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

+ **FAO 331/2015**

SATYA DEV GOSWAMI & ANR Appellants
Through: Mr. Yogesh Swroop, Advocate

versus

UNION OF INDIA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% **29.10.2015**

CM No.22987/2015 (condonation of delay in filing)

1. This is an application seeking condonation of delay of 8 days in filing the appeal.
2. For the reasons given in the application, the delay is condoned and the application is allowed.

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3. This appeal is preferred against the decision of the Railway Claims Tribunal (in short the Tribunal) dated 03.06.2015. By virtue of the impugned judgment, the Tribunal, has rejected the claim petition filed by the appellants under Section 16 of the Railway Claims Tribunal Act, 1987 (in short the Act).

3.1 The appellants had lodged a claim for compensation in the sum of Rs.8 Lakhs in respect of the death of Sh. Bhupender Kumar, the son of the appellants herein.

3.2 The deceased Bhupender Kumar died in an incident, which occurred on 15.07.2011. At the time of his death, the deceased was unmarried.

4. The case of the appellants before the Tribunal was that the deceased Bhupender Kumar had purchased a valid journey ticket for travelling via train from Delhi-Shahdara to Khekra Railway Station. The appellants had taken a stand before the Tribunal that, as there was congestion in the compartment of the passenger train in which the deceased was travelling, he fell out of the train due to a sudden jerk. Apparently, according to the appellants, the deceased was standing near the entrance of the compartment from where he, purportedly, fell out.

4.1 The appellants thus, averred that Sh. Bhupender Kumar suffered multiple injuries which, resulted in his death.

5. It is, in these circumstances, that claim was lodged with the Tribunal.

6. The Tribunal, based on the evidence placed before it, by the parties, rejected the claim petition, filed by the appellants. In coming to this conclusion, the Tribunal noted that though a ticket was produced by the appellants, the ticket was not recovered at the time of ‘jamatalashi’.

6.1 The Tribunal, however, on a demurer examined the other aspect of the matter, which is, as to whether it was a case of an “untoward accident” which had occurred consequent to Sh. Bhupender Kumar’s accidental fall from the train, as claimed by the appellants.

6.2 Qua this aspect, the Tribunal noted the testimony of Sh. Arvind

Kumar (RW-1), who was the Railway Gangman, on duty, and was present, at the time, when the incident occurred. In respect of the testimony of Sh. Arvind Kumar (RW-1), the Tribunal recorded the following finding of fact in paragraph 10 of the impugned judgment :-

“..10. In contrast, the respondents have examined RW-1 Shri ARvind Kumar, who is a Railway Gangman on-duty at that time near the scene of incident. In his testimony before the Tribunal, RW-1 state that while he was on duty as Gangman near Nand Nagri, at 17.30 hrs, he found a boy standing on the track and in between the lines and he warned him to keep away from the track and the boy came out of track. RW-1 further stated that in the meanwhile, Janata Express train came from Old Delhi railway station and was going towards Saharanpur and the boy jumped in front of the engine on to the track and was run-over by the train. He further deposed that he informed the Gateman about the incident asking him to convey the same to the station authorities. In the cross-examination, it is elicited that he gave statement to the police on the same day. The statement of RW-1 recorded by the RPF forms part of the DRM Report, Ex. R-1. The testimony of RW-1 before the Court is duly corroborated by the contents of the said earlier statement made before the police. The statement of Shri Shashi Kant, the Gateman recorded by the RPF also forms part of the DRM Report, Ex. R-1. Shri Shashi Kant, Gatemen is, however, not examined before the Tribunal. The Memo issued by Dy. Station Supdt., Delhi at 18.15 hrs on 15.07.2011 to the GRP and RPF would state that between Shahdara and Noli, near Gate No.2-C between K.M. 3/2 and 3/ 4, one person came underneath the train and was not cut and died. In the said Memo, which is enclosed to Ex. R-1, the DRM Report, it is further stated that the source of information was the Station Master, Block Cabin by name Shri Kanti Prasad. In his statement, the Gateman Shri Shashi Kant stated that he passed on the information to the Block Cabin and later the GRP came and took the dead body. In the evidence, RW-1 also stated

that he keeps coming to the railway gate since his tools and other instruments are kept there and the incident occurred about 300 feet away from the railway gate and he informed the Gateman and the Gateman Shri Shashi Kant, in turn, informed the Station Master about the incident. The station diary, a copy of which is enclosed to exhibit R-1 also contains an entry relating to this incident, wherein, it is stated that Gateman Shri Shashi Kant of gate No.2-C informed that near Gate No.2-C and in between K.M. 3/4 and 3/2, one male person was cut by train number 14545 Express and the body was lying in between the lines, and the GRP Shahdara and RPF Shahdara were informed. A copy of the diary enclosed to exhibit R-1 would show that the train number 14545 passed through the spot at around 17.30 hrs. There is a footnote in the said Diary Book at 17.47 hrs stating that one person was cut by train No.14545 U.P. between K.M 3/4 and 3/2. Thus, the official record in the form of entries made in the concerned diaries and the Memo issued by the Station Master coupled with the undiscredited testimony of RW-1 would lend support to the contention of the respondents that the deceased was, in fact, run over by the train near the railway gate. There is absolutely no reason to suspect the genuineness of the said entries made in the official records in the course of regular official transactions. There is no reason to discard or disbelieve the testimony of RW-1, the Railway Gangman, who was on duty at that time at the place of the occurrence..”

(emphasis is mine)

6.3 Furthermore, the Tribunal also recorded that the nature of injuries, which were severe, pointed to the fact that the case of the appellants that Sh. Bhupender Kumar had died on account of a mere fall from the train was not sustainable. The reference to the nature of injuries and the conclusion of Tribunal is made in paragraph 11 of the impugned judgement.

7. The learned counsel for the appellants, however, relied upon

the inquest report to contend that Sh. Bhupender Kumar had fallen from the train. It is the learned counsel's contention that the said record was drawn by an independent source and had to be thus given greater weight as compared to the testimony of Sh. Arvind Kumar (RW-1) [i.e. the Gangman].

8. In this context, the discussion by the Tribunal on the aspect of inquest report requires to be noted. This discussion is contained in paragraph 9 of the impugned judgment. For the sake of convenience, the same is extracted hereinbelow :-

“..9. ..As stated supra, the observation in the inquest report, Exhibit A-12 that the deceased had fallen from train is without any basis. It is significant to note that in exhibit A-1, the first DD entry made at 6.10 p.m. by Old Delhi railway station police pursuant to the information received from the PCR is that near Hanuman Mandir, Ashok Nagar, one male person died since he was cut by train. In Exhibit A-2, the return report of the S.I. also, the apparent cause of death is noted as train accident. Neither in exhibit A-1 nor in Exhibit A-2, there is any reference to accidental fall from the train being suggested as the cause of death. In the post-mortem report, exhibit A-9 also, the history of the death is noted as railway accident. When once exhibit A-3 statement is taken out of the reckoning, since Shri Mukesh Kumar is not examined, there remains nothing on record that would lead to any inference of accidental fall from the train..”

(emphasis is mine)

9. Having regard to the aforesaid aspects, it is quite clear that the Tribunal taking into account the totality of the evidence and the material produced before it, came to the conclusion that Sh. Bhupender Kumar did not die on account of an accidental fall from the train, as claimed by the appellants.

9.1 The learned counsel for the appellants apart from placing reliance on the findings of the inquest report did not advert to any other material, which would have me come to a contrary conclusion.

10. To my mind, there is no perversity in the appreciation of evidence by the Tribunal. The appeal is accordingly, dismissed.

RAJIV SHAKDHER, J

OCTOBER 29, 2015

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