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

% *Judgement delivered on: 1st May, 2018*

+ **FAO 104/2015**

JAMIL AHMAD & ANR Appellants

Through: Mr. Anshuman Bal, Advocate.

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 dated 29.12.2014 passed by the Railway Claims Tribunal, Principal Bench, Delhi, dismissing the appellant's claim for compensation, which was sought on account of the demise of their son Mr. Jakir in a rail accident on 22.05.2013.

2. The appellants, i.e. the mother and father of the deceased Jakir, had claimed that Jakir was travelling in a train from New Delhi to Faridabad in EMU passenger train alongwith one Rajbir. He had a valid ticket bearing No. X-36263390. They claim that due to heavy rush inside the train compartment and a sudden jerk from inside it, the deceased fell from the moving train due to which he received grievous injuries and died on the spot. The body of the deceased was discovered at from the railways track

and was taken to the Aruna Asif Ali Government Hospital, where the Post Mortem was conducted. The body of the deceased was identified by his family members. It is stated that DD No. 16-A dated 22.05.2013 was registered by GRP, Nizamuddin, New Delhi.

3. The Railways registered the accident and initiated an inquiry. The crux of the DRM Report was that the deceased was not a bona fide passenger and he fell down from the train due to his own negligence leading to his death, therefore, his death was not on account of any untoward incident whatsoever. Hence, there is no mistake on the part of the Railways to warrant payment of any compensation

4. What emanates from the aforesaid is that Mr. Jakir died in the train accident, however, the claim for compensation was denied by the Railways on the grounds that: i) the applicants have failed to show that the deceased was a bona fide passenger and, ii) his death was not due to an accidental fall from the train amounting to an untoward incident within the meaning of section 123(c) r/w section 124-A of the Railways Act, 1989 (in short, the Act).

5. The appellants have placed on record a valid ticket bearing No. X-36263390 i.e. Ex. A-8, Jamatalashi which shows that the deceased was indeed travelling from New Delhi to Faridabad, and the same was recovered from the person of the deceased. However, the Tribunal has rejected the said evidence and has recorded as under:-

“13. The applicants have placed on record copy of two journey tickets, one from Faridabad New Town to New Delhi and other for the reverse journey on 22.5.2013 recovered from

the person of the deceased. Recovery of these tickets is mentioned in the Jamatalashi, Ex. A-8 and Brief Facts, Ex. A-6. It is also mentioned in the statements of Harish, Ex.A-1 and Constable Richpal, Ex.A-2. However, mere recovery of the journey ticket does not establish that the deceased was a bona fide passenger on board at the time of incident. To be eligible for getting compensation, the applicants have to show that the deceased was a bona fide passenger onboard a train and his death was due to an untoward incident as defined in Section 123 (c) of the Railways Act which includes accidental falling from a train carrying passengers. The evidence on record does not show that the death of the deceased was due to accidental fall from the train, rather the statement of the Loco Pilot supported by the Station record establishes that the death of the deceased was due to getting run over by train while crossing the railway track unauthorisedly. In the circumstances, it is held that the applicants have failed to show that the deceased was a bona fide passenger onboard a train and his death was due to an accidental fall from the train amounting to an untoward incident within the meaning of Section 123 (c) read with the Section 124-A of Railways Act. The issues are answered accordingly.”

6. However, in ***Suman Lata v UOI***, MANU/DE/2294/2017, this Court had held:

“4. Section 124A of the Railways Act is based on the principle of no fault liability and the compensation cannot be denied to the appellant on the ground that the deceased was negligent and it is wholly irrelevant as to who was at fault. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. The word 'passenger' has been defined under Section 2 (29) of the Railways Act defines as a person travelling with a valid pass or ticket. The Explanation to Section 124A clarifies that the word 'passenger' includes a railway servant on duty; and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket

and becomes a victim of an untoward incident. As such, there are three categories of persons who are defined as passengers: - (i) a person with a valid ticket to travel; (ii) a person who holds a railway pass to travel and (iii) a person who holds a platform ticket. In every one of the categories, so long as he is in railway premises or a train, he shall be taken as a passenger. His or her presence in the railway premises or a train shall be taken as authorized. It is for this reason that there are decisions which make an extended meaning to the definition passenger to a person who comes into the platform and gets into a wrong train, Gaurav Kapoor v Union of India, MANU/DE/0552/2014 : III (2014) ACC 639 (Del) or a person who purchases a passenger train ticket and gets into an express train Santoshi v Union of India, FAO 267/2014 (Del); person travelling atop a train and not inside a passenger compartment Raj Pal Goel v. Union of India, MANU/DE/0155/2014 : 2014 ACJ 2315 or a person breaking journey without an endorsement and getting into another in continuation of the journey to the destination station Dwarika Mahto v. Union of India, MANU/DE/4384/2011 : 2013 ACJ 768. In all these situations, it is possible to feed meaning and logic to the decisions, only if we recognise that primacy always is the lawful authority to enter the railway premises when the incident of travel itself becomes secondary. The judicial tool of liberal construction for a welfare legislation could alone justify these decisions in order that the categories of persons to whom the benefit is intended to apply, being generally poor where only a modest compensation is provided under the Act, ought not to be denied even such a small benefit.”

7. It is odd that when a valid passenger ticket for the train journey was found from the person of the deceased during the *jamatalashi* by the police, the impugned order disregarded it. It is erred evidently. From the aforesaid, it is established that the deceased was a bona fide passenger since he had a

valid train ticket. The factum of his death in the rail accident has been established.

8. The impugned order, however, had dismissed the appellants' claim on the ground that since the body was cut by a train, there was a likelihood that the deceased died when he was trying to cross the railway lines; this would be classified as a self-inflicted injury and would thus come under the Exception provided in section 124-A of the act. Therefore, the sweep of strict liability on the Railways, would not be applicable in the present case. This Court finds the said reasoning erroneous because insofar as a valid ticket has been found on the body of the passenger and 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 untoward incident for which the Railways would be strictly liable.

9. The reasoning of the impugned order is also 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 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; his body was found on the railway tracks, therefore, the clear inference is that the deceased was in a train going towards Faridabad. Furthermore, the factum of his body lying on the railway tracks is admitted by the Railways.

10. The reasoning of the impugned order that because the deceased was cut into halves: i.e. the head was severed from the body and the neck, arms and legs broken, therefore, the death could not have been caused due to accidental falling from a moving train, is erroneous. 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 and deny any claim for compensation. It is possible that the deceased, while standing near the doors of the overcrowded passenger compartment, 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 violent but valiant melee his legs and arms 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 at 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 that place. Thus the inference, that he died while crossing the tracks, is unwarranted and untenable.

11. 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.”

12. In view of the aforesaid, the impugned order cannot be sustained. It is quashed. 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. 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, without any difference in the stages. Accordingly, an interest @ 9% per annum is awarded from the date of the accident i.e. 22.05.2013. 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. 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.

13. The appeal is allowed in the above terms.

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NAJMI WAZIRI, J.



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