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

+ **FAO 256/2015 and CM N.15048/2015 (stay)**

UNION OF INDIA

..... Appellant

Through: Ms. Shipra Shukla, Advocate

versus

SUKANI DEVI & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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14.08.2015

1. This is an appeal filed by the Union of India via General Manager, Northern Railway, New Delhi, which is directed against the judgment dated 08.05.2015, passed by the Railway Claims Tribunal (in short the Tribunal).

1.1 The Tribunal vide the impugned judgment has allowed the claim of the respondents and has awarded a compensation in the sum of Rs.4 Lakhs alongwith interest at the rate of 6% p.a. from the date of filing of the claim petition till realization. The manner in which the compensation is to be paid has been set out in the impugned judgment.

2. There are two findings of fact which the tribunal has recorded in the impugned judgment.

2.1 First, that the deceased (i.e. Siya Ram Yadav), who is the husband of respondent no.1 was a bonafide passenger. Second, he

died on account of an “untoward incident” which occurred at platform no.2, on 17.05.2013. The findings in that behalf are recorded in paragraph no.7 of the impugned judgment.

3. The learned counsel for the appellant, however, assails the impugned judgment on two grounds. First that, the tribunal failed to take into account the report of the Divisional Safety Commissioner; and second, that the evidence filed by way of affidavit of the Loco Pilot Shunter of the Railways, was ignored.

3.1 In sum, it is the submission of the learned counsel for the appellant that the tribunal has ignored vital pieces of evidence put forth before it, and therefore, come to an erroneous conclusion.

4. I have heard the learned counsel for the appellant. In my view, the submissions made by the appellant are without merit for the following reasons :-

4.1 The stand taken by the appellant before the tribunal is that the appellant had suffered “self inflicted” injuries on account of his own negligence. The tribunal, however, came to the conclusion that Siya Ram Yadav died on account of an untoward incident. The tribunal in coming to this conclusion relied upon the DD entry and material placed before it by the appellant. On an appreciation of evidence placed before it, the tribunal concluded that the Siya Ram Yadav died while boarding the “Jan Sadharan Express Train” at platform no.2. The relevant observations made in that behalf are extracted hereinbelow for the sake of convenience :-

“..We may at this stage also observe that said original ticket was produced before this Tribunal, which was exhibited as

Ex. A-16. It is also not denied that body of deceased (as a injured person) was extracted from Platform no.2, on the said date of journey, before departure of train at 15.20 hrs, as explained by documents produced by Railway. Further, it may be noted that DD entry No.12A PS AVRS, Delhi, regarding injured person, was recorded based on information received by PCR through w/set at 3.15 p.m., which was exhibited No.A-10. Further DD entry No.16A(Ex.A-11) of the said date recorded at 6.00 p.m. clearly referred earlier DD entry no.12A, as well as regarding falling of person while boarding Jan Sadharan Express and shifting him to Lal Bahadur Shastri Hospital by the CAT Ambulance, who later on was declared dead vide MLC No.6945/13 (Ex. A-18). Thus, it is clearly proved that deceased was a bonafide passenger, holding valid ticket purchased on the date of incident prior in time to the departure time of said train namely train No.12388 Anand Vihar Jan Sadharan Exp. Train,Ex. Anand Vihar Railway Station to Patna Railway Station. As such, it is proved beyond any doubt that incident in question took place at Platform no.2, Anand Vihar Railway Station while boarding Jan Sadharan Exp. Train from said Railway Station. There is absolutely no justification in the contentions raised by Railway that injuries suffered by the deceased were self-inflicted and the same was fall out of his own criminal act and negligence, and there is no evidence to prove that deceased was not travelling vie said train, as projected by the respondent..” (emphasis is mine)

4.1 Having regard to the aforesaid findings, the contention of the learned counsel for the appellant, that Siya Ram Yadav died due to his own negligence, is not tenable.

4.2 Furthermore, I may indicate that even in the report of the Divisional Safety Commissioner what has clearly come through is that Siya Ram Yadav died due to a fall while trying to board the Jan Sadharan Express Train; albeit when in point of fact it was stationary.

The submission of the learned counsel for the appellant that Siya Ram Yadav died due injuries sustained on account of being jostled by the crowd and, in that sense, contributed to his death, does not impress me.

4.3 The reason for this is that crowd control within the precincts of the railway station, (which necessarily includes the platforms) is the obligation of the railways. Orderly, embarkation as well disembarkation is the obligation of the Railways. To that extent the Railway owes a duty of care to a bonafide passenger.

5. In so far as the Loco-Pilot-Shunter's affidavit is concerned, its contents are completely contrary to the report of the Divisional Safety Commissioner as it is suggestive of the fact that no incident took place, at all.

6. In these circumstances, no interference is called for with the impugned judgement. The captioned appeal and the pending application are accordingly, dismissed.

RAJIV SHAKDHER, J

AUGUST 14, 2015

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