

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

+ **FAO No. 121/2017**

% **30th May, 2017**

MOHD. ISMAIL Appellant

Through: Mr. V.N. Jha, Advocate.

versus

UNION OF INDIA Respondent

Through: Mr. Rohit Dutta, Advocate for
Mr. Joydeep Mazumdar, Advocate for
Northern Railways.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is filed against the judgment of the Railway Claims Tribunal dated 5.10.2016 which has dismissed the claim petition filed by the appellants/applicants. The claim petition was filed on account of death of Mohd. Yakoob on 19.8.2014.

2. The facts of the case as pleaded by the appellants/applicants are that the deceased Mohd. Yakoob after purchasing of a valid journey ticket was travelling by Toofan Express Train from New Delhi to Behraich. That when the train reached Itawa

the train took a sudden jerk which resulted in the deceased falling out of the moving train and he died as a result of the untoward incident. The claim petition was hence filed by the appellants/applicants, and who are the parents and children of the deceased.

3. The Railway Claims Tribunal below has dismissed the claim petition by observing that the appellants/applicants are only entitled to compensation if it was first found that the deceased was a *bonafide* passenger having purchased a valid train ticket, and it has been found that no ticket was found on the person of the deceased. The Railway Claims Tribunal has also held that there was no proof that the deceased died on account of fall from the train and in fact the deceased was found in an injured condition with legs amputated by the 3008 Express Train on eastern side of the platform near the pathway. The relevant observations of the Railway Claims Tribunal for dismissing of the claim petition read as under:-

“No ticket was found on the person of the deceased. Deceased was found in an injured condition with legs amputated by 3008 Express train on Eastern side of the platform near the pathway as per Station Master’s Memo and died after reaching the hospital. Applicants could not produce any evidence of the deceased travelling on the train in question. If the deceased fell at Itawa railway station and as per exhibit A-3, inquiry report of police, he was resident of Behraich. When informed by the police about the death of Shri Yakoob, his elder brother informed that he is a heart patient, , his father is 100 years old, wife of the deceased has predeceased him and whereabouts of his children are not known. He said that they cannot come to take over the dead body and that body may be buried as per their customs. One bag was found with the dead body but no ticket recovery is mentioned anywhere. Although GRP documents conclude fall from the train, but they are all based on presumption and not on any evidence. It is also surprising that family

could come to Police Station 2 to 3 weeks after the death to collect information but did not bother about the last rites of the deceased. The learned counsel for the respondent brought out discrepancies in various documents. Whereas as per application, the deceased died on 19.8.14, but the family came to police station to find out the details of accident on 6.9.14. but, in the cross-examination of AW-1, Shri Mohd Ismail, father of the deceased stated that he came to police station on 31.8.14. The father of the deceased is said to be 100 years old but as per election identity card he is only 70 years old and as per passport, he is 80 years old. Perhaps this is not material. The name of the daughter, applicant No. 3 was also not matching and amended later from Huma Bano to Huma Begum. AW-1 stated her name as Huma Bano in his evidence, but the name in the Aadhar Card (only photocopy, original not produced) is Huma Begum. This also may be discarded as not very material if all the discrepancy was with regard to the name, but she is shown as 33 years old as per the photocopy of Aadhar Card, but she is stated to be 17.6 years as per the application and certificates of ADM, exhibit A-5. The whereabouts of children of the deceased were stated to be not known, as per their uncle (Ex.A-3)

In view of the facts brought out above, it is held that the deceased was not a bona fide passenger and the case is not proved to be a fall from the train, as alleged in the claim application. Even the dependents are doubtful due to discrepancies in their names, ages etc. Both these issues are decided against the applicants.”

4. Once, admittedly no train ticket is recovered, in my opinion, in the facts of the present case the Railway Claims Tribunal was justified in holding that the deceased was not a *bonafide* passenger. No doubt, in all cases it is not that a train ticket is recovered whenever there is an untoward incident, however, it depends on the facts of each case as to whether the deceased was or was not a *bonafide* passenger travelling after purchasing a valid train ticket. In the present case, in any of the clothes which the deceased was wearing at the time of the accident no ticket was found. Not only there is no evidence of purchase of any train ticket, but it is also found that there is no evidence whatsoever of the deceased dying on account of fall from

the train. It is seen that the legs of the deceased were amputated and he was lying near the pathway of the platform and which indicates that it is possible that the deceased was trying to cross the tracks and which resulted in his legs being run over by the train and which were amputated and he therefore died as a result of the accident. More importantly, it is noted by the Railway Claims Tribunal that the family of the deceased came to the Police Station only after two–three weeks of the death to collect information and that the family did not even bother about the last rites of the deceased and the railway office was asked to do the last rites of the deceased. The deceased died on 19.8.2014 and the family came to the Police Station to find out about the details of the accident only on 31.8.2014/6.9.2014. There is no evidence of any eye witness of the deceased falling down from the train, and which is a *sine qua non* for holding that there is an untoward incident in terms of Section 123(c) read with Section 124A of the Railways Act, 1989.

5. I may note that the Railways Claims Tribunal has also made some observations with respect to confusion existing with respect to relations of the appellants/applicants with the deceased because of variance of names, however, this Court need not go into this aspect because it is not proved in the facts of the case that the deceased

was a *bonafide* passenger travelling on a train after purchasing a valid train ticket and that in any case it is not proved that the deceased died on account of fall from a train. The factum with respect to the legs of the deceased being amputated and who was found lying near the pathway near the platform is an indication that possibly the deceased was trying to cross the tracks and which resulted in his accident with a train causing amputation of his legs and hence his death.

6. No grounds are made out for interference in the impugned judgment of the Railway Claims Tribunal.

7. Dismissed.

MAY 30, 2017

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VALMIKI J. MEHTA, J