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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th October, 2018

+ **FAO 33/2015**

RAJESH KUMAR VERMA & ANR Appellants

Through: Mr.Anshuman Bal, Advocate.

versus

UNION OF INDIA Respondent

Through: Ms. R. Malhotra with Mr. Himanshu
Kaushik, Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

1. Though, arguments have already been addressed on 15.10.2018 on behalf of either side, time had been sought on behalf of learned counsel for the respondent to produce the judgment in relation to reliance placed on the verdict of Supreme Court in *Union of India v. Rina Devi (AIR 2018 Supreme Court 2362)* to contend that the amount of compensation payable, if payable, has to be computed as payable from the date of accident, which, it was submitted on the said date, as per the Schedule to Railway Claims Tribunal Act, 1987 would be Rs. 4 lakhs with interest to be paid thereon.

2. Vide the present appeal, the appellants have assailed the impugned judgment of the learned Principal Bench of the Railway Claims Tribunal, Delhi, dated 17.10.2014 in Claim Application no. OA(IIU) No. 151/2011 whereby the claim application filed under Section 16 of the Railway Claims Tribunal Act, 1987 seeking

compensation of Rs.10 lakhs for the demise of the deceased Shankutala Devi who was stated to have expired in an incident which occurred on 25.12.2010, was dismissed and it was held that the applicants, i.e. appellant nos. 1 to 4, namely, Rajesh Kumar Verma (the spouse of the deceased Shakuntala Devi), Ms. Preeti, Jyoti and Ravi (three children of Shankutala Devi) were not entitled to any compensation whatsoever.

3. The contentions raised on behalf of the claimants before the learned Railway Claims Tribunal were to the effect that the deceased Shakuntala Devi on 25.12.2010 was travelling from New Delhi to Faridabad R.S. in EMU passenger train at about 7.35 p.m. after purchasing a valid journey ticket and that due to a sudden jerk of the train she had an accidental fall from the train near Faridabad New Town Station and died. The respondent Railways filed their written statement disputing their claim and denying their liability to pay compensation and further contended that the deceased was not a bonafide passenger and her death was not on account of any accidental fall from the train amounting to an untoward incident within the meaning of Section 123 read with Section 124A of the Railways Act.

4. On the basis of pleadings of the parties the following issues were framed during the trial:-

“1. Whether the applicant proves that he is the dependant of the deceased within the meaning of Section 123(b) of the Railways Act?

2. Whether the applicant proves that the death of the deceased had occurred as a result of an untoward incident, as alleged in the claim application?

3. *Whether the respondent proves that the claim is not covered under the ambit of Section 123, 124 and 124(A) of the Railways Act?*

4. *Whether the applicant proves that the deceased was a bonafide passenger on the train in question on the relevant day?*

5. *To what order/relief?”*

5. The spouse of the deceased, Rajesh, was examined as AW-1 and Sh. Rajender Prasad as AW-2. No oral evidence was adduced on behalf of the respondent, however, the DRM's report was placed on record as Ex.R-1 in support of their case.

6. The learned Principal Bench of Railway Claims Tribunal, Delhi has observed that there is a reference of recovery of journey ticket from the person of deceased in Ex.A-9, Jamatalashi Report, but that mere recovery of the journey ticket, “*even if true*”, does not establish that the deceased was in fact travelling by any train.

7. The railway ticket was recovered from the jamatalashi of the deceased coupled with the factum that the railway ticket was in relation to the train travelling from New Delhi to Faridabad N.T. R.S. and also back from New Delhi to Faridabad for the date 25.12.2010 which journey ticket was issued at 08:14 hours with the jamatalashi memo having been issued at 19:35 hours. In the circumstances, there is nothing on record to disbelieve the contention of the appellants/claimants herein that the deceased was a bonafide passenger of the train of the respondents.

8. The other observation vide the impugned judgment of the learned Railway Claims Tribunal, Principal Bench, Delhi is to the

effect that there was nothing on record to indicate that there had been an accidental fall from the train. Further submissions were made during the course of arguments addressed on 15.10.2018 on behalf of the respondent to the effect that the post mortem report indicated the following injuries, wounds and bruises on the person of the deceased:

1. *Crushed injury on the skull and the face brain material is missing and skull bone are present in pieces, a laceration present on the left side of cheek up to nose vertical lie on dissection fracture of nasal bone seen*
2. *A lacerated wound present on the right arm posteriorly.*
3. *Crushed injury present on the right elbow joint.*
4. *A lacerated wound present on the right fore arm posteriorly 3X2.5 cm.*
5. *Compound fracture present on the right wrist.*
6. *On dissection multiple fracture of right forearm seen*
7. *A lacerated wound of size 6X3.5 cm present on right side of abdomen laterally just above the hip joint. From which small interstice is coming out partially.*
8. *A lacerated wound of size 4X3.5 cm present on right thigh laterally, on dissection fracture of right femur present.*
9. *A lacerated wound of size 6X2.5 cm present on the right leg anteriorly in the middle.*
10. *A compound fracture present on the right lower leg i.e. fracture of both bone present at the sight.*
11. *Compound fracture present on the left leg in the middle, i.e. fracture both bone.*
12. *A lacerated wound of size 3X 2 cm present on left side leg just below the compound fracture, on dissection multiple fracture of both bones left side of leg are seen.*
13. *Compound fracture present on the left forearm in the middle i.e. fracture of both bones, on dissection multiple fracture of both bone seen.*
14. *Multiple abrasion present on all over the body anteriorly, on dissection of chest fracture of ribs*

- right side 2-6 are seen and left side 2-5 are seen and multiple lacerations present on the both sides of the lung at the places and about 200 cc of dark fluid blood found in pleural cavity.*
15. *On dissection of abdomen multiple laceration present on the spleen and liver and about 250 cc of dark fluid blood present in abdominal cavity.*
16. *On dissection fracture of vertebra seen at lower side.”*

9. It was, thus, submitted on behalf of the respondent that the same was an indication to the effect that the deceased left the railway station and was crossing the railway line of her own unauthorisedly and had not fallen down from the train. Taking into account the factum that the deceased, as observed herein above, is held to be a bonafide passenger of the train in question, the contention raised on behalf of the respondent that the deceased could not have had an accidental fall from the train cannot be accepted.

10. The other contention raised on behalf of the respondent was to the effect that the deceased would not be covered within the ambit of Sections 123, 124 and 124A of the Railway Claims Tribunal Act, 1987. It is essentially to be observed that Section 124A of the said enactment prescribes for no fault liability and in terms thereof compensation cannot be denied on the ground that the deceased was negligent and it is wholly irrelevant to say as to who was at fault in the event of the deceased being a bonafide passenger of the train and he/she becoming a victim of an untoward incident so long as the person was within the railway premises or in the train. As a consequence thereof, the deceased would have to be held a bonafide passenger with her legal heirs being entitled to compensation, as

observed by this Court in *Hemlata & Ors. v. Union of India* [IV (2017) ACC (Del.)] and *Sharda Devi & Anr v. Union of India*, FAO No.399/2014, decided on 09.08.2018.

11. Reliance is placed by the appellant on the verdict of the Hon'ble High Court of Bombay in *Union of India v. Sitabai Vasane & Ors.* [III (2013) ACC 483 (Bom.)], wherein *inter alia* it has been observed to the effect that where the inquest panchnama revealed that the valid ticket was found from the dead body, the onus was on the railways to establish a contrary version and that a suicide could not be inferred.

12. The observations of the Hon'ble High Court of Allahabad in *Union of India v. Nand Lal Chaley* [I (2015) ACC 533 (All.)], which undoubtedly has persuasive value to bring forth that where a person is held to be a bonafide passenger with a valid train ticket, the onus of proof was shifted to the Railways to show that the death was not on account of untoward incident.

13. The verdict of the Hon'ble Supreme Court in *Jameela & Ors. v. Union of India* (AIR 2010 Supreme Court 3705) also brings forth that the negligence of a passenger even if he/she was standing at the open doors of the compartment of a running train cannot be termed to be a negligent act or a rash act and that the legal heirs of the deceased would be entitled to compensation with interest.

14. Similar are the observations of the Hon'ble Supreme Court in *Undavali Narayana Rao v. State of A.P.* (AIR 2010 Supreme Court 3708), *Union of India v. Prabhakaran Vijaya Kumar & Ors.* [I (2009) ACC 270 (SC)] and *Union of India v. United India Insurance Co. Ltd.* [1988 (1) RCR Civil 354].

15. In the circumstances, thus, inasmuch as the deceased is held to be a bonafide passenger of the train in question on which she was travelling on 25.12.2010, coupled with the no fault liability in terms of Section 124A of the Railway Claims Tribunal Act, 1987 and she having suffered the injury on the railway tracks within the premises of Railways and the factum that vide a catena of judgments, it has been laid down by the Hon'ble Supreme Court that Section 124A of the said enactment lays down no fault liability for an accidental fall of bonafide passenger, which the deceased is essentially held to have had in the instant case, makes the Railways wholly responsible for payment of compensation in terms of the said enactment.

16. As observed hereinabove, on the date of the accident, the amount of compensation payable is admitted by Rs.4 lakhs and not Rs.10 lakhs as claimed through the present petition. In view thereof the appeal is allowed with the impugned judgment of the Railway Claims Tribunal, Principal Bench, Delhi in Claim Application No. OA(IIU) No.151/2011 dated 17.10.2014 being set aside with compensation to the tune of Rs.4 lakhs with interest at the rate of 6 per cent per annum w.e.f. the date of demise of the deceased, i.e. 25.12.2010 till the date of realization thereof being granted to the appellants.

17. The appeal is disposed of accordingly.

ANU MALHOTRA, J.

OCTOBER 16, 2018

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