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

DECIDED ON : 8th DECEMBER, 2017

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FAO 1/2012

RAM DULARE & ANR Appellants

Through : Mr.Anshuman Bal, Advocate.

versus

UNION OF INDIA Respondent

Through : Ms.Shipra Shukla, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. This First Appeal has been filed under Section 23 of Railway Claims Tribunal Act, 1987 (hereinafter 'Tribunal') impugning the judgment of the Tribunal dated 29.08.2011 by which the claim petition filed by the appellants was dismissed. The appeal is contested by the respondent.

2. Briefly stated, facts of the case as reflected in the petition are that on 17.02.2009 at about 10.45 p.m. Rakesh Kumar – appellants' son aged around 22 years while going from Sunhera to Delhi Shahdara railway station in a passenger train No.6SSD sustained fatal injuries while standing on the gate of the train. When the train reached near Behta Hajipur railway station, Distt. Ghaziabad, U.P., due to heavy rush and sudden jerk taken by the driver of the said train, Rakesh Kumar fell down from the running train and suffered

grievous injuries. He was taken to MMG Hosptial to Ghaziabad, U.P. where he succumbed to the injuries. It is further urged that Rakesh Kumar was travelling on a valid railway ticket and he died in an untoward incident. The matter was reported to the police vide DD No.18 dated 18.02.2009.

3. It is further urged that Rakesh Kumar had purchased a railway ticket for his journey from Sunhera to Delhi Shahdara railway station. The claim petition was contested by the respondent. By an order dated 30.08.2010, the Tribunal was of the view that the deceased was not a bonafide passenger at the time of accident; claim was denied. FAO No.30/2011 was filed to impugn the said order dated 30.08.2010. This Court remanded the case to the Tribunal vide order dated 29.03.2011 to pass an appropriate order after clarifying the issue of the date of purchase of the ticket. The Tribunal again came to the conclusion that the deceased was not a bonafide purchaser and dismissed the claim petition. Being aggrieved and dissatisfied, the instant appeal has been preferred.

4. The appellants were required to prove that the deceased Rakesh Kumar was a bonafide passenger and was travelling on a valid railway ticket. To prove their claim, the appellants produced railway ticket bearing No.3947 issued at Sunhera railway station. This ticket was duly verified by the railway officials. It was found that this ticket was not sold on 17.02.2009 from Sunhera halt. There was no stock of DSA(II)/O/F from 08.02.2009 to 19.02.2009. Stock was received and sale at SFA halt started on 20.02.2009 from ticket No.82200 onwards.

The report so submitted before the claim Tribunal remained unchallenged.

5. Specific query was raised during arguments when the learned counsel for the appellants was asked if the ticket in question was recovered from the body of the deceased by the authorities at the spot. Learned counsel for the appellants fairly admitted that the ticket was not recovered during search of the body. He informed that this ticket was handed over by the concerned doctor after post-mortem examination to the appellants. When specifically asked whether there was any mention about the handing over the ticket by the doctor to the appellants in any documents/ proceedings, the counsel answered in negative. The counsel was further asked as to when the ticket came into appellants' possession, to which, he had no clear answer. It was further enquired if the victim was a resident of Sunhera or for what purpose he had visited the said station that day. Again, there was evasive response stating that the victim had gone there for his personal work.

6. Testimony of AW-2 (Ajay Kumar) inspires no confidence. At no stage, it was averred in the petition if Ajay Kumar was with the victim at the time of accident in the said train. AW-2 (Ajay Kumar) did not produce any ticket in his possession to show if he was travelling in the said train as a passenger. It is unbelievable that after coming to know the victim's fall from the train, he would not raise hue and cry or that he would not inform the railway authorities or police. He also did not disclose as to for what specific purpose they had gone to Sunhera, if so, when.

7. Earlier in the claim petition, it was recorded that the time of accident was 8 p.m. and the victim was travelling in EMU. Subsequently, amendment was sought to state that the time of accident was 10.45 p.m. and the victim was travelling in train No.6SSD. This contradictory and conflicting stands make the appellants' claim suspect.

8. The post-mortem report and the other proceedings conducted at the time of recovery of the body do not reflect if the ticket was with the victim at the time of incident.

9. The findings of the Tribunal based upon fair appreciation of the evidence warrant no intervention. The appellants have failed to establish if the victim was a bonafide passenger travelling in a particular train on a valid ticket.

10. The appeal is accordingly dismissed.

11. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

DECEMBER 08, 2017 / tr