

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

+ **FAO No.149/2017**

% **14th September, 2017**

REKHA AND ANR. Appellants

Through: Mr. D. Sabharwal, Advocate.

versus

UNION OF INDIA Respondent

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 is filed by the appellants/claimants under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment of the Railway Claims Tribunal (RCT) dated 10.1.2017 by which the RCT has dismissed the claim petition filed by the appellants/claimants on the ground that the deceased Sh. Laxman Singh was not a *bonafide* passenger. The appellants/claimants filed the claim petition alleging that the deceased Sh. Laxman Singh while travelling from New Delhi to New Town, Faridabad on 16.10.2015 met with an untoward incident late in the evening when he boarded the

crowded local EMU train and from which he is said to have fallen down. The incident in question is alleged to be an untoward incident and hence compensation is claimed under the Railway Claims Tribunal Act pursuant to Section 123(c) and Section 124-A of the Railways Act, 1989.

2. The RCT has held that the deceased was not a *bonafide* passenger because no valid train ticket on the date of travel was proved and nor was any pass proved and which pass ordinarily would have been purchased by the deceased since he was a regular commuter between New Delhi and New Town, Faridabad on account of being a toy seller. The relevant observations of the trial court for holding that deceased was not a *bonafide* passenger reads as under:-

“On the issue of whether the deceased was a passenger, it is stated that he was a daily commuter engaged in the selling of toys. The accident had taken place where the deceased had fallen out of the train at Okhla Railway Station. The ticket is said to have been lost as per the averments in the application. However, if we examine all the documents, it would seem that immediately after the fall from the train, a mobile phone, diary, cash of Rs.950/- were recovered from the body. It is inconceivable that a relatively heavy object that is capable of being popped out of the pocket such as mobile phone was still around and the ticket alone was selectively lost. The counsel for the applicant states that the deceased also had a Tiffin box and a bag and he could have kept the ticket in the bag, which was not recovered from the spot. If it was a case that he was a commuter, he had a pass & an identity card, he could have kept them together for safety in some bag. However, just purchasing a ticket for the day, it is unusual that a person could have kept it in a bag. If he had kept his other important belongings such as cell phone, diary and money in his pocket, we are unable to

persuade ourselves that he had a ticket in his bag and reject the case that it was lost.” (underlining added)

3. A reading of the aforesaid discussion of the RCT shows that RCT has rightly held that in the facts of the present case since from the body of the deceased a mobile phone, diary as also an amount of Rs.950/- was recovered, then, there was no reason as to why a ticket would not have been found on the person of the deceased if the deceased was travelling after purchasing a valid ticket. RCT has rightly observed that if a heavy mobile phone did not fall out of the pocket then there was no reason why the alleged train ticket was only selectively lost. RCT has also rightly observed that it is unusual that the deceased had put the cell phone, diary and money in his pocket and the ticket was allegedly put in a bag which was lost.

4. In law the initial onus to prove that the deceased was a *bonafide* passenger lies on the claimants. No doubt, it is not required that in all cases the ticket of travel must be filed and proved, however, equally it is true that Courts do not have to presume purchase of a ticket in all cases of untoward incidents. In the present case, RCT has given valid reasons for holding that the deceased was not a *bonafide*

passenger and to which reasoning of RCT I would also like to add that if the deceased was a daily commuter from New Delhi to New Town, Faridabad, then such a person would not have a ticket, but, would have taken a monthly pass and which monthly pass admittedly was not purchased by the deceased as per the admitted case of the appellants/claimants.

5. There is no merit in the appeal. Dismissed.

SEPTEMBER 14, 2017

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VALMIKI J. MEHTA, J

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