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

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Judgment delivered on: 01.06.2018

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FAO 39/2011

SHIV SINGH & ORS

..... Appellants

Through: Mr. Rohit Agarwal, Advocate.

Versus

UNION OF INDIA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns an order dated 01.09.2010 passed by the Railway Claims Tribunal, declining the appellants' claim for compensation on account of demise of their son Mr. Arvind Kumar, who allegedly died in an untoward railway accident.

2. It is the appellants' case that while travelling from a train on 15.01.2009 from New Delhi to Ghaziabad, the deceased fell-off near Mandavli Phatak due to a sudden jerk in the train; he sustained grievous injuries and was taken to Walia Nursing Home and thereafter to LNJP Hospital, New Delhi where he succumbed to his injuries on 19.01.2009. Since, the ticket was not found on him, the impugned order did not consider him to be a *bona fide* passenger. Although, the brother of the deceased-Mr.

Rajeev Kumar had deposed that he had purchased a valid passenger ticket for the deceased. The impugned order did not believe his deposition for the reason that this statement was given to the police on 19.01.2009, i.e., 4 days after the accident.

3. The impugned order also referred to the police records pertaining to the case i.e. Exhibits AW1/5, AW1/6 & AW1/10, wherein it did not find any evidence to show that the death was due to a fall from the train. The impugned order, *inter alia*, reads as under:-

“Regarding the nature of the incident, the police records pertaining to this case, ex. AW1/5, AW1/6 and ex. AW1/10 nowhere mention that the death of Shri Arvind Kumar was due to a fall from a train. On the contrary, there is only mention of the fact that he has met with a train related accident. It is significant that there is on record the statement of Shri Ram Kumar Singh (ex. AW1/8), in which, it has been mentioned that Shri Arvind Kumar was found lying in an unconscious state on the line towards Ghaziabad, and he had, with the help of some others, taken Shri Arvind Kumar to the hospital. Shri Ram Kumar Singh has also stated that the indications were that Shri Arvind Kumar was injured in a train-related accident. It is also relevant to mention that Mandavli Phatak, where the alleged incident took place, happens to be very close to the residence of Shri Arvind Kumar, the deceased. The evidence on record seems to overwhelmingly point to the fact that Shri Arvind Kumar was, in all probability, victim of a run-over by a train incident and not an untoward incident, as claimed by the applicants. These issues are, therefore, decided in favour of the respondent and against the applicants”.

4. The Court would note that Exhibit AW1/5 dated 19.01.2009 bearing DD No. 4A records intimation of the death of Mr. Arvind Kumar in a train accident. However, Exhibit AW1/4 is the crucial document which is the first intimation to the police on the date of the accident, i.e., 15.01.2009 being DD No. 11A of the Police Station, New Delhi Railway Station, which recorded an intimation from phone no. 9818038739, that a person had fallen from a train near Mandavli Phatak and was in a serious condition. Subsequently, a Report of the Police records that, “after enquiry it was revealed that the death was due to falling from the train at Mandavli Railway Station and was got admitted in LNJP hospital vide MLC 5546/2009 but died during the course of treatment. The post-mortem was conducted. It records that *“death is due to craniocerebral damage consequent upon blunt force impact to the head. All the injuries are antemortem”*. These two documents were critical for establishing the factum of fall of the deceased from the moving train. Exhibit AW1/4, being the first document that records the fall of the deceased from the moving train, cannot be ignored. There is no reason to disbelieve it. Insofar as the other issue apropos the purchase of a railway ticket is concerned, the deceased’s brother – Mr. Rajeev Kumar had stated to the police in his statement (Exhibit AW1/7) that he purchased the ticket for his younger brother-Mr. Arvind Kumar on the fateful day. His affidavit by way of evidence remained unshaken in the cross-examination on behalf of the Railways. His deposition, *inter alia*, records that he had purchased a ticket for Rs. 4 on 15.01.2009 from Ajmeri Gate side of the New Delhi Railway Station for the travel of his brother-Mr. Arvind Kumar from New Delhi to Ghaziabad. At the station, he discussed

some family matter with the deceased and thereafter Rajeev Kumar returned back to his work.

5. In view of the aforesaid, two things are established; i) that Mr. Arvind Kumar had died in a train accident and that ii) he was a *bona fide* passenger or would otherwise deemed to be a *bona fide* passenger. In the circumstances, strict liability under section 123 of the Railways Act, 1989 would be applicable to the Railways to prove that the deceased did not have a valid train ticket.

6. The petitioner relies upon the judgment of this Court in FAO No. 61/2017 titled as ***Bhola vs. Union of India*** (decided on 27.02.2018).

7. In FAO No.64/2017 titled as ***Jagveeri & Anr. vs. Union of India*** dated 10.04.2018, this Court has held as under:-

“8. In ***Ashutosh Dwivedi***¹, it was held that in an accident or untoward incident, the presumption shall always be in favour of the passenger with regard to the bonafides, unless rebutted by material and cogent evidence.

9. In ***Juhi Parveen***² this Court held that a train ticket can get lost and it cannot be held that a deceased is not a bonafide passenger merely because a train ticket is not recovered. It went on to hold that the deceased was a bonafide passenger.

10. This Court is of the view that the impugned order has erred in its reasoning that since a relatively heavier object like a cell phone could still be on the body of the deceased, it was unconceivable that the ticket alone could have popped out of the pocket or otherwise was lost after

¹ ***Ashutosh Dwivedi vs. Union of India*** in F.A.F.O. No. 82/1999 decided on 12.01.2009

² ***Juhi Parveen and Another vs. Union of India*** 2015(1) TAC 167 (Del.)

the person fell from the train. Rejection of the claim on this ground is not sustainable because a lighter object will always fly-off from the pocket if the unfortunate body is violently tossed about in a gruesome and fatal train accident. A heavier object like cell phone being better ensconced, deeper in the pocket, is likely to stay in the pocket. Besides, the ticket could have been lost in the efforts of chance good Samaritans or the Railway or police officials or hospital authorities trying to ascertain the identity of the injured person by looking into the contents of his pockets.

11. Furthermore, the Madras High Court in **C. Selvi vs. Union of India** in C.M.A.No.241 of 2016 decided on 11.01.2018 held as under:-

“.....14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression, we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e., a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls

down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

15. xxxxxx

16..... It is no doubt true that the position of law as provided in Section 106 of the Evidence Act is that if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in Illustration (b) of that Section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But, such principle is not applicable to a case of a dead person, who was proved to have died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the Claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railways has given any such evidence nor as any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of proving the said fact had not been discharged. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the Claimants."

8. Similar view was taken in ***FAO No. 553/2016, titled as Kamla & Ors. vs. Union of India***, decided on 14.05.2018.

9. In view of the preceding discussion and the documents/evidence as discussed, the deceased would be deemed to be a bonafide passenger with a valid train ticket. The factum of his death in a train accident already stands proven by the police records.

10. Since the demise of the deceased by an untoward railway accident stands proven, the appellants are liable to receive the compensation for the same. The appellants' claim is allowed. In terms of the Notification dated 22.12.2016 amending the Railways Accidents and Untoward Incidents (Compensation) Rules, 1990, the compensation for human fatality is Rs. 8 lacs. Accordingly, Rs. 8 lacs shall be paid to the appellants by the Respondent/Railways.

11. In view of the judgment of the Supreme Court in ***Union of India vs. Rina Devi***, Civil Appeal No. 4945/2018 decided on 09.05.2018, interest can be awarded from the date of the accident itself when the liability of the Railways arises upto the date of payment. Accordingly, an interest @ 9% per annum is awarded from the date of the accident i.e. 15.01.2009.

12. The appellants are the unfortunate parents of the deceased. The compensation amount shall be divided equally between them. Upon deposit of the compensation amount, an amount of Rs. 75,000/- shall be released to each of them. The remaining amount shall be kept in interest bearing FDRs of Rs. 1 lac each to mature every successive year. Upon maturity, the principal amount along with the interest accrued thereon, shall be credited into their respective Bank Accounts maintained in a bank near their place of residence, to enure to the equal benefit of the appellants. The details of the appellants' accounts shall be furnished to the Manager-UCO Bank, Delhi High Court Branch. Copies of the bank account shall be filed in the Court

supported by an affidavit of the appellants. The Manager, UCO Bank shall retain the original FDRs. In case of exigency, the appellants may move the Court for directions.

13. The appeal is allowed in the above terms.

NAJMI WAZIRI, J.

JUNE 01, 2018

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