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

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Date of Decision: 01st June, 2018

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+ **FAO 109/2017 & CM APPLN. 8273/2017**

UNION OF INDIA

..... Appellant

Through: Ms. Rashmi Malhotra and Mr.
Himanshu Kaushik, Advocates

versus

HARKESH & ORS

..... Respondents

Through: Mr. Saurabh Pandey and Mr. Alok
Kumar Palai proxy for Mr. Yogesh
Swroop, Advocate

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+ **FAO 45/2018**

HARKESH

..... Appellant

Through: Mr. Saurabh Pandey and Mr. Alok
Kumar Palai proxy for Mr. Yogesh
Swroop, Advocate

versus

UNION OF INDIA (MINISTRY OF RAILWAY) Respondent

Through: Ms. Rashmi Malhotra and Mr.
Himanshu Kaushik, Advocates

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The parties have challenged the award of the Railway Claim Tribunal whereby compensation of Rs.4,00,000/- along with interest @ 9% per annum has been awarded to the parents of Late Pradeep Sharma *alias* Sunny.

2. Harkesh and Savitri Devi (Respondent no.1 and 2 in FAO 109/2017 and appellants in FAO 45/2018) hereinafter referred to as ‘the claimants’ filed an application for compensation before the Railways Claim Tribunal on the averments that on 29th August, 2015, Pradeep Sharma *alias* Sunny along with his aunt boarded the train from Shahdara Railway Station after purchasing a valid ordinary second class ticket; train was over crowded; when the train started moving, Pradeep fell down from moving train due to sudden jerk/jolt and push/pull of the passengers and suffered grievous injury; the right hand of the Pradeep amputated; the hand bag containing the clothes, money and railway tickets was lost during the accident; Pradeep was taken to G.T.B. Hospital, Delhi and thereafter, shifted to Safdarjung Hospital, Delhi where he succumbed to his injuries during medical treatment on 6th September, 2015.

3. The Railways contested the claim on various grounds *inter alia* that the deceased was not a *bonafide* passenger as he was not holding a valid railway ticket and he was negligent in trying to catch the moving train and; the injuries suffered by deceased are self-inflicted and therefore, the claimants are not entitled to any compensation.

4. The Railway Claims Tribunal held the incident to be an untoward incident within the meaning of the Section 123(c) read with 124A(b) of the Railways Act, 1989. The Claims Tribunal further held that the negligence of the deceased is of no consequence in view of the principles of strict liability of the Railways. The Claims Tribunal awarded compensation of Rs.4,00,000/- along with interest @ 9% per annum from the date of filing of the claim application.

5. Learned counsel for the Railways urged at the time of the hearing that the deceased was negligent in trying to catch a moving train and, therefore, the claimants are not entitled to any compensation.

6. Learned counsel for claimants urged at the time of hearing that there was no negligence on the part of the deceased. Without prejudice, it is submitted that the negligence of the deceased is of no consequence. It is submitted that the claimants are entitled to compensation of Rs.8,00,000/- along with interest thereon according to Schedule of the Railway Accident Untoward Incidents (Compensation) Amendment Rules, 2016. Reliance is placed on the recent judgment of the Supreme Court in ***Union of India v. Rina Devi***, 2018 SCC OnLine SC 507.

7. In ***Rina Devi*** (*supra*) the Supreme Court held that death or injury in the course of boarding or de-boarding a train to be an untoward incident entitling the victim to compensation and such cases will not fall under the proviso of Section 123A of the Railways Act, 1989. The relevant portion of the said judgement is reproduced herein under:-

“8. A submission has been filed by the Registrar Principal Bench, Railway Claims Tribunal seeking clarification on four subjects which repeatedly arise before the said Tribunal i.e. :

(i)

(ii)

(iii) **The concept of self inflicted injury:** Whether attempt of getting into or getting down a moving train resulting in an accident was a case of ‘self inflicted injury’ so as not to entitle to any compensation or no such concept could not apply under the scheme of law which casts strict liability to pay compensation by the Railway under Sections 124 and 124A. In this regard views of the High Courts of Kerala in *Joseph PT v. Union of India*, Bombay in *Pushpa v. Union of India* and Delhi in *Shayam Narayan v. Union of India*-may appear to be

against the decisions of this Court in Union of India v. Prabhakaran Vijaya Kumar and Jameela v. Union of India.

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25. We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar* laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

(Emphasis Supplied)

8. This case squarely covered by the principles laid down by the Supreme Court in ***Rina Devi*** (*supra*). Applying the aforesaid principles, this Court holds the incident in question to be an untoward incident and the claimants are entitled to the compensation from Railways.

9. With respect to the quantum of compensation, the Supreme Court, in ***Rina Devi*** (*supra*) held that the compensation will be payable as applicable on the date of the accident but if the amount prescribed on the date of the award is higher than the amount payable on the date of the accident, then the claimant would be entitled to the higher of the two amounts. The relevant portion of the said judgement is reproduced herein under:-

"8.issue of apparent conflict in *Rathi Menon v. Union of India* and *Kalandi Charan Sahoo v. General Manager, South-East Central Railway, Bilaspur* as to the

(i) **Quantum of compensation:** It is stated that there is a conflict in the decisions in *Rathi Menon* (supra) and *Kalandi Charan Sahoo* (supra) which needs clarification. We have already taken note of this issue.

..... Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

10. It is well settled that the appeal is the continuation of the claim petition and the power of the Appellate Court is co-extensive with that of the Claims Tribunal. Reference may be made to ***Sardar Tajender Singh Gambhir v. Sardar Gurpreet Singh***, 2014 (10) SCC 702. Applying the principles laid down in ***Rina Devi*** (*supra*) in present case, the claimants are held entitled to Rs.8,00,000/- in terms of the Railways Accidents and Untoward Incidents (Amendment Compensation) Amendment Rules, 2016 which prescribes compensation of Rs.8,00,000/- in case of death with effect from 1st January, 2017.

11. FAO 109/2017 is dismissed, FAO 45/2018 is allowed and the claimants are held entitled to compensation of Rs.8,00,000/- along with interest @ 9% per annum from the date of the application i.e. 03rd December, 2015. Pending application is disposed of.

12. The Railways is directed to deposit enhanced compensation amount along with interest @ 9% per annum with the Registrar General of this Court within six weeks from today.

13. List for disbursement of compensation amount on 16th July, 2018.

14. The claimants shall remain present in Court on the next date of hearing along with the passbooks of their savings bank account with Union Bank of India, Naveen Shahdara, Delhi with proper endorsement in terms of order dated 21st November, 2017 and 30th November, 2017.

15. Copy of this judgment be given *dasti* to counsels for the parties under the signature of Court Master.

JUNE 01, 2018
ds

J.R. MIDHA
(JUDGE)

सत्यमेव जयते