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

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Judgment delivered on: 10.04.2018

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FAO 64/2017

JAGVEERI & ANR

..... Appellants

Through: Mr. Shyam Singh Sisodia, 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 10.11.2016 dismissing the appellant's claim for compensation from the Railways for the demise of their son Mr. Rahul Jatav in a rail accident. On 19.10.2015, Mr. Rahul Jatav was travelling in Kashi Vishwanath Express from New Delhi to Hapur, Uttar Pradesh alongwith his friend Mr. Wasim. On the way, near Mehrauli, Ghaziabad (UP), due to a sudden jerk in the train, he fell down and suffered grievous injuries. Later, he was stated to be taken to Maxwell Multispeciality Hospital, Ghaziabad, Uttar Pradesh, where he was declared dead.

2. The Railways registered the accident and initiated an inquiry. The crux of the DRM Report was that the deceased fell down from the train due to his own negligence leading to his death; that no passenger ticket was

recovered from the body of the deceased, hence, there is no mistake on the part of the Railways to warrant payment of any compensation.

3. What emanates from the aforesaid is that Mr. Rahul Jatav died in the train accident, however, the claim for compensation filed by his parents was declined on the ground that he was not proven to be a bonafide passenger due to the non-recovery of the train ticket.

In this regard, the impugned order has reasoned as under:-

“1. On the Issue of whether the deceased was a passenger in the train, the contention was that the deceased was returning from New Delhi to Hapur after his day's work. The applicant's case was that the deceased held a pass for travel between Hapur to New Delhi but it had expired on 13.10.2015. It is the case of the applicant through AW-2 that the deceased was travelling along with him and they had purchased the ticket. In the cross-examination, AW-2 would admit that while going to Delhi they did not purchase the ticket since they did not have money but, however, there was a pass and there was no need for purchase of the ticket. While returning since they have done two or three days' work at a stretch without returning home, they had money and they purchased the ticket. They did not secure the pass since they thought they would get one from Hapur itself. The counsel for the applicant argues that the applicant has produced the best evidence of a co-passenger and the Railways have not examined anyone to contradict this evidence.

2. We find the explanation given & the quality of evidence of AW-2 to be unreliable. If AW-2 and the deceased did not have money on the day when they travelled from Hapur to Delhi and although they had money while returning to Hapur, they did not get a pass but purchased ticket, the correctness of such a statement could be tested by his father's version that they worked for two/three days and they were returning. If the incident was on 19.10.2016 and their return was after two/three days of work at Delhi, they should have travelled from Hapur to Delhi somewhere around 16th or 17th

October 2015. If they had gone to Delhi without a ticket and the explanation was that the pass, which they had was valid, it would seem to be incorrect by the fact that the pass had expired even on 13.10.2015. Counsel for the applicant will downplay this discrepancy to state that there could be mistake of two/three days. If they knew that they would be travelling to Delhi without a ticket because they did not had money and they purchased ticket while returning to Hapur because they had earned livelihood, it must be seen alongside the statement recorded by the police of father of the deceased, who had claimed, which is part of Ex.A-2, that the deceased had left Hapur in the morning as usual and while returning he had died. This version also is a material contradiction to the date when the deceased was said to have travelled from Hapur to Delhi and remained at Delhi for earning his wages.

3. The arguments of the learned counsel for the applicant that the Railways has not proved that the deceased was a ticketless passenger is illogical. A negative proof that a person did not have a ticket would require no more than what is the admitted position that no ticket was recovered. On the other hand, what was available for recovery was a cell phone. If a relatively weightier object like cell phone could still be on the body of the deceased, it is unconceivable that the ticket alone could have popped out of the pocket. If there was evidence that on that day there was a ticket checking done and the deceased had produced the ticket to the Ticket Examiner, there would be some meaning in the arguments that the Railways did not find the deceased to be a ticketless passenger. The Railways have no such case that there was a ticket examination of passengers on that day. While there is duty for every passenger to purchase a ticket, it is not mandatory for Railway to have a ticket examiner to examine whether every passenger possesses a ticket or not. It will be a matter of evidence at the time when such a situation is a material fact and relevant to be established at the enquiry.

4. If there was burden on the Railways, the burden is discharged by what is brought out clearly in the enquiry that no ticket was available from the body of the deceased. We hold under the circumstances that he was not a passenger in the

manner defined under Section 2(29) of the Railways Act. The Issue is answered accordingly”.

4. The learned counsel for the appellant contends that once it is proven that a fatal injury has been caused in a railway accident, strict liability would be applicable and the Railways would have to pay the compensation.

5. The learned counsel for the appellant relies upon the judgment of the Supreme Court in **Union of India vs. Prabhakaran Vijaya Kumar & Ors.** in Civil Appeal no. 6898/2002 decided on 05.05.2008, judgment of this Court in **Juhi Parveen and Another vs. Union of India** 2015(1) TAC 167 (Del.) and judgment of the Allahabad High Court in **Ashutosh Dwivedi vs. Union of India** in F.A.F.O. No. 82/1999 decided on 12.01.2009.

6. In **Union of India vs. Prabhakaran Vijaya Kumar & Ors.** it was held that:-

“17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault”.

7. The deceased is not proven to have died due to his own negligence, his death would be covered within a definition of ‘untoward incident’. Therefore, the death of Mr. Rahul Jatav would be covered under section 124A of the Act. Apropos, the dismissal of the claim on the ground that the deceased was not a bonafide passenger, this Court in a similar case held that in cases of accidents/untoward incidents, the presumption normally is in favour of the passenger.

8. In **Ashutosh Dwivedi**, 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*** 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 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”.

“.....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.”

12. Insofar as the loss of life of Mr. Rahul Jatav in the train accident is established, the non-recovery of passenger ticket from his person cannot, for the reasons mentioned in para 9 hereinabove, be fatal to the compensation claimed. Therefore, for the aforesaid reasons, he is taken to be a bonafide passenger.

13. Resultantly, the claim has to be and is allowed. In terms of the Notification dated 27.12.2016 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 with interest on Rs. 4 lacs @ 9% from the date of filing of the claim petition till 26.12.2016 and @ 9% on Rs. 8 lacs w.e.f. 27.12.2016. The said amount shall be deposited within four weeks, from the date of receipt of this order, in the UCO Bank, Delhi High Court Branch and shall be kept by the bank in account of Rahul Jatav. Upon deposit, Rs. 1 lac shall be released to the appellants – the parents of the deceased, to be shared by them equally, in their respective bank accounts maintained in a bank near their place of residence. The remaining amount shall be kept in interest bearing FDRs of Rs. 1 lac each to mature every successive year. The details of the appellants' accounts shall be furnished to the Manager-UCO Bank, Delhi High Court Branch. Copies of the same shall be filed in the Court supported by an affidavit. The FDR amount upon maturity alongwith interest thereon shall be directly transferred into the bank accounts of the appellants in equal parts. The Manager, UCO Bank shall retain the original FDRs. In case of exigency, the appellants may move the Court for directions.

The appeal is allowed in the above terms.

NAJMI WAZIRI, J

APRIL 10, 2018

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