

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

+ **FAO No.434/2016**

% **1st May, 2017**

SMT. URMILA AND ORS. Appellants

Through: Mr. Rajiv Mangla, Advocate.

versus

UNION OF INDIA AND ANR. Respondents

Through:

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 under Section 23 of the Railway Claims Tribunal Act, 1987. The appellants impugn the judgment of the Railway Claims Tribunal (RCT) dated 7.3.2016 by which the RCT has dismissed the claim petition filed by the appellants seeking compensation on account of death in an 'untoward incident' of Mr. Bablu on 8.8.2013.

2. The facts of the case are that the appellants/claimants claim that the deceased Mr. Bablu on 8.8.2013 was travelling by EMU train from Rundhi to Faridabad after purchasing a valid ticket at Rundhi Railway Station. When the deceased Mr. Bablu wanted to board the train from platform no.4 at Rundhi where he was waiting for

the train to come, and when the EMU train came there was a heavy pushing and pulling, resulting in the deceased Mr. Bablu falling down on the railway tracks and getting crushed on the spot resulting in his death.

3. The respondent Railways contested the claim and it was pleaded that the deceased died out of his own criminal negligence as he did not die while falling from the platform but the deceased's body was cut into two pieces on account of his trying to cross the railway tracks when the subject train came. The RCT held the deceased to be a *bonafide* passenger because the deceased was having a train ticket which was proved as Ex.A-10 but the issue before the RCT was that whether the deceased died out of his own criminal negligence or there was an untoward incident.

4. Untoward incident is defined in Section 123(c) of the Railways Act, 1989 and the entitlement of the compensation on account of death in an untoward incident, with exceptions to the claim, is as provided in Section 124-A of the Railways Act. 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. (i) These aforesaid Sections 123(c) and 124-A of the Railways Act have been interpreted by the Supreme Court in the cases of *Jameela & Others vs. Union of India, (2010) 12 SCC 443* and *Union of India vs. Prabhakaran Vijaya Kumar and Others, (2008) 9 SCC 527* and the Supreme Court has held that an ordinary negligence of a passenger will not disentitle the allowing of the claim petition, and only when it is shown by the Railways that the deceased died on account of his own criminal negligence then the claim petition can be

dismissed. It therefore has to be seen that whether the deceased Mr. Bablu died on account of his own criminal negligence.

(ii) It is seen in the facts of the case that on the one hand appellants were not accompanying the deceased on the fateful day being 8.8.2013, and therefore, there is no primary evidence or direct evidence on behalf of the appellants of any eyewitness that the deceased Mr. Bablu died while trying to board the EMU train from platform no.4, on the other hand the respondent has filed the DRM report Ex. R-1, and which DRM report records the statements of the Guard and the Loco Pilot of the train in question, as also the statement of the Gangman concerned, and all of whom have spoken in one voice that the deceased was run over while trying to cross the railway tracks. The train driver has also made a statement that he had given a hoot but in spite of that one boy suddenly came running and he did not stop and consequently he got run over by the train and the train was immediately thereafter stopped.

6. No doubt the DRM report has been prepared about nine months after the happening of the incident, however, the said report is based on the primary evidence of the three government employees who are the Loco Pilot, the Guard and the Gangman who have stated that the deceased died out of his own criminal negligence while crossing the tracks.

7. In my opinion, the case of the respondent has to be believed also for the reason that if the deceased was trying to board the train from the platform and he had fallen from the platform on to the tracks, then, the body would have been mutilated and not cut into two pieces as was the position. The body as per the report has been cut into two pieces with head being flung on the one side and the cut-up body being on the other side. Whatever be the position with respect to how unfortunately the body was cut up, the fact remains that the body was not mutilated, but was cut into two pieces, and which would not have been in case the deceased had fallen from the platform to the tracks and died on account of movement of the train, and in such a case the accident would have resulted in crushing of the body and not body being cut up into two pieces.

8. Learned counsel for the appellants argued that the ticket window from where the ticket was purchased was on the other side and the body showed that the deceased was coming from the other side of the tracks and which would not be possible, however, it is perfectly possible that the deceased for some reason had crossed the tracks and was again trying to re-cross the tracks for coming to the platform, and this Court cannot disbelieve the direct statements of the three official witnesses who have said that the accident took place on account of

criminal negligence of the deceased while trying to cross the tracks. This direct evidence of the employees of the respondent has to be believed more so because there is no direct evidence of any eye witness led on behalf of the appellants because as already stated above no eye witness has deposed in favour of the appellants of the deceased dying in an untoward incident while trying to board the train from platform no.4.

9. Dismissed.

MAY 01, 2017
Ne

VALMIKI J. MEHTA, J