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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.04.2018

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FAO 263/2012

SUSHILA DEVI @ MEERA & ORS

..... Appellants

Through: Ms. Kavita Tyagi and Ms. Navneet
Goyal, Advocates.

Versus

UNION OF INDIA

..... Respondent

Through: Ms. Shipra Shukla, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns an order of the Railway Claims Tribunal, dated 21.02.2012, which dismissed the appellants' claim for the compensation for the death of Mr. Jagdish-husband, son and father of appellant nos. 1, 2 and 3 and 4 to 8, respectively. Mr. Jagdish is stated to have been travelling in the Sirsa Express Train on 21.09.2010 which was going to Sadar Bazar from Nangloi. From his body, a travel pass bearing MST No. 71888762 was found. It was valid till 16.10.2010.

2. The appellants' case is that due to heavy rush in the train, Mr. Jagdish fell down from it near pole No. 16/8, Down line near Gate No. 12 C Kirari at about 9.00 am. The fall from the train resulted in fatal injuries. He died on the spot. The Post Mortem Report from Aruna Asaf Ali Hospital, Police Mortuary, Subzi Mandi, Delhi records the nature of injuries on the body.

The Police Station, Kishan Ganj Railway Station recorded the matter vide DD No. 6PP, dated 21.09.2010 and DD No.15 PP, dated 21.09.2010. Appellant no. 1, widow of the deceased, placed some documents in evidence. The claim has been dismissed on the ground that there was a doubt about Mr. Jagdish having been fallen from Sirsa Express because the nature of injuries were perceived by the Tribunal as being such that he could not have sustained them by falling from a train. The contention of the Railways was that he could possibly be crossing the railway line and suffered the fatality in which his neck and both arms were severed from the body.

3. The impugned order relied upon the judgment of this Court in ***Dharambiri Devi & Ors. vs. Ministry of Railways & Anr., 149 (2008) DLT 435.***

“14. I may further note that the body of the deceased being cut into two halves is not possible if the deceased fell out of the bogie through the exit if the train received a sudden jerk. A person falling of a bogie from the exit would have a trajectory which would drop him, if not a feet or two away from the train, at least 6 to 8 inches from the train and the forward motion would throw the person forward and not laterally. Meaning thereby the body could not be cut into two by the train running over.

15. There is no evidence on record that the railway line had a curvature at the place where body of the deceased was found. I could have appreciated if the railway line had a curvature, in such a situation, it could have been plausible to consider the body being into two as a result of the fall and the momentum of the body vis-a-vis the motion of the train.

16. *I clarify, the situation could have been akin to a person falling from a moving bus towards left and coming under the rear wheel of a bus. When a bus cuts towards the left, a person jerked out from the front gate may come under the rear wheel of the bus for the reason it is well known that the rear wheel of the bus passes over the spot towards the left of the spot where the front wheel passed over.*

17. *Be that as it may, the settled law is that where on the given evidence view taken by the Court or Tribunal of plenary jurisdiction is plausible, the Appellate Court would not take a Contrary view, merely because another view is possible”.*

4. The learned counsel for the appellant states that the impugned order has erred on the ground that it fails to correctly interpret the evidence led by the respondents, i.e. Statements of RW-1, 2 & 3. RW-1 & 3 stated that they have not seen the accident happening whereas RW-2-Mr. Inder Singh stated that he saw the person falling from the train as he was employed as a Gateman working for the Railways. His statement to the police on the date of the accident was that while on duty from 8.00 hours to 16.00 hours, he saw that Sirsa Express coming from Nangloi Station was extremely crowded due to which some people had to stand near the gate of the train. In that very instance, a person fell from the train and his body was cut in two parts/severed. He intimated the Assistant Station Master (ASM), Nangloi about the incident. He came to the spot where he gave a statement to the Police ASI, PP Kishan Ganj, Delhi. He stated that he informed the ASM about the accident. His statement and testimony is not shaken by any suggestion of doubt or any contrarian evidence by the Railways. The statement of the railway guard, Shri Om Prakash Meena was recorded two

years after the incident, so was the statement of RW-3. They have not given any clear picture about the incident. They do not support the claim of death of Mr. Jagdish by a train accident. However, the testimony of Mr. Inder Singh RW-2 who was posted at Gate no. 12C, Nangloi Railway Station is clear and unequivocal: that the death was caused due to the fall of the deceased from a crowded train and his body got severed under the wheels of the moving train. He saw the accident and stated so to the ASM, immediately after the unfortunate happening. He also stated so to the local police, a little while later, the same day. He was near the site of the accident discharging his duty as a railway employee. He was also at the place where the body of the deceased lay when the police did their inquiries. His testimony establishes the death of Mr. Jagdish in a railway accident. Nothing further needed to be established by the appellant. The valid monthly railway travel pass had established that he was a *bona fide* passenger in the train. The impugned order has erred in not fully appreciating the testimony of RW-2, Mr. Inder Singh – the Railway employee. Therefore, the impugned order is to be set aside.

5. The learned counsel for the appellant has relied upon the judgment of the Supreme Court in ***Union of India vs. Prabhakaran Vijaya Kumar and others*** 2008 ACJ 1895, which held:-

“16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.

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.”

6. Insofar as the establishment of the death accident supported by the monthly railway pass MST No. 71888762, a clear liability is made out for the payment of compensation amount by the Railways.

7. 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."

8. 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 in A/c: Jagdish. Upon deposit of the aforesaid compensation, Rs. 75,000/- shall be released equally to the appellants – the parents of the deceased, 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 bank account shall be filed in the Court supported by an affidavit of the appellants. The FDR amount upon maturity, alongwith interest accrued thereon, shall be directly transferred in equal parts into the bank accounts of the appellants. The Manager, UCO Bank shall retain the original FDRs. In case of exigency, the appellants may move the Court for directions.

9. The appeal is allowed in the above terms.

APRIL 19, 2018

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NAJMI WAZIRI, J.



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