

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

+ **FAO No.159/2017**

% **17th April, 2017**

SMT. SUNITA AND ORS. Appellants
Through: Mr. Yogesh Swroop, Advocate.
versus

UNION OF INDIA Respondent
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.13937/2017 (for condonation of delay)

1. For the reasons stated in the application, delay of 85 days
in filing the appeal is condoned.

C.M. stands disposed of.

FAO No.159/2017

2. This First Appeal is filed under Section 23 of the Railway
Claims Tribunal Act, 1987 against the judgment dated 6.10.2016 by
which the Railway Claims Tribunal (RCT) has dismissed the claim
petition filed by the appellants, and who are the legal heirs of the
deceased Sh. Jagpal.

3. The case set up before the RCT was that the deceased Sh. Jagpal was travelling with his brother and a friend from New Delhi to Ballabgarh. It is further pleaded that while boarding the train, Sh. Jagpal slipped and fell down and his head was decapitated at the tracks opposite the platform. It was further pleaded that there was a heavy rush in the train and when the train started moving from New Delhi there was a sudden jerk as a result of which the deceased Sh. Jagpal fell. Accordingly the claim petition was filed on account of negligence of the respondent/Railways.

4. In order to succeed in a claim before the RCT, inter alia, it has to be proved that the deceased was a *bonafide* passenger and that there is no criminal negligence of the deceased person. The relevant Sections in this regard, defining an ‘untoward incident’ is defined in Section 123(c), and entitlement of compensation with exceptions thereof is contained in Section 124-A of the Railways Act, 1989, and these Sections read as under:-

“**Section 123** (c) “untoward incident” means—

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.

Section 124A. Compensation on account of untoward incident.—When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purpose of this section, “passenger” includes—

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

5. The RCT has held by the impugned judgment that the deceased was not a *bonafide* passenger because no ticket was recovered from the person of deceased. No doubt, non recovery of the ticket is not conclusive and whether a person is or is not a *bonafide* passenger has to be examined from the facts of each case, however, the RCT in this regard has given various salient conclusions for holding that the deceased was not a *bonafide* passenger, and which are as under:-

- (i) There was no report of the guard of the train that a passenger, i.e the deceased has slipped and fallen down from the train.

(ii) Also if the train was completely crowded and the deceased had fallen down while boarding the train or because of a jerk when the train started moving, there was no reason why the chain was not even pulled by even a single passenger on the train that a person had fallen from the train and which train was overcrowded by passengers.

(iii) It was very curious that the deceased who was travelling with his brother, and which brother was examined as AW-2, this brother AW-2 after reaching Ballabgarh did not make enquiries with respect to the deceased who was travelling in a different compartment, and who AW-2 simply went home. If really the deceased was travelling in the same train but in a different compartment, there was no reason why AW-2 would not have waited for his brother or at least have made enquiries as to why the deceased Sh. Jagpal did not join the AW-2 at the destination station, for going home.

(iv) In fact the deceased had psychiatric clinical history as admitted in evidence on behalf of the appellants, and in fact since this was an admitted case of psychiatric clinical history, there was therefore all the more reason for the AW-2 to be conscious stricken when he could not find the deceased at the destination station.

(v) Admittedly AW-2 did not purchase the ticket for his deceased brother Sh. Jagpal and from the person of Sh. Jagpal no ticket was recovered for showing that Sh. Jagpal was a *bonafide* passenger.

6. From the aforesaid conclusions of the RCT, it is clear that the deceased was not a *bonafide* passenger and in fact it is not proved that deceased was travelling in the train and he slipped and fell from the train on account of the negligence of the respondent/Railways. I adopt the reasoning and conclusions in the impugned judgment of the RCT and the relevant paras of which read as under:-

“ On the issue of whether the deceased was a passenger at the relevant time of the incident, the contention is that he was travelling with his brother and a friend from New Delhi to Ballabgarh. The brother of the deceased, who has been examined as AW-2 and his friend were reported to have boarded the train in one compartment and the deceased travelled in another compartment. AW-2 did not know that his brother had fallen even while boarding the train and that his head decapitated at the tracks opposite the platform. It was seen by a Constable, who was on platform No.7 and he had reported that a dead body was found on the tracks with head decapitated and he suspected that it could be a case of suicide. He was himself not a witness but he had noticed the body only after the train had left.

It is most important to notice that there was no report by the Guard himself that some passenger slipped and fell down from the train. If the train was very crowded, as AW-2 would have us believe, then it is also most unlikely that nobody saw the deceased falling from the train or immediately complained about the fall, leave alone none pulled the chain to stop the train. If AW-2 had travelled in the same train, his version that when he arrived at the destination station, he looked for his brother and finding him not there, he proceeded towards home. This again is a most unlikely conduct for a brother, who knew that his deceased brother was travelling in the same train and he must have made the only inference that something untoward could have happened. More so, in a situation, where the brother's own statement to the police revealed that the deceased's brother had a psychiatric clinical history and he would have been conscious stricken about the safety of his brother when he did not find him at the destination station. That is yet another ring of artificiality in the entire narration that AW-2 did not purchase the ticket for his brother and each one of them decided to purchase the ticket independently. Admittedly, when the body was

recovered and taken by the police, there was no ticket found on the person of the deceased. All that we can notice is that except the fact that the deceased had been run-over, it will be difficult for us to believe that AW-2 was travelling in the same train and that he knew that his brother had purchased the ticket. It will be difficult for us to enter a conclusive finding that the deceased had committed suicide, but it will be relevant for us to register the statements given by the brother and friend of the deceased to the police admitting to the psychiatric clinical history of the brother and they suspected that the deceased would have committed suicide. While the brother, with his knowledge of the psychiatric condition could make such an inference to some degree of credibility, the police who had first noticed the body has also made such an inference. That would have been possible only by looking at the nature of injuries and the manner of decapitation of the head that are more consistent with a fall across the track than a person falling from the train. We must also observe with caution that there are quite a few occasions where a fall from train in between compartments could result in decapitation. The observation that the police constable had made shall be tested in the light of the statements of other persons as a whole, who had been intimately connected with the deceased.

The learned counsel poses a question as to how the body could be found near the platform. We have already observed that nobody in a crowded train had noticed the fall. No person standing on the platform had noticed the fall of the deceased. The police Constable, who was at the platform, had noticed a dead body after the train had left and not when he was boarding the train. Unfortunately, it is not clear about the exact location of the body whether it was on the posterior aspect of the platform, in which case it was even likely that the deceased was attempting to get into the train from the side away from the platform. In such an eventuality, the person standing in the platform could not have noticed. If the deceased was attempting to get in through the other side, it still does not fit in with the statement given by AW-2 that they were boarding the train at the same time from the platforms. Given all these improbabilities of the deceased being a passenger with a ticket and also the time when the body was found, the inquest concluded that it was a case of suicide.”

7. In view of the above, there is no illegality in the impugned judgment of the RCT, and therefore, this appeal is dismissed, leaving the parties to bear their own costs.

APRIL 17, 2017
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VALMIKI J. MEHTA, J