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

Date of Decision: October 19, 2016

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FAO 210/2016

DEVI RAM & ANR.

..... Appellants

Through: Mr. D. Sabharwal, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Mr. Rakesh Mittal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 25th January, 2016 rejects appellants' claim petition seeking compensation on account of unfortunate death of their son in a railway accident on 6th April, 2014.

The case put forth by appellants' counsel is that the deceased with his friend-*Rajender* was travelling from Okhla to Palwal Railway Station by EMU Local train on 6th April, 2014 and he had got down at Ballabgarh Railway Station to visit his uncle and after taking meals, he had boarded the train from Ballabgarh Railway Station to Palwal at 6 P.M.. It is the case of appellants that due to heavy rush in the compartment, the deceased, who was standing near the door of train's compartment, suddenly fell down from the running train due to heavy

jerk between Ballabgarh and Asoati Railway Stations. Appellant No.1 had deposed before trial court in support of the claim petition and had also got the evidence of deceased's friend-*Rajender* recorded before learned Tribunal. However, respondent had chosen not to lead any oral evidence, but had proved the Divisional Railway Manager's (DRM) Report (Ex.R-1). While adverting to the Rules for break of journey, learned Tribunal in the impugned order has concluded that since the deceased was not holding the valid journey ticket at the time of accident, he cannot be considered to a *bona fide* passenger of the train in question.

Appellant's stand of deceased sustaining fatal injuries due to fall from the train has been discarded by the learned Tribunal in the impugned order while noting that the deceased had boarded the train from Ballabgarh at 6.15 P.M. and the distance from Ballabgarh to Asoati is 10 kilometres and by EMU Local Train, the said distance can be covered in 9-11 minutes and so, it cannot be believed that the deceased had fallen from the train at around 8 P.M.. So, the learned Tribunal has discarded the version put forth by deceased's friend-*Rajender*.

While referring to the Post-mortem Report (Ex.A-17), learned Tribunal in the impugned order has concluded that the multiple fractures sustained by the deceased could not have been possible by fall from a running train as the body of the deceased was found to be smeared with grease and it can be possible only when the deceased is struck head on by the engine of a moving train.

To dismiss appellants' claim petition, learned Tribunal has relied

upon the report of Inspector RPF (Railway Protection Force) enclosed with the DRM Report (Ex.R-1) which reveals that there was an unauthorized passage near the site of the accident for going to Subhash colony by unauthorizedly crossing the railway line and since the deceased was admittedly at the uncle's place before the accident, therefore, the possibility of deceased getting hit by the train while unauthorisedly crossing the railway track cannot be ruled out. Thus, the stand of the appellants of deceased falling from the running train has been discarded in the impugned order.

The challenge to impugned order by learned counsel for appellants is on the ground that the DRM's Report (Ex.R-1) has not been tendered by any witness and so, it cannot be looked into. It is pointed out that in DRM's Report (Ex.R-1), it is nowhere recorded that any witness has seen the deceased unauthorizedly crossing the railway line.

On the other hand, learned counsel for respondent draws the attention of this Court to the cross-examination of deceased's friend (AW-2) to point out that it has come in his evidence that the accident had taken place near the Ballabgarh Power House, which is quite near to Ballabgarh and it shows that the place of the accident was close to residence of Mr. Kanha, uncle of the deceased, and so, appellants' stand of deceased falling from the running train stands belied. So, dismissal of this appeal is sought by respondent's counsel while submitting that the impugned order suffers from no infirmity.

Upon hearing and on perusal of impugned order and the evidence on record, I find that DRM's Report (Ex.R-1) has been tendered in

evidence in the presence of appellants' counsel before the learned Tribunal and it is pertinent to note that no objection to its exhibition was taken by appellants' counsel before learned Tribunal. In such a case, appellants cannot be heard to say that the DRM's Report (Ex.R-1) has not been duly proved in evidence.

The manner in which the accident in question had taken place, as detailed by learned Tribunal in the impugned order, clearly depicts that the multiple injuries were suffered by deceased and that the body of deceased was smeared with grease, which rules out appellant's version of deceased falling from a running train. In view of the DRM's Report (Ex.R-1) and the cross-examination of deceased's friend-*Rajender* (AW-2) it becomes evident that the deceased was unauthorizedly crossing the railway line when he was struck down by a running train.

In the face of the DRM's Report (Ex.R-1), learned Tribunal has rightly discarded the deposition of deceased's friend-*Rajender* (AW-2). The manner in which the accident had taken place can be gathered from the attending circumstances and need not be always proved by ocular version. The timing of the accident and the alleged boarding of the train by deceased do not synchronize and so, learned Tribunal has rightly concluded that deceased had not boarded the train from Ballabgharh and had not fallen from the overcrowded compartment of a moving train due to sudden jerk. Thus, it is amply clear that the accident in question does not come within the ambit of Section 123 (c) read with Section 124-A of *the Railways Act*.

In view of the aforesaid, I find no substance in this appeal and

since the impugned order is quite reasoned and justified, therefore, this appeal is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 19, 2016

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