

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

+ **FAO No. 308/2017**

% **24th July, 2017**

UNION OF INDIA

..... Appellant

Through: Mr. A.S. Dateer, Advocate

versus

HABIB & ANR.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 25925/2017 (for delay)

For the reasons mentioned in the application, delay of 22 days in re-filing the appeal is condoned.

The application stands disposed of.

C.M.Nos. 25923/2017 & 25924/2017 (for exemption)

Exemption is allowed subject to just exceptions.

Both the applications stand disposed of.

FAO No. 308/2017 & C.M. No. 25922/2017 (for stay)

1. This first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 impugns the judgment of the Railway Claims

Tribunal dated 04.01.2017 by which the Railway Claims Tribunal has allowed the claim petition filed by the respondents/claimants for grant of statutory compensation on account of death of Yasin son of Habib. The respondents/claimants are the parents of the deceased Yasin.

2. The facts of the case are that there was marriage of brother of the deceased which was also attended by mausi of the deceased namely Smt. Bundo. On 27.03.2015, when the deceased along with Smt. Bundo and her family members were returning to their home at Delhi, the deceased Yasin also came along with Smt. Bundo and her family members. They purchased the journey tickets bearing no.18152145 and 18152146 and boarded the EMU train from Khurja junction for Delhi. The train was overcrowded and on account of a sudden and heavy jerk in the train, and on account of push of the passengers, the deceased Yasin fell from the train between poll no.10/23 and 10/25 near Sahibabad. The relatives of the deceased pulled the chain but the train did not stop. Therefore, they got down from the train at Vivek Vihar Railway Station and reached the place of accident where Yasin was found to have died. The police was

informed. DD no.12 dated 27.03.2015 was lodged and investigation proceedings were conducted.

3. The appellant contested the case and denied that the deceased was a *bonafide* passenger. It is also pleaded that the victim must have met with the fatal accident due to his own criminal negligence.

4. There are two issues which arise in the present case with respect to the deceased being a *bonafide* passenger and whether the deceased had died on account of falling from the train and there was no criminal negligence on the part of the deceased.

5. So far as the issue of the deceased being a *bonafide* passenger, the Railway Claims Tribunal has rightly held the deceased as the *bonafide* passenger inasmuch as the original ticket was proved as Ex.A1. Also, the certified copy of the inquest report Ex.A3, shows that the deceased had died on account of falling from the train. The Railway Claims Tribunal has therefore rightly arrived at a finding that the deceased was a *bonafide* passenger and hence there is no reason to

interfere with the impugned judgment holding the deceased to be a *bonafide* passenger.

6. The next aspect is as to whether the deceased had died on account of an untoward incident or the deceased had died on account of his own criminal negligence. The Railway Claims Tribunal in this regard has given a finding that no evidence was led by the appellant showing criminal negligence and hence there is no basis for arriving at a finding that the deceased was hanging out of the train. To this finding of the Railway Claims Tribunal, I would like to add that there is no evidence led by the appellant of any eye witness that the deceased was hanging out of the gate of the train and therefore was struck by the poll. I therefore completely agree with the conclusion of the Railway Claims Tribunal because once no evidence was led by the appellant to show that the deceased died on account of his own criminal negligence, it has to be held that the deceased died in an untoward incident.

7. The law in this regard is clear and it is held by the Supreme Court in the cases of *Union of India vs. Prabhakaran Vijay Kumar & Others (2008) 9 SCC 527* and *Jameela & Others vs. Union*

of India (2010) 12 SCC 443 that even if a passenger is guilty of negligence yet compensation has to be awarded and that compensation cannot be awarded only if it is proved that the deceased died due to his own criminal negligence or death was on account of self-inflicted injury as provided under Section 124A of the Railways Act, 1989.

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

JULY 24, 2017
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VALMIKI J. MEHTA, J



नित्यमेव जयते