

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

+ **FAO No.589/2016**

% **14th September, 2017**

SMT. SUNITA AND ORS. Appellants
Through: Mr. Shyam Singh Sisodia,
Advocate.

versus

UNION OF INDIA Respondent
Through: Ms. Perna Mehta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Railway Claims Tribunal (RCT) dated 2.8.2016 by which RCT has dismissed the claim petition by holding that there was no untoward incident of a fall from the train.

2. The facts of the case are that the deceased Sh. Bharat Kumar, and who was the husband/father/son of the appellants/claimants, was stated to be working as a tailor at Shahdara

in Delhi. The deceased Sh. Bharat Kumar was a resident of village Shahpur Bamheta, District Ghaziabad, (UP). The deceased had a valid monthly season ticket and identity card bearing no.148154. It was pleaded by the appellants/claimants that deceased died on account of fall from the train while travelling from Shahdara, Delhi to Ghaziabad. The deceased fell from the train in around the railway station Sahibabad. The deceased on account of the untoward incident of fall from the train at around the railway station Sahibabad was first got admitted to Narender Mohan Hospital, Sahibabad (UP) and thereafter he was referred to G.T.B. Hospital, Shahdara, Delhi where he succumbed to his injuries on 10.8.2014. The subject claim petition was therefore filed pleading the death of Sh. Bharat Kumar as an untoward incident of a *bonafide* passenger and whereby the appellants/claimants are entitled to statutory compensation of Rs.8 lacs.

3. Before the RCT, evidence was led of the appellant no.1/widow and during which evidence the appellant no.1 proved the following documents:-

“Ex.A-1	:	Voter I. Card of Sunita
Ex.A-2	:	Voter I. Card of Savitri

Ex.A-3 : DD No.28-B dated 10.8.14
Ex.A-4 : MLC
Ex.A-5 : Injury report
Ex.A-6 : Post mortem report
Ex.A-7 : Original MST and I.Card
Ex.A-8 : Copy of aadhar card of Nitin
Ex.A-9 : Copy of aadhar card of Bhawna
(Originals of Ex.A-8 and A-9, A-2 and A-2 are produced, perused and returned)”

4. Appellant no.1 deposed and supported the claim petition and proved that her husband Sh. Bharat Kumar was a *bonafide* passenger and he died on account of the untoward incident of a fall from the train on 9.8.2014. The DD No.28-B dated 10.8.2014 with respect to accident was proved as Ex.A-3. MLC of the G.T.B Hospital, Shahdara was proved as Ex.A-4 and the postmortem report was proved as Ex. A-6.

5. The RCT has dismissed the claim petition by holding that there does not appear to have taken place an untoward incident and for which purpose reference is made to the report of the DRM of the Railways that the site of the accident was at a place where a person would have crossed the tracks. The relevant observations of the RCT read as under:-

“1. On the issue of whether the deceased was a bona fide passenger of the train in question at the relevant time of the incident, the claimants would file a monthly pass valid on the date of the accident. The respondent has

denied that he was a passenger and would rely on the RPF report, which had made a specific reference to the fact that there was no ticket or pass found on the person of the deceased at the time when he was picked up from the spot. On the other hand, it is stated that the applicants had handed over the pass to the police. If the possession of ticket or pass itself ought not to be taken as a conclusive piece of evidence, it must be seen at least that there was some evidence that he was a bona fide passenger in the Express train and there was an untoward incident of fall from the train. The applicants admitted that they are not personally aware as to how and where the accident took place or the train in which the deceased was travelling. The Station Master has given a report that merely refers to the fact of a person found in injured condition at Ghaziabad end of Sahibabad Yard. The DRM report reveals that the site of the alleged accident was in a place where the persons would cross the tracks. If there is no eyewitness referring to the fall from the train and the deceased did not carry the pass on himself at the time when he was picked from the site of accident, the nature of a report given by the police and the conclusions drawn by the DRM would appear to be correct and we are afraid that we are unable to support the case of the applicant that the deceased was a passenger only by the fact that he held a pass to travel between the two stations where he was found in an injured condition.

The explanation of the applicant that the deceased was a tailor working in Gandhi Nagar and that he got delayed due to heavy load of work and he got late for return from his place of work that does not take us anywhere. There is not even an attempt at the time of trial to secure information about any particular Express train, which he could have boarded when the alleged untoward incident took place. We find under the circumstances on Issue No.1 that he was not a passenger of the train in question. On Issue No.2 would fall as a matter of corollary that the incident that could have killed him could not be reckoned to be on account of any untoward incident in the manner contemplated under a provision. The applicants status is namely as widow and children of the deceased and parents, which is sufficiently available through production of the ration card and the election identity card. Even if the applicants are shown to be legal representatives, the results would not secure to their favour. The application stands dismissed with no order as to costs.”

6. A reading of the aforesaid discussion given by the RCT shows that there is a very sketchy reasoning to arrive at a conclusion that there is no fall from the train. RCT for some reason ignores

reference to the DD of the police Ex.A-3 showing that the death is on account of the train accident and also that MLC Ex.A-4 does not contain any contents that the deceased was cut by a train, and which cutting of the body would have been taken place if the deceased was allegedly trying to cross the tracks as said by the DRM in his report dated 5.5.2015. In fact, it may be noted that the report of the DRM dated 5.5.2015 also does not refer to any eye witness nor has the respondent led any evidence of any eye witness or any other evidence that the deceased died on account of meeting with an accident while trying to cross the tracks. Most importantly, if the deceased had expired while being hit by a train during crossing the tracks, then, the driver or guard of the train with which the deceased met with the accident, would have reported the factum of the train crushing a person who was crossing the tracks, but admittedly there is no such report.

7. In my opinion, as per the evidence led in the present case and the record of the RCT, it clearly emerges that the deceased was a *bonafide* passenger having a valid monthly season ticket which was proved and exhibited as Ex.A-7 along with related identity card. The

factum with respect to the untoward incident is also proved on account of the DD No.28-B dated 10.8.2014 as also the MLC and the postmortem report as Ex.A-4 and Ex.A-6. Once no evidence is led by the respondent/Railways of the deceased having died on account of being cut by a train while trying to cross the tracks, the necessary conclusion which has to be reached is that the deceased died on account of an untoward incident of a fall from the train.

8.(i) One issue which arises in this case is as to whether the appellants should be held entitled to compensation only of Rs.4 lacs or that the appellants should be entitled to compensation of Rs.8 lacs as became payable w.e.f 1.1.2017 on account of the amendment w.e.f 1.1.2017 of the relevant entry of the Schedule of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. When the accident occurred in this case 9.8.2014 the statutory compensation which was payable was Rs.4 lacs and it is only during the pendency of these judicial proceedings that the compensation was enhanced to Rs.8 lacs w.e.f 1.1.2017. The present appeal was filed on 14.12.2016.

(ii) I do not have to labour hard on this issue inasmuch as counsel for the appellants rightly relies upon the judgment of the Supreme Court in the case of *N. Parameswaran Pillai and Another Vs. Union of India and Another (2002) 4 SCC 306* wherein the Supreme Court in identical circumstances held that the compensation which is to be awarded is the statutory compensation payable on the date of passing of the order and not on the date of the accident. Appellants therefore will be entitled to the statutory compensation of Rs.8 lacs and which has become payable w.e.f 1.1.2017. Appellants will also be entitled to interest at 6% per annum from the date of filing of the claim petition before the RCT on 13.10.2014 and till the date of passing of today's judgment and further till compensation is paid to the appellants.

9.(i) The present appeal as also the claim petition are allowed. There are four appellants/claimants and who would be entitled to a sum of Rs.8 lacs in the following ratio:

(a) Smt. Sunita (widow) - a sum of Rs.2 lacs along with interest at 6% per annum for the period as stated above.

(b) Smt. Savitri (mother) - a sum of Rs.2 lacs along with interest at 6% per annum for the period as stated above.

(c) Minor children of the deceased Sh. Bharat Kumar, who are appellant nos.2 and 3, namely Bhawna and Nikhil, and who were aged about 12 years and 10 years when the claim petition was filed, will be each entitled to a sum of Rs.2 lacs with interest at 6% per annum simple for the period as stated above.

(ii) Whereas the amount payable of Rs.2 lacs each to Smt. Sunita and Smt. Savitri be straightaway paid by drawing up the cheques/banking instruments, however, the amounts which would be payable to minor Bhawna and Nikhil be put in their name in a fixed deposit of Rs.2 lacs each so as to earn maximum rate of interest. Smt. Sunita, appellant no.1 will be entitled to withdraw the interest accrued on the FDR of appellant nos.2 and 3 at the end of every year for the purpose of upkeep of the minor children. Fixed deposits of Rs.2 lacs each in the name of minor Bhawana and Nikhil be handed over to them on their attaining majority. If however there is a grave urgency or any other grave requirement for the minors for the FDRs to be encashed earlier than on their reaching majority age, then in such

circumstances the mother Smt. Sunita or alternatively if the mother Smt. Sunita is not available, then the grandmother Smt. Savitri, or any legal guardian, will be entitled to approach the RCT for an order for immediate encashment of the amounts of the FDRs in the name of Bhawana and/or Nikhil. The amounts be paid to the appellants within a period of six weeks from today.

10. Appeal is accordingly allowed and disposed of in terms of aforesaid observations.

SEPTEMBER 14, 2017
Ne

VALMIKI J. MEHTA, J

नित्यमेव जयते