

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

+ **FAO No. 586/2016**

% **21st April, 2017**

RAM RATTAN & ORS. Appellants

Through: Mr. D. Sabharwal, Advocate.

versus

UNION OF INDIA Respondent

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 impugning the judgment dated 29.9.2016 of the Railway Claims Tribunal (RCT) dismissing the claim petition filed by the appellants/claimants. The case of the appellants was that the deceased Sh. Jaivir Singh Tomar was a *bonafide* passenger travelling from New Delhi to Agra Cantt. by Jhelum Express train. It was pleaded that when the train reached Nizamuddin railway station, the deceased got down from the train to fetch drinking water and after re-boarding the train, he was standing near the gate. It is further pleaded that the train took a heavy jerk, and as a result of which the deceased fell down from the moving train and died. It was therefore pleaded

that there was an untoward incident as defined under Section 123(c) of the Railways Act, 1989 (hereinafter referred to as 'the said Act') read with Section 124-A of the said Act, and therefore, statutory compensation of Rs.8 lacs be granted.

2. The RCT framed two issues as to whether the deceased was a *bonafide* passenger and whether there was an untoward incident, and which expressions are found in Section 123(c) and Section 124-A of the said Act, and which 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.”

3.(i) RCT has decided both the issues against the appellants/claimants holding that the deceased was not a *bonafide* passenger and that the deceased died out of his own negligence as he was trying to board a running train when the train was passing through the Nizamuddin railway station where it had no scheduled stoppage. RCT has held that the deceased was not a *bonafide* passenger because no train ticket was recovered from the person of the deceased. RCT held that though out of the belongings of the deceased recovered at the spot various items such as mobile phone, cash, visiting cards etc were recovered but no journey ticket was recovered and therefore when other belongings were recovered but the ticket was not recovered, hence the deceased was not a *bonafide* passenger.

(ii) I completely agree with the aforesaid reasoning and conclusions of the RCT that the deceased was not a *bonafide* passenger. In fact, RCT has also rightly noted that deceased was an employee of M/s Bobby Caterers which had a place near Nizamuddin railway station and which aspect is established by the fact that after the accident the

co-workers of the deceased came to the spot immediately and identified the body of the deceased and therefore the deceased was trying to board the train at the unscheduled halt at the Nizamuddin railway station. In the opinion of this Court the deceased was thus not a *bonafide* passenger and hence the claim petition was rightly dismissed by the RCT.

4. The RCT has also held that the deceased died on account of his own negligence and he was run over by the train when he was trying to board the train at Nizamuddin railway station. Nizamuddin railway station was not the scheduled halt of the Jhelum express. RCT in order to hold that the deceased died out of his own criminal negligence has referred to the statement of the eye witness Sh. Satyapal who was a head constable in the Railway Protection Force and who deposed by his deposition Ex.A-5 that the deceased was run over by the Jhelum express train at the Nizamuddin railway station when the train was passing through the Nizamuddin railway station at which there was no scheduled stoppage. In my opinion therefore the RCT has rightly relied upon the statement of the eye witness who was a neutral person and there was no reason therefore to disbelieve the statement of the eye witness head constable Sh. Satyapal. It is therefore held that the RCT was correct in arriving at the conclusion that the deceased

died out of his own criminal negligence. The RCT has in the following terms held that the deceased was not a *bonafide* passenger and he died out of his own criminal negligence and which reasoning is accepted by this Court as correct:-

“IV. Issue-wise Reasoning for the judgment:

1. Issue 1: Whether the deceased was a bonafide passenger on board of the Jhelum Express train (train number not mentioned) on 14.7.14 from Delhi railway station to Agra Cantt railway station?
2. Issue 2: Whether the death of the deceased was on account of any untoward incident, as alleged in the claim application?

On the issue of whether the deceased was a passenger in the train in question, the applicants have failed to file the relevant journey ticket on record in proof of the fact that the applicant was a bona fide passenger in the train in question. During search from the person of the deceased, some of his belongings viz. visiting cards, mobile phone and cash etc., were recovered. There is, however, no recovery of the railway journey ticket from the person of the deceased. When all other belongings were duly recovered from the person of the deceased, had the ticket been available, it should have been recovered from his person along with other valuables. In the absence of the same, the burden cast on the applicants to prove that the deceased was a bona fide passenger remains un-discharged. Apparently, there is no eyewitness to the incident in question. In this view of the matter, I hold that the applicants have failed to prove that the deceased was a bona fide passenger at the relevant time of the incident.

As regards fall of the deceased from the train in question, the averments made in the claim application are that the deceased was travelling from New Delhi to Agra in Jhelum Express train and that he got down at Nizamuddin railway station to get drinking water and while in the process of re-boarding the train, he fell down and sustained fatal injuries. The learned counsel for the respondent drawn attention of the Court to the fact that the said train has no scheduled stoppage at Nizamuddin railway station. A copy of TSR record has also been filed in this regard. When the train has no stoppage at Nizamuddin railway station, the story put forth by the applicant that he got down at the said station stands belied. The learned counsel for the respondent further drawn attention of the Court to the fact that the deceased was working with Bobby Caterers, a place near Nizamuddin railway station and also the fact that after the alleged incident the co-workers of the deceased came to the spot immediately and identified his body. The documents filed on record by the applicants vide exhibit A-5 and the GRP, railway and other police documents clearly indicate about the incidents as being of run-over by train. None of these documents mention the cause of death as accidental fall from the train in question. Ex.A-5 clearly states that as per the eye-witness, Shri Satyapal, Hd. Constable, RPF, deceased was run over by Jhelum Express train at Nizamuddin railway station while trying to

board the train, when it was passing through Nizamuddin railway station having no scheduled stoppage at Nizamuddin. The statement of Shri Satyapal, Hd. Constable annexed with the DRM Report also reiterates the same position. The statement of Hd. Constable given during normal course of his duty cannot be doubted. Thus scene from any angle, the evidence filed by both the parties on record nowhere established the fall of the deceased being an accidental fall from the train in question. The facts and circumstances of the case clearly indicate and lead me to infer that the deceased, in all probability, was run over while crossing the railway lines and did not fall from the train, as alleged in the claim application. In view of this, it is held that the deceased was neither a bona fide passenger nor his death has taken place on account of an untoward incident, as alleged in the claim application. The issues are answered accordingly.”

5. In view of the above, there is no illegality in the impugned judgment of the RCT. Dismissed.

APRIL 21, 2017

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VALMIKI J. MEHTA, J