

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

+ **FAO No. 211/2016**

% **21st November, 2017**

SUNITA DEVI & ANR. Appellants

Through: Mr. D. Sabharwal, Advocate.

versus

UNION OF INDIA Respondent

Through: Ms. Suvira Lal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

FAO No. 211/2016 and C.M. Appl. No. 34416/2016 (for delay)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Railway Claims Tribunal dated 15.7.2015 by which the Railway Claims Tribunal dismissed the claim petition filed by the appellants for seeking statutory compensation of Rs. 8,00,000/- on account of death of Sh. Girish Babu who was the husband and father of the claimant nos. 1 and 2/appellant nos. 1 and 2.

2. The facts pleaded by the appellants were that the deceased Sh. Girish Babu was travelling on 13.9.2010 from Agra Cantt to Nizamuddin Railway Station Delhi and he died on account of fall from the train between Palwal Railway Station and Aswati Railway Station. The accident was pleaded to be an 'untoward incident' as per Sections 123(c) and 124A of the Railways Act and hence the claim petition was filed. It may be noted that in the claim petition appellants pleaded that the deceased Sh. Girish Babu had gone to Village Pilakhatra in District Ita, Uttar Pradesh for meeting his mother and thereafter he had travelled from District Ita to Agra and from where the train journey was to commence of the deceased to Nizamuddin Railway Station at Delhi.

3. On the issue that whether the deceased was a *bonafide* passenger and hence the appellants/claimants were entitled to compensation, Railway Claims Tribunal has rightly held that no train ticket was found from the person of the deceased although some slip of paper containing a mobile number was found and hence the deceased was not a *bonafide* passenger. No doubt, in all cases filing and proving of a train ticket is not necessary, but initial onus always

lies upon the claimants to satisfy the court that the deceased was travelling on a train and was a *bonafide* passenger after having purchased a valid train ticket. In cases where the deceased is travelling with family on a long distance train or there are other circumstances to believe that a train ticket would have been purchased, courts do draw a presumption of the deceased being a *bonafide* passenger even if a train ticket is not recovered, however, it is not the law that in all cases a presumption must be drawn of purchase of a railway ticket by the deceased. In the present case in my opinion Railway Claims Tribunal has rightly held that the appellants/claimants failed to prove the factum with respect to the deceased having purchased a train ticket and therefore the deceased was not a *bonafide* passenger. There is no illegality or perversity in such findings for this Court as an appellate court to set aside such findings.

4. Railway Claims Tribunal has referred to the fact that in Column 7 of claim petition filed by the appellants there was a mention of a journey ticket no. 85928253 of travel from Faridabad to New Delhi Railway Station and which obviously was false because the

deceased was said to be travelling from Agra to Nizamuddin Railway Station at New Delhi. Counsel for the appellants/claimants argue that there is a typing mistake in Column 7 but I cannot accept this fact because this averment is made in the very beginning at the time of filing of the claim petition. In any case, even if we take that this averment was made by mistake of a particular train ticket from Faridabad to New Delhi instead of ticket being from Agra to New Delhi, yet, the appellants/claimants had to prove that the deceased was a *bonafide* passenger on account of having purchased a valid train ticket but this the appellants/claimants failed to prove including because of the reason that there is no deposition that anyone including appellant no. 1/claimant no.1 saw the deceased purchasing the train ticket.

5. In my opinion, once the deceased was not *abona fide* passenger, the appellants/claimants hence could not be granted the statutory compensation for an 'untoward incident'.

6. The appeal is therefore dismissed.

NOVEMBER 21, 2017 JK

VALMIKI J. MEHTA, J