

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

+ **FAO No. 378/2017 & CM No.34839/2017 (exemption)**

% **22nd September, 2017**

KIRAN VATI & ORS. Appellants

Through: Mr. Puneet Goel, Adv.

versus

UNION OF INDIA Respondent

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 dated 23.5.2017 by which the Railway Claims Tribunal has dismissed the claim petition filed by the appellants/applicants.

2. The facts of the case are that the father and husband of the appellants/applicants namely Sh. Bhopal Singh is said to have died in a train accident on 1.10.2015 when he was travelling back from Shahdara Delhi to Behta. Appellants/applicants pleaded that the

deceased had come to Delhi to attend a retirement party of one of his friends but he did not return back to his home. Appellants/applicants then received information of an unidentified person having died near the railway track, and it was found that the body was of the deceased Sh. Bhopal Singh. The subject claim petition was therefore filed pleading that there was an untoward incident in terms of the provisions of Section 123(c) read with Section 124A of the Railways Act, 1989 and therefore, appellants/applicants were entitled to compensation.

3. The Railway Claims Tribunal has given a finding that the deceased died on account of a fall from the train, but the Railway Claims Tribunal dismissed the claim petition by holding that the deceased was not a *bonafide* passenger as it has not been proved that deceased had a valid ticket of travel.

4. It is trite that before statutory compensation of Rs. 8 lacs is awarded to the appellants/applicants, it is necessary in terms of the provisions of Section 2(29), Section 123(c) and Section 124-A of the Railways Act that it has to be proved that the deceased was a *bonafide* passenger. *Bonafide* passenger necessarily means, in terms of Section

2(29) of the Railways Act, a person who travels by a train must have a valid train ticket or a pass. Explanation to Section 124-A of the Railways Act also clarifies that for the purpose of grant of compensation under Section 124-A of the Railways Act the passenger must be a person who has purchased a valid ticket for travel.

5. In my opinion, the Railway Claims Tribunal has rightly held that the deceased was not a *bonafide* passenger because admittedly no proof was filed and no evidence was led of purchase of a ticket by the deceased. In fact the appellants/applicants were not even aware that the deceased was travelling by train because as per the information given by the appellants/applicants to the police the deceased had probably died in a road accident. The impugned judgment shows that no seizure memo was prepared with respect to the articles found on the person of the deceased Sh. Bhopal Singh and thus there is no evidence of any train ticket from the person of the deceased.

6. No doubt, it is not necessary that in every case a ticket of travel must be filed and proved, however, the fact that the deceased was travelling under a valid ticket has otherwise to be proved.

Depending on facts of each case ticket even if not recovered from the person of the deceased or not filed with the claim petition, is held not to be conclusive of the issue of the deceased being a *bonafide* passenger, because, circumstantial facts like travelling with the entire family members, the luggage of the passenger being stolen or a co-passenger had seen the deceased purchasing a ticket etc etc, then in such cases courts may and do hold that the deceased was a *bonafide* passenger, however, I cannot agree with the argument of the counsel for the appellants/applicants that onus of proof is on the Railways that ticket has not been purchased. Though, learned counsel for the appellants/applicants places reliance upon the judgment of a learned Single Judge of the Madhya Pradesh High Court in the case of ***Mrs. Shanti Vs. Union of India***, it is seen that the said judgment holds that onus of proof to show that the deceased was not a *bonafide* passenger is on the Railways in view of the judgment of the Supreme Court in the case of ***Rathi Menon Vs. Union of India, (2001) 3 SCC 714*** and having gone through this judgment of the Supreme Court, and which judgment counsel for the appellants/applicants deliberately did not cite before this Court, it is seen that nowhere in ***Rathi Menon's*** case

(*supra*) the Supreme Court holds that every person who falls from a train and dies as a result of the accident of fall from the train must be presumed to be a *bonafide* passenger travelling with a ticket. I deprecate the practice of counsels who seek to rely upon the judgments of the Supreme Court by referring to judgments of the High Court where the said judgment of the Supreme Court is referred to without citing the concerned judgment of the Supreme Court. The peril of courts relying on such type of arguments and thus possibly of even misleading the courts are seen from the facts of the present case inasmuch as when this Court *suo moto* went to the judgment of **Rathi Menon's** case (*supra*) it was found that no ratio is laid down in **Rathi Menon's** case (*supra*) that wherever a claim petition is filed for statutory compensation on account of an untoward incident then onus of proof lies on the Railways that the deceased had not purchased a train ticket and there has to be a presumption in favour of the passenger that the passenger was a *bonafide* passenger travelling after purchase of a ticket.

7.(i) Learned counsel for the appellants/applicants then sought to place reliance upon a judgment delivered by a learned Single judge

of this Court in the case of *Smt. Munchun Devi & Ors. Vs. Union of India* **FAO No. 242/2014** decided on 15.10.2014 and it is argued that in the case of *Smt. Munchun Devi (supra)* also it has been held that it is not required that a train ticket must be filed and proved. Reliance is placed upon para 7 of the judgment and which reads as under:-

“7. In this context statement of AW2 assumes importance that deceased took leave from the Association and boarded Jan Sadharan Express at Sarai Rohilla Station on 4th February, 2010 for going to Patna in Bihar and in my view is trustworthy and reliable. From the documents placed on record including report of Station Master, it is clear that dead body was recovered at the platform in front of ASM’s office. Shri Ajeet Kumar made a statement before the police that deceased was going to his native place in Bihar from Delhi by the Jan Sadharan Express train. Report of Sectional Commercial Inspector placed on record also indicates that the deceased sustained injuries by Jan Sadharan Express train. Place of incident has been shown as platform no. 2 of Ajaibpur railway station. Date of incident has been mentioned as 4th February, 2010. Train number has been given that of Jan Sadharan Express. It is also reflected that train was going from Sarai Rohilla railway station to Patna. Name of the deceased has also been mentioned in the report. It has also been mentioned therein that on 5th February, 2010, Rs.700/- was paid to GRP for cremation of the dead body of deceased. In view of the statement of AW2, supported by the documents on record, it is clear that deceased was working in Delhi and was going from Delhi to Patna on 4th February, 2010, by Jan Sadharan Express. It is not in dispute that Ajaibpur railway station falls on route of Jan Sadharan Express. Had deceased not been travelling in the said train, his presence at Ajaibpur railway station was not possible. This factual circumstance corroborates the statement of AW2 that deceased had boarded Jan Sadharan Express on 4th February, 2010, at about 7.25 pm at Sarai Rohilla railway station for going to Patna and fell down at Ajaibpur railway station. Accordingly, nonrecovery of ticket from the deceased, by itself, would not be sufficient to hold that he was not a bonafide passenger of Jan Sadharan Express train. It is not uncommon that tickets are lost in such major incidents where a person loses his life in as much as his belongings. Luggage of deceased was not recovered. Except identity card, nothing was recovered. It is highly improbable that deceased would have been travelling from Delhi to his native place, that is, Patna, which was around 1000 kms away from Delhi, without any money and luggage. Meaning thereby that somebody had taken

away the belongings of deceased and in such a scenario there is every possibility of ticket being lost. In such an eventuality, non-recovery of ticket would not mean that deceased was not a bona fide passenger of said Train.”

(ii) There is no quarrel to the proposition of law as laid down in para 7, and in fact this Court also in the earlier para of this judgment held that it is not necessary that in all cases train ticket has to be filed and proved, and depending on facts of each case a court has to arrive at a conclusion even if no train ticket is filed and proved as to whether the deceased was or was not a *bonafide* passenger. In the case of **Smt. Munchun Devi** (*supra*) the deceased was held to be a *bonafide* passenger because it was a long distance travel by the train and which ordinarily would not be done without a purchase of a ticket otherwise the passenger on a long route is bound to be apprehended by the TTE, with the fact that in the said case of **Smt. Munchun Devi** (*supra*) it was found that there was a luggage of the deceased but that luggage was lost and not recovered and therefore, there is possibility of the luggage containing the ticket. Therefore, it depends on facts of each case whether a deceased was or was not a *bonafide* passenger i.e he had or he had not purchased a valid ticket or filed and proved the train ticket, and which was found in favor of the claimant in **Smt. Munchun**

Devi's case (*supra*), but the facts of the present case does not entitle the appellants/applicants to successfully contend that the deceased was a *bonafide* passenger. In the present case, as stated above, not only no train ticket has been filed and proved but that even no evidence is led of any eye witness to show purchase of the train ticket by the deceased, and the appellants/applicants did not even know the mode of the travel of the deceased Sh. Bhopal Singh as to whether it was by road or by train. In my opinion therefore the Railway Claims Tribunal has committed no error in dismissing the claim petition on account of the deceased having not to be proved as a *bonafide* passenger travelling on a valid train ticket.

8. Dismissed.

SEPTEMBER 22, 2017/ib

VALMIKI J. MEHTA, J