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

% *Judgment delivered on: 22.05.2018*

\+ **<u>FAO 245/2014</u>**

BIBI SHABNAM KHATOON & ORS. ..... Appellants

Through: Mr. Yogesh Swaroop, Mr. Alok Kumar Palai and Mr. Kapil Kaushik, Advocates.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Rohit Dutta, Mr. Kamlesh Kumar and Mr. Joydeep Mazumdar, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J (Oral)</u>

In compliance of the previous order, the learned counsel for the appellants has handed over a copy of an affidavit of the appellant. It is taken on record. It states that her husband Mohd. Shamsher had died on 21.10.2011 while he was travelling from Anand Vihar to Bihar and died on the spot. A Daily Diary (DD) entry was made bearing DD No. 5A dated 21.10.2011 at Anand Vihar Police Station, New Delhi.

This appeal impugns an order dated 02.05.2014 passed by the Railway Claims Tribunal, rejecting the appellant's claim for compensation on account of demise of Mohd. Shamsher, who died in a rail accident, was a *bona fide* train passenger. The valid railway ticket was found on the person of the deceased with a laceration on his back, close to his spine. The learned counsel for the appellants states that according to the post-mortem examination, the death was on account of an injury to the spine and this injury could not have happened except by way of an untoward incident during the train journey. There is no divine camera, which could be replayed to show as to how the injury happened. It is not the case of the Railways that the body of the deceased was planted in the train. Therefore, it would have to be inferred in favour of the claimant that the passenger had boarded the train alive but died on account of an untoward incident. No complaint is on record by any passenger or railway staff that the aid passenger was otherwise hurt, unwell or in capacitated during the train journey. Therfore, it would have to be presumed that he was not a terminal liability whenhe boarded the train. Hence, strict liability under section 123 of the Indian Railways Act, 1890 ('the Act') would be applicable to the Railways. He submits that the impugned order has erred insofar as it has held that the death was not on account of an accident or untoward incident but because of falling of the passenger inside the railway compartment itself. He relies upon the judgment of the Allahabad High Court in ***Union of India vs. Naiénder Kumar Gupta & Ors. 2014(I) T.A.C. 101(AIL)***, which relying upon the dicta of the Supreme Court in ***Union of India vs. Prabhakaran Vijaya Kumar, 2008 ACJ 1895 (SC)*** held, *inter* alia, as follows:-

> *"14. Further, the provisions as provided under section 123(c) of the Act is beneficial piece of legislation. It should be interpreted liberally. The Hon'ble the Apex Court in the case of Union of India v. Prabhakaran Vijaya Kumar 2008 ACJ 1895 (SC) has held that the object of the Act is for the benefit of the persons for whom the Act was made and should*

> *be given a liberal and not strict interpretation. On account of this reason, the Hon'ble Andhra Pradesh High Court observed that if any one falls down from any part of the train, it should be considered to be accidental falling. Upper berth is an integral part of the compartment, therefore, if anybody falls down from the upper berth to the floor or the train, it would be considered as accidental falling from the train. It was the duty of the respondent to prove that the deceased had not taken due precaution or he fall down due to his overact. "*

The Court is of the view that, insofar as it is established that the deceased Mohd. Shamsher was a *bona fide* passenger with a valid train ticket and Post-Mortem Report records that "*death is laceration of spinal cord consequent upon blunt force impact which is sufficient to cause death in ordinary course of nature*", the case would be covered as an untoward incident. The blunt force obviously happened on or occurred during the railway journey. It has not been shown by the Railways that the deceased passenger had already suffered a blunt force impact and the injury too occurred would be deemed to have occurred during the journey. A passenger can be injured in a railway compartment whether the train is moving or stationary. Falling of a passenger inside a railway coach could because of a ishap and it ought not to be necessarily seen as a self-inflicted injury.

In view of the above, the claim would have 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.

In view of the judgment of the Supreme Court in ***Union of India vs. Rina Devi***, Civil Appeal No. 4945/2018 pronounced on 09.05.2018, interest can be awarded from the date of the accident itself when the liability of the Railways arises upto the date of payment. Accordingly, an interest @ 9% per annum is awarded from the date of the accident i.e. 21.10.2011.

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 Mohd. Shamsher".

The deceased is survived by the four appellants, i.e., appellant no. 1-Smt. Bibi Shabnam Khatoon his widow and two minor children, namely, Mohd. Samir Alam and Sogra Khatun and his mother Smt. Bibi Amina, who is 68 years old and his father had already passed away.

The compensation amount shall be equally divided between them. Upon deposit, the mother Mst. Bibi Amina shall be released an amount of Rs. 75,000/- and an amount of Rs. 1 lac shall be released to appellant no. 1 right away. The amounts of appellant nos. 2 and 3 shall be kept in an interest bearing FDRs of Rs. 20,000/- each to mature every successive year. Upon maturity, the amounts shall be paid into the account of guardian, i.e., their mother-the appellant no. 1. The amount of Rs. 1.25 lacs from the appellants account shall be kept in an interest bearing FDRs of Rs. 33,000/- each to mature every successive year, which amount, upon maturity, shall be released to her. The remaining amount of the mother's share shall be kept in an interest bearing FDR of Rs.50,000/- each to mature every successive year. Details of their bank accounts shall be furnished to the UCO Bank Manager and the copy of the same shall be filed in this Court. The Manager, UCO Bank shall retain the original FDRs till their maturity. In case of exigency, the appellants may move the Court for directions.

An appropriate affidavit or statement/documents shall be furnished to the learned counsel for the Railways so that the appellants would get tax relief, i.e. exemption from TDS under section 15H of the Income Tax Act, if eligible.

The appeal is allowed in the above terms.

NAJMI WAZIRI, J.

MAY 22, 2018

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