

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

+ **FAO No. 191/2015**

% **16th August, 2017**

KRISHNA DEVI AND ANR. Appellants

Through: Mr. Anshuman, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms. Shipra Shukla, Advocate
for UOI.

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 under Section 23 of the Railway Claims Tribunal Act, 1987, impugns the judgment of the Railway Claims Tribunal dated 5.2.2015 by which the Railway Claims Tribunal has dismissed the claim petition filed by the appellants/claimants, seeking compensation for the death, in an untoward incident of fall from the train, of their son Mangu.

2. The facts of the case as pleaded by the appellants are that the deceased Mangu was travelling from New Delhi to Bhatinda by

Punjab Mail on 1.9.2010 and he died on account of accidental fall from the train between Budhlada Railway Station and Datewas Railway Station in Punjab.

3.(i) It is settled law, and which is clear from Section 123(c) of the Railways Act, 1989 that, before compensation is granted, it must be established/proved that the deceased was a *bonafide* passenger. *Bonafide* passenger means a person who is travelling in a train by purchasing a valid ticket. In the present case Railway Claims Tribunal has by the impugned judgment dismissed the claim petition filed, *inter alia*, on the ground that no train ticket has been filed and proved on record and also that the only person who accompanied the deceased one Sh. Sheeshpal, and who gave his statement Ex.AW1/8 to the police, was not called for evidence.

(ii) No doubt, in law, it is not that in every case train ticket is necessarily to be proved, however, each case depends upon its own facts, and the courts have to examine/scrutinize the facts of each case in order to decide whether in spite of the fact that no train ticket is found or recovered from the person of the deceased, whether the deceased was a *bonafide* passenger.

4. In the present case, in my opinion, Railway Claims Tribunal has rightly held that the deceased was not a *bonafide* passenger because it was found that as per the inquest report Ex.AW1/7 only a pocket diary was recovered from the deceased and nothing else was recovered. Surely, if a pocket diary can be recovered from the person of the deceased, then if the deceased was travelling after purchasing a valid ticket, even that ticket would have been found on the person of the deceased. In any case, once two views are possible and the view taken by the Railway Claims Tribunal is not in any manner illegal or perverse in the facts of the present case, then this Court would not like to interfere with the findings of the Railway Claims Tribunal that the deceased Mangu was not a *bonafide* passenger as no train ticket is proved for the travel of the deceased Mangu from New Delhi to Bhatinda.

5. Learned counsel for the appellants argued that the deceased Mangu along with a co-passenger Sh. Sheeshpal who gave his statement Ex.AW1/8 to the police were *bonafide* passengers and that this Court should take into account the statement of Sh. Sheeshpal Ex.AW1/8 to the police stating that it was the deceased who had

purchased the tickets and which tickets were with him both for the deceased as also for Sh. Sheeshpal, however I cannot agree with this argument for two reasons. Firstly, Sh. Sheeshpal was not produced in court on behalf of the appellants and therefore he was not subjected to the test of cross-examination with the fact that no reasons have been given by the appellants for non-production of Sh. Sheeshpal. The second reason is that even if Sh. Sheeshpal had come he would have only deposed that the tickets were with the deceased Mangu, however, no tickets were recovered from the person of the deceased.

6. Therefore, in my opinion, in the case such as the present it is not possible to come to the conclusion that the deceased had necessarily purchased a ticket and that he necessarily was a *bonafide* passenger travelling after purchasing a valid ticket.

7. There is no merit in the appeal and the same is hereby dismissed.

AUGUST 16, 2017

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VALMIKI J. MEHTA, J