

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

+ **FAO No. 294/2017**

% **14th July, 2017**

RAJ KUMARI 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)

C.M. Appl. No. 24295/2017 (for condonation of delay)

This is an application seeking condonation of delay of 27 days in filing the appeal.

For the reasons stated in the application, the same is allowed and the delay of 27 days in filing the appeal stands condoned.

C.M. stands disposed of.

FAO No. 294/2017

1. This first appeal under Section 23 of the Railways Claim Tribunal Act, 1987 is filed by the appellants against the impugned judgment of the Railway Claims Tribunal dated 23.1.2017 by which the Railway Claims Tribunal has dismissed the claim petition filed by

the appellants for grant of statutory compensation on account of death of Sh. Sukh Ram, and who was the husband and father respectively of the two appellants/applicants.

2. The facts of the case are that the subject claim petition was filed pleading that the deceased Sh. Sukh Ram was travelling from Delhi to Bharthna by Unchahar Express after purchasing a valid train ticket. It was further pleaded that when the train started moving from Etawah Railway Station, Sh. Sukh Ram fell down from the train due to jerk/jolt and he died. The railway police at Etawah informed the appellants and hence the subject claim petition was filed seeking statutory compensation of Rs.8,00,000/-.

3. The issue with respect to entitlement to statutory compensation is that if an 'untoward incident' happens to a '*bona fide* passenger' then statutory compensation can be claimed. This is the subject matter of Section 123(1)(c) of the Railways Act, 1989 and Section 124A thereof. The requirements of these Sections *inter alia* are twofold. Firstly, the deceased traveler should be a *bona fide* passenger i.e he is travelling on a valid ticket and secondly there must be an untoward incident i.e a person does or suffers injuries on account of an unintended negligence in a train accident. Of course, in terms of Section 124 A of the Railways Act if the deceased suffers injuries or

dies for his own criminal negligence as per eventualities given in the various situations provided under Section 124A of the Railways Act, then statutory compensation cannot be granted.

4. In the present case, admittedly, no ticket has been proved to have been purchased by the deceased Sh. Sukh Ram. There is only an oral statement of the witness who deposed for the appellants that the ticket was purchased but no train ticket has been found on the person of the deceased. Of course, it is the law that it is not necessary that a train ticket is always recovered in case of an untoward incident because in certain accidents the ticket can get lost, however, courts are now regularly finding that this law that a ticket need not be filed and proved in all occasions, is being used to commit gross frauds upon the Railways and to siphon huge moneys of the Railways running into crores of rupees. The present case is one such case as will be seen from the discussion hereinafter, and wherein this Court will reproduce an important paragraph of the impugned judgment showing that it is inconceivable that death of the deceased took place on account of train accident involving the deceased Sh. Sukh Ram allegedly travelling on 13.5.2016 from Delhi to Bharthna on Unchahar Express. In any case, the claim petition was rightly dismissed because the deceased was not

proved to be a *bona fide* passenger as no train ticket has been filed and proved with respect to the travel of the deceased Sh. Sukh Ram.

5. The next issue to be examined is that whether at all there is an untoward incident and assuming that the deceased was travelling after purchasing a valid train ticket. Untoward incident means that there is an incident of a fall from the train. As per the facts which are pleaded/alleged that the deceased was travelling from Delhi to Bharthna by Unchahar Express and which journey started on 13.5.2016 and the accident took place on 14.5.2016. The Railway Claims Tribunal below has dismissed the claim by observing that the medical report showed that the body had decomposed and decayed to such an extent that there were maggots all over the body, skin peeled off, abdomen distended and hair easily plucked out, and meaning thereby the body/corpse was rotting much more than for 4-5 hours being the period from the falling from the train of the deceased Sh. Sukh Ram and the discovery of the body by the railway police. This is so observed by the Railway Claims Tribunal in the following portion of the impugned judgment and accordingly the claim petition was dismissed:-

“Counsel for the respondent argued that the alleged train left NDLS at 9:30 pm reached Itawah at 2:45 am and dead body of the deceased was noticed by the Guard of EMU passenger at 7:15 hrs next day i.e. 14.05.2016, panchnama conducted at 11 am on 14.05.2016. Panchnama brings out that body was rotting and badly mutilated, and head was split open, right hand

broken. PME also states the body to decomposed, maggots all over the body, skin peeled off, abdomen distended and hair easily plucked out. If the deceased was on alleged train, the accident could have taken place only around 2:45 am on 13.05.2016 and within 4-5 hrs of alleged accident, body is unlikely to rot and maggots found all over body. In the light of condition of corpse, the conclusion in panchmana that the deceased fell from Unchahar Express appears far fetched and it is held that death did not take place in an untoward incident.”

6. I completely agree with the aforesaid conclusions of the Railway Claims Tribunal because it is inconceivable that the body would have decomposed so much as is found in the medical report merely on account of an accident having allegedly occurred just 4-5 hours earlier. The train in question left Delhi station at 9:30 p.m. on 13.5.2016 and had reached Itawah where the accident is pleaded to have occurred around 2:45 a.m. The body was discovered at around 7:15 hours on the morning of 14.5.2016. Accordingly the Railway Claims Tribunal has rightly held that in the facts of this case it is not proved that an untoward accident happened. I may only add that admittedly there is no report in any railway record with respect to the deceased falling from the train, any record that any passenger had seen Sh. Sukh Ram falling from the train, and in which case surely one of the passengers would have pulled the chain and which is not so in the facts of the present case.

7. The benevolent provisions of the Railways Act, 1989 for granting of statutory compensation on account of untoward incident

occurring is now being used by the unscrupulous persons, as a team forming a chain, to defraud the Railways and which has in fact now become endemic. This Court recollects that there is possibly a proposal to amend the relevant provisions for grant of statutory compensation only on account of frauds being played upon the Railways.

8. This Court in the judgment in the case of *Mehtab son of Sh. Mohd. Sabir Vs. Union of India* in FAO No. 60/2011 decided on 14.7.2011 at the time of dismissing of the appeal on account of the claim being fraudulent directed initiation of a criminal case against the applicant for compensation in the said case by observing as under:-

“5. I am noticing that many cases are coming up before this Court where it is more than amply clear that there is a systematic endeavour to defraud the railways because of the enactment and implementation of the Railway Claims Tribunal Act, 1987 which provides for statutorily fixed compensation in case of an untoward incident. In case of death the compensation is fixed at Rs. 4 lacs, and which can be very large amount in many cases. It is high time that this practice of filing fraudulent claims against the Railways pursuant to the Railway Claims Tribunal Act is looked into very strictly, though of course in those limited number of cases where it is ex facie clear that a fraud is sought to be perpetrated on the Railways. The facts of the present case show a clear attempt by the applicant, who is only a minor, and therefore actually his father Mohd. Sabir to defraud the railways. For pursuing a fraudulent case and seeking compensation perjury has been committed by making statements on oath before the Railway Claims Tribunal by filing an affidavit by the said Mohd. Sabir. I wish that Mohd. Sabir was better advised by his lawyers before the Railway Claims Tribunal but unfortunately this did not happen possibly because of the high amount of compensation.

6. The provision of Section 340 of Code of Criminal Procedure, 1973 (Cr.P.C.) provides for a complaint being filed before a concerned Metropolitan Magistrate in case any of the offences as stated in the said section are found to have been committed. The offences which are mentioned in Section 340 Cr.P.C. are those offences contained in Section 195(1)(b) Cr.P.C. A reference to Section 195(1)(b) shows that it includes the offences of perjury, giving false affidavits etc. and which are punishable under Sections 193, 199, 200 and 209 of Indian Penal Code, 1860 (IPC). Prima facie, in the present case there is made out a case for a complaint to be

registered by the Registrar General of this Court acting under Section 340 Cr.P.C. against Mohd. Sabir through whom the present appeal has been filed and through whom the claim petition was also filed before the Railway Claims Tribunal and who has committed the offences of perjury, giving false evidence, giving and using false declaration and making a false claim.

7. Accordingly, while dismissing the appeal, I direct the Registrar General to make a complaint to the concerned Metropolitan Magistrate having jurisdiction and also take such other steps as are required in law under Section 340(1)(d) &(e) Cr.P.C.

8. The matter be listed before the Registrar General of this Court on 10.8.2011 in terms of the present order. A copy of this order be sent to Railway Claims Tribunal.

With the aforesaid observations, the appeal stands dismissed and disposed of.”

9. An SLP being SLP No. 28701/2011 against this judgment dated 14.7.2011 has been dismissed by the Supreme Court on 4.11.2011 and Supreme Court had observed that whatever issues/defences were there, were to be urged before the criminal court in the criminal case against the claimants. I find the facts of the present case such to apply the observations contained in paras 5 to 8 of the judgment dated 14.7.2011 in FAO No.60/2011, and accordingly the same directions are issued in this case as stated in paras 5 to 8 of the judgment dated 14.7.2011 in FAO No.60/2011.

10. While dismissing the present appeal, the matter is listed before the Registrar General of this Court on 28th July, 2017 in terms of the present order, and the Registrar General will take necessary action in terms of the present judgment.

JULY 14, 2017/ AK/Ne

VALMIKI J. MEHTA, J