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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: October 06, 2016

+ **FAO 331/2016**

SARLA & ORS

..... Appellants

Through: Mr. Raj Kumar Rajput, Advocate

versus

UNION OF INDIA

.....Respondent

Through: Mr. Hashmat Nabi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The Railway Tribunal vide impugned order of 19th November, 2015 has dismissed appellants' claim petition by holding that the death of deceased was not on account of any accidental fall from the train and would not be covered within the meaning of Section 123 (c) read with Section 124-A of *the Railways Act, 1989* as the train had already started moving after its scheduled stoppage, when the deceased ran after moving train and had a fatal fall in the process.

Impugned order holds that the case of appellants comes within the Proviso (b) to Section 124-A of *the Railways Act, 1989* to deny compensation to appellants, who are the legal heirs of the deceased.

Learned Tribunal has relied upon two decisions of this Court in *Jamirul Nisha and Anr. v. Union of India*, 2009 ACJ 1393 and in *Bimla Devi & Anr. v. Union of India*, 2014 SCC Online Del 102 to hold that fall from an overcrowded compartment of a train would not come within the definition of accidental fall from the train as the death of the passenger in the said case was not result of any untoward accident.

The manner in which the accident in question took place is spelt out in opening paragraphs of impugned order and needs no reproduction. Suffice to note that the deceased while trying to board an overcrowded compartment of the train fell down on the railways tracks under the platform and sustained injuries, which proved fatal.

The challenge to impugned order by learned counsel for appellants is on the ground that the deceased was a *bona fide* passenger and was trying to board a compartment of the train, which was no doubt crowded, but while doing so, he had accidentally fallen and so, it is a case of accidental fall from the train which is covered by Section 123 (c) of *the Railways Act, 1989*. It is submitted by appellant's counsel that the decision in *Jamirul Nisha (supra)* is not applicable to the facts of instant case because evidence of a co-passenger was found to be contradictory regarding the manner of accident, whereas it is not so in the instant case.

It is submitted that reliance placed upon the decision in *Bimla Devi (supra)* by learned Tribunal is totally misplaced as deceased in the said case had tried to get down from the running train at an unauthorized stop, whereas it is not so in the instant case. Thus, it is submitted that

impugned order deserves to be set aside and appellants' claim petition ought to be allowed. In support of above submissions, reliance is placed upon decisions in *Union of India v. Prabhakaran Vijaya Kumar and Others*, (2008) 9 SCC 527 and *Jameela and Others v. Union of India*, (2010) 12 SCC 443.

On the contrary, it is submitted by learned counsel for respondent that there is no infirmity in the impugned order as the deceased had not fallen from the train, but had died due to foolishly trying to board an overcrowded compartment of a moving train and in that process, the deceased had fallen down and had sustained fatal injuries. It is pointed out that *Jamirul Nisha (supra)* was a case where the victim/deceased had accidentally fallen from the train whereas in the instant case, the deceased had died while trying to board the train.

It is submitted that if a passenger tries to board a running train, then it is a criminal act, which is punishable under *the Railways Act, 1989* and so, the decision in *Bimla Devi (supra)* would squarely apply to the instant case. In this regard, attention is drawn to Section 154 of *the Railways Act, 1989*. Thus, it is submitted that there is no substance in this appeal.

Upon hearing and on perusal of impugned order, trial court record and the decisions cited, I find that falling from a train while trying to board it cannot be said to be a criminal act or a self-inflicted injury by any stretch of imagination. Learned Tribunal has gravely erred in holding that the case of appellants comes within the Proviso (b) to Section 124-A

of *the Railways Act, 1989* as the aforesaid provision relates to a self-inflicted injury. However, it cannot be said that an inadvertent fall while trying to board a running train would be a self-inflicted injury.

During the course of hearing, respondent's counsel has unrealistically urged that this was a criminal act on the part of the deceased to board a running train. One fails to understand how an act of boarding a moving train, which is just leaving the platform, would be a criminal act and how can such an act be punished under Section 154 of *the Railways Act, 1989*. Reliance placed by respondent's counsel upon Section 154 of *the Railways Act, 1989* is entirely misplaced for the reason that this provision relates to endangering safety of persons travelling by train, by rash or negligent act. At best, it is a costly error of judgment by deceased, who while trying to board the train had a fatal fall on the railway tracks while slipping from the platform, which resulted in amputation of his both legs and ultimately, the said injuries proved fatal. There is no manner of doubt that reliance placed by respondent's counsel upon aforesaid provision is totally uncalled for. Such a view is being taken as Apex Court in *Prabhakaran Vijaya Kumar (supra)* has held that even if a passenger, who is not actually inside the train, falls down would be inconsequential in a claim petition under *the Railways Act, 1989*.

Since the grant of compensation under *the Railways Act, 1989*, is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and penal one and in case of conflict, an interpretation, which is to the benefit of the person for whom the Act is

made, should be preferred. Such is the mandate of Apex Court in *Prabhakaran Vijaya Kumar (supra)*.

In *Jameela (supra)*, it was held that under Section 124-A of *the Railways Act, 1989*, there is a strict liability on the Railways to pay the compensation and negligence is not a ground to deny compensation under Section 124-A of *the Railways Act, 1989*. It was reiterated by Apex Court in *Jameela (supra)* that falling from a train due to one's own negligence does not come within any of the exceptions enumerated in the Proviso to Section 124-A of *the Railways Act, 1989* to deny compensation.

Applying the dictum of Apex Court in *Prabhakaran Vijaya Kumar (supra)* and *Jameela (supra)* to the facts of the instant case, I find that negligence of the deceased in trying to board a train while it was leaving the platform is not covered by any of the exceptions to Proviso to Section 124-A of *the Railways Act, 1989* to justify denial of compensation to appellants, who are the legal heirs of the deceased.

In the aforesaid view of the matter, impugned order is set aside and appellants' claim petition is allowed with direction to respondent to deposit the statutory compensation of ₹4 lacs alongwith interest @ 6% *per annum* from the date of filing of the claim petition, till the date of deposit with learned Tribunal within 12 weeks from today. To secure the compensation amount of ₹4 lacs, it is deemed appropriate that upon deposit, it shall be converted into an FDR initially for a period of one year with automatic renewals and appellants would be entitled to the monthly interest accruing thereon. It is made clear that if appellants are in

need of any amount of money, then upon filing of an application before learned Tribunal, the money claimed be released by learned Tribunal provided it is shown that it is for a just cause.

Records be remitted back forthwith.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 06, 2016

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