose, that Balwan Singh decided to board a train to reach his final destination, which was, Sadulpur. Apparently, a railway warrant was issued, pursuant to which a ticket was also issued, to enable, the deceased to travel from New Cooch Behar till Sadulpur via Delhi. This was, at least, the case set up by the respondents before the Tribunal.

3.3 The deceased Balwan Singh commenced his journey on 16.04.2011. On reaching Delhi, the deceased, apparently, resumed his journey, on 17.04.2011, by boarding a general compartment of a train named as : Ratangarh Express. It appears that when the train reached Sarai Rohilla - railway station, in Delhi, the unfortunate incident happened.

3.4 It was contended by the respondents herein, before the Tribunal, that the deceased fell off the train, and thus, met his death. The respondents lodged their claim with the Tribunal, on 16.04.2012, under Section 16 of the Railway Claims Tribunal Act, 1987. In the claim so lodged, compensation in the sum of Rs. 4 lacs was sought by the respondents.

3.5 By virtue of the impugned judgement, the Tribunal has allowed a compensation of Rs. 4 lacs, with interest, at the rate of 6% per annum till the date of institution of the claim. Furthermore, additional interest at the rate of 9% per annum has been granted from the date of institution till the date of realization. Directions were also issued by the Tribunal as to the manner in which the compensation was to be distributed. No orders, however, were

issued qua the cost.

4. Having regard to the aforesaid broad facts, I may only notice that the respondents had cited two witnesses i.e. respondent no.1 (AW1) and, one, Mr Mani Ram (AW2), who had evidently met the deceased in the rest room, at the Delhi railway station. Admittedly, Mani Ram (AW-2), was also employed with the BSF.

4.1 Both, the deceased Mr Balwan Singh, and Mr Mani Ram (AW2), had boarded the Rattangarh Express train.

4.2 In the background of the aforesaid facts, the Tribunal, in so far as the aspect as to whether or not the deceased had bought a railway ticket, returned findings of fact which are set out in paragraph 10 and 11 of the impugned judgment. For the sake of convenience the same are extracted hereinbelow:

“....10. Apart from the oral evidence of AW-2, the journey of the deceased from New Cooch Behar to Sadulpur is borne out by the letter of one Shri Dilip Kumar, Deputy Commandant of Squadron 134 of BSF addressed to the first applicant in response to a request and also a copy of the railway warrant enclosed thereto, which are filed by one Shri Indrajit, brother of the first applicant, by way of an affidavit and marked as exhibit AWs3/1 and 3/2. A perusal of exhibit AW3/1 and AW3/2 would disclose that the deceased was granted leave from April 14, 2011, and at that time, he was issued a journey ticket against a railway warrant for travel by AC-3 from New Cooch Behar to Sadulpur. In view of exhibit AW3/1 and AW3/2 the documents emanating from official source, the authenticity of which is not disputed, it can be reasonably inferred that the deceased commenced his journey at New Cooch Behar and reached old Delhi on 16/17.04.2011 and resumed onward journey on the morning

of April 17, 2011 from old Delhi to Sadulpur by boarding Rattangarh Express and the said inference is duly fortified by the un-discredited testimony of AW2.....”

(emphasis supplied)

5. In so far as other aspect is concerned, which is that the deceased Mr Balwan Singh would have met with an accident while crossing the railway track, and not by falling off the Rattangarh Express train, is dealt with in paragraphs 13 to 15 of the impugned judgement. In the said paragraphs, following findings stand recorded :

- (i). DD no.4-B (AW1/6), prepared on the day of the accident i.e. 17.04.2011, records that the death of Balwan Singh occurred due to fall from the train.
- (ii). The post mortem report (AW1/9), records cause of death as the combined effect of spinal shock, hemorrhage and multiple injuries; all of which were ante-mortem.
- (iii). The inquest report (AW1/11) concludes that death was due to train accident.
- (iv). Lastly, the deceased was issued a valid journey ticket for travel by AC-IIIrd class.

5.1 It is in the backdrop of the aforesaid evidence and / or material that the Tribunal concluded that the finding recorded in the DRM report, that the deceased, may have been run over by another train, while crossing the railway track, was not correct. The conclusion reached by the Tribunal in paragraph 15 of the impugned judgment is extracted hereinbelow for the sake of convenience :-.

“.....15. The conclusion reached in the DRM report that the deceased might have been run-over by some train while crossing the track is a mere surmise and cannot be accepted in view of the other evidence available on record clearly pointing to the occurrence of the death due to accidental fall from the train. Taking into consideration the totality of the circumstances and on a holistic view of the entire material available on record, it can be reasonably concluded that the death of the deceased was due to an accidental fall from the train Rattangarh express amounting to an untoward incident within the meaning of Section 123 (c) read with Section 124-A of the Railways Act, 1989. The respondents cannot seek to avoid their liability to pay compensation unless any of the exceptions contained in the proviso to Section 124-A of the Railway Act is shown to be applicable. In the present case, none of the said exceptions is attracted so as to exonerate the respondent Railways from their liability to pay the compensation. Hence, on Issue Nos. 1 and 2, it is held that 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 and on Issue No. 3, it is held that the deceased was a bonafide passenger of the train in question at the relevant time of the incident. The issues are answered accordingly.....”

(emphasis supplied)

6. Having regard to the aforesaid, I find no merit in the submissions advanced by the learned counsel for the appellant. Nothing has been pointed out to me by the learned counsel, which would persuade me to hold that the findings of fact reached by the Tribunal were bereft of relevant evidence. In such like cases the test of preponderance would have to be applied. The Tribunal did apply that test, as is evident, on a perusal of the impugned judgement.

7. I find no error in the judgement. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

JULY 03, 2015/kk