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

% *Judgment delivered on: 24.04.2018*

+ **FAO 211/2014**

SH. PREMPAL SINGH & ANR. Appellants

Through: Ms. Pankaj Kumari for Mr. S. N. Parashar, Advocate.

Versus

UNION OF INDIA Respondent

Through: Ms. Gurkirat Kaur and Mr. Archita Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns an order dated 26.11.2013 passed by the Railway Claims Tribunal dismissing the appellants' claim for compensation on account of the demise of their son Mr. Lokender Singh in a rail accident. It is the appellants' case that the deceased who used to work in Delhi, on 05.09.2011 during his return rail journey to Muradabad he got the space only near the gate, due to heavy rush in the rail compartment. En-route due to a sudden jerk and push in the train, he fell from the moving train, came under its track and his body was cut into two. It is not in dispute that a valid passenger ticket alongwith a mobile phone was found on his person. The body was identified by his family members, who were informed by officials through his phone. The factum of his death in the rail accident has been

established and there is no doubt about him being a valid passenger. Nevertheless, the impugned order dismissed the claim on the ground that since the body was cut into two, there was a likelihood that the deceased died when he was trying to cross the railway lines, which would be a self-inflicted injury and thus come under the exception provided in section 124-A of the Railways Act, 1989. Therefore, the sweep of strict liability on the Railways, would not be applicable in the present case.

2. This Court, however, finds the said reasoning erroneous because insofar as a valid ticket has been found on the body of the passenger, his body was found on the railway tracks and it has been recorded that he died in the train accident, the presumption is that it was an accident and untoward incident for which the Railways would be strictly liable.

3. In *Union of India vs. Prabhakaran Vijaya Kumar and others 2008 ACJ 1895*, the Supreme Court of India 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.”

4. This Court too has followed the same in FAO No.64/2017 titled as *Jagveeri & Anr. vs. Union of India* dated 10.04.2018 and in FAO No.

312/2017, titled as **M. Rehan & Anr. vs. Union of India**, dated 13.04.2018.

The relevant portion of **Jagveeri** (*supra*) reads 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 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

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.)

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."

5. The impugned order rejecting the claim has reasoned as under:-

"9. The case of the applicants is that their son, the deceased Lokender Singh, went to Delhi from Moradabad on 5.9.2011 on some work and was returning home in the night. In the application or in the evidence by way of affidavit of AW-1, it is nowhere stated as to by which train the deceased was travelling or at what time, he boarded the train and where. It is pleaded in the application that after purchasing ticket, the deceased telephonically informed the family members that he would return home by evening or night train after finishing the work. It is not disclosed at what time the deceased talked to which of the family member. The said averments contained in the application that the deceased informed the family members by telephone that he would return home by evening or night train is only a self-serving and unsubstantiated statement. There is nothing on record to show that the deceased boarded any train as passenger to go to Moradabad. What all the material on record would disclose is that the dead body of the deceased was found on the track i.e. down loop line near starter signal of Gajrola R.S. Ex.AW-1/4 is the Memo issued by the Station Master, Gajrola to the G.R.P. at 07:10 hours on 6.9.2011 wherein it is stated that a dead body of some person was found lying near the down- starter. It is significant to note the position of the dead body at the place where it was found. As seen from the DRM's Report and its enclosures, the dead body was found lying near the down loop line starter signal in such a condition that it was cut into two pieces and half of the body was inside the track and the remaining half was outside the track. The DRM's Report, Ex.R-1, states that it appears to be a case of run over by some train while the deceased was trying to

unauthorizedly cross the railway track and, therefore, was cut into two pieces but certainly not a case of fall from the train. It is further stated in Ex.R-1 that the question of the dead body being cut into two pieces does not arise due to fall from any train going on the loop line. The particulars of the timings of the train that pass through Gajrola on the intervening night of 5/6.9.2011, which is enclosed to the DRM's Report, Ex.R-1 would show that train no.54076 Down arrived at 03:24 hours and left at 03:34 hours and train no.54308 Down arrived at 05:25 hours and left at 05:27 hours both on the down loop line. The said particulars would show that the other trains which pass through Gajrola without any halt are all taken on down main line. The DRM's Report shows that even if a person had a fall from a non-stop train passing through Gajrola on the down main line, the question of the body lying on the down loop line does not arise. Further it is to be noted that the body was horizontally cut into two pieces, half of which was lying inside the track i.e. in between the two rails and half of it outside the track. The Postmortem Report, Ex.AW-1/7 also shows that the body was cut into two pieces at the level of abdomen. If really the deceased had an accidental fall from any train passing either on the down main line or down loop line, it is highly improbable and hard to believe that he would be cut into two pieces and that too the two pieces lying scattered, one inside the track and the other off the track. The location of the dead body, the position and condition in which it was found lying would negate the claim of the applicant that it was a case of accidental fall from the train and on the other hand supports the contentions of the respondent that it can be a case of being run over by some speeding train while the deceased was trying to cross the track. The inference is further fortified by the fact that there is absolutely no evidence adduced by the applicants to show that the deceased boarded any train and was travelling by any train on that night. The applicants have not filed any Report of investigation by the police to show that on inquiry, it was found to be a case of accidental fall from the train. From the mere fact and circumstances

that the dead body of the deceased was found at the railway track, no inference can be drawn that the deceased was a passenger and that he had an accidental fall from some train.

10. No doubt the applicants have produced a journey ticket, Ex.AW-1/8, which is said to have been recovered from the person of the deceased. Ex.AW-1/8, ticket bearing no.43785382, shows that it was issued on 5.9.2011 at 15:17 hours for travel from Delhi to Moradabad. The DRM's Report, Ex.R-1, contains a certificate from the Chief Booking Supervisor of Delhi to the effect that the said ticket was issued on 5.9.2011 from the booking office of Delhi R.S. Ex.AW-1/6 is the Panchayatnama showing that the said ticket was recovered from the person of the deceased besides other items. Assuming for a moment that the deceased purchased the said journey ticket, Ex.AW-1/8, from the mere circumstance of the alleged recovery of the said ticket from the person of the deceased, no inference can be drawn that he was a bonafide passenger on board any train at the relevant time. A mere holder of a ticket does not necessarily be a bonafide passenger. When the material on record does not support the claim of the applicants that the deceased had an accidental fall from a train, and, on the other hand supports the contention of the respondent that it was a case of being run over by the train, the finding of a journey ticket on the person of the deceased, even if true, is of no consequence.

11. Even otherwise, the liability of the respondent to pay compensation arises only when it is established by the applicants that the deceased had in fact an accidental fall from a train. Even in a case where a person is found to be bonafide passenger, still the respondent railway would not be liable to pay the compensation when once it is established that the death or injury was not on account of any untoward incident within the meaning of Section 123(c) of the Railways Act. Based on the vague averments and scanty evidence produced by the applicants, no finding can be recorded to the effect that the death of the deceased was

due to accidental fall from the train amounting to untoward incident. In these circumstances, it is held that the material on record does not establish that the deceased was a bonafide passenger on board any train and does not also establish that the deceased had any accidental fall from any train and on the other hand supports the contention of the respondent that it was a case of being run over by some train while unauthorizedly crossing the railway track. Issues are answered accordingly.”

6. The Court is of the view that the aforesaid reasoning is flawed because it cannot be expected for a passenger in a railway journey, who is travelling alone, to keep evidence of when, where, how and in whose presence, he/she undertook the journey. But the impugned order expects this kind of evidence; the unreasonableness of the expectation and the impossibility of the assumption is evident. It is untenable. Therefore, the impugned order has to be set aside. The evidence in favour of the claimants is that the deceased had a valid passenger ticket; the claimants state that he was working in Delhi and was on his return journey to his hometown in Muradabad; his body was found on the railway tracks, one station prior to Muradabad, therefore, the clear inference is that the deceased was in a train going towards Muradabad. Furthermore, the factum of his body lying on the railway tracks is admitted by the Railways.

7. The reasoning in the impugned order that because the deceased was cut into halves: one part found inside the railway tracks and the other outside, the death could not have been caused due to accidental falling from a moving train, is flawed. The impossibility of a passenger being so crushed after a fall from a moving train has not been conclusively established in law, so as to obviate all such claims for compensation. It is possible that the

deceased while standing near the overcrowded passenger compartment door, slipped down while holding on to the door- railing, and frantically tried to recover and re-board the train – with his legs flailing violently, and in the valiant and violent melee his legs or his body could have unfortunately come under the wheels of the train leading to his being consumed in the fatal accident. As long as such possibility exists, the claim cannot be ousted or denied on technical assumptions. There is not a divine camera which could replay the actual manner of the fatality, but all factors lead to the inexorable conclusion that a bonafide passenger died in an untoward train accident. There is also no reason why the deceased would be walking the railway tracks in an odd place en-route his destination – his home. It is not that he lived near the site of the accident or that he had any regular business anywhere near the place of the accident. Thus the inference that he died while crossing the tracks, is unwarranted and untenable.

8. In view of the aforesaid, the impugned order cannot be sustained. 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 @ 9% from 30 days after the date of the fatal accident which happened on 05.09.2011, till payment. The said amount shall be deposited within six 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 Lokender Singh”. Upon deposit, Rs. 2 lac shall be released to the claimants/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. 50,000/- 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. Upon maturity, the FDR amount alongwith interest accrued thereon, shall be directly transferred into the respective bank accounts of the appellants in equal parts. The Manager, UCO Bank shall retain the original FDRs till their maturity. In case of exigency, the appellants may move the Court for directions.

9. The appeal is allowed in the above terms.

NAJMI WAZIRI, J.

APRIL 24, 2018

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