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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : FEBRUARY 02, 2018

DECIDED ON : APRIL 05, 2018

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FAO 27/2015

RAJBIR SINGH & ANR

..... Appellants

Through : Mr.Anshuman, Advocate.

versus

UNION OF INDIA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. This first appeal is filed under Section 23 of Railway Accident Claims Tribunal Act, 1987, impugning the judgment of the Railways Claims Tribunal dated 23.05.2014 whereby the claim petition filed by the appellants was dismissed. The appeal is contested by the respondent.

2. Briefly stated the facts of the case are that the deceased Mohan, appellants' son, while travelling by train No.19023 Janta Express from Shakurbasti to Rohtak on 18.09.2012 accidentally fell down from the running train near the housing board colony and suffered injuries. Subsequently, he succumbed to the injuries on

27.09.2012. It is claimed that the deceased was a bonafide passenger and had a valid MST. The claim petition was contested by the respondent before the Tribunal and it was averred that the victim was not a bonafide passenger; he did not sustain injuries due to fall; there was no accident on 18.09.2012 near housing board colony, Rohtak Railway Station, Haryana. The Tribunal had no territorial jurisdiction to entertain the claim.

3. On the basis of the averments, following issues were framed:

- (i) Whether the death of the deceased had occurred as a result of an untoward incident, as denied under Section 123 (c) (2) of the Railways Act, 1989?
- (ii) Whether the deceased was a bonafide passenger of train on the relevant day?
- (iii) Whether the application of Shri Rajbir Singh is maintainable?
- (iv) To what order/relief.

4. Appellant No.1 Rajbir Singh examined himself as AW-1 and proved various documents Exhibited as AW-1/2 to AW-1/19. The respondent relied on various documents Exhibited as R-1 to R-47. By the impugned judgment, the claim preferred by the petitioners was declined. Aggrieved by the said order, the instant appeal has been preferred.

5. I have heard the learned counsel for the parties and have examined the file.

6. Primarily the claim was rejected as the learned Tribunal was of the view that there were inconsistent statements of the witnesses examined by the claimants. It was further noted that ASI Sanjay Kumar had manipulated the statements of the concerned witnesses and did not record the correct facts. The Tribunal was also of the view that victim's father had given inconsistent version as to when and from whom he came to know about the incident and when he arrived at the hospital. It was concluded by the learned Tribunal that the victim was not a bonafide passenger and no such incident as alleged had taken place.

7. The findings of the learned Tribunal seemingly are based upon conjectures and surmises and are not supported by any acceptable evidence on record. As noted above, the respondent did not produce any evidence in defence.

8. It is not at issue that at the time of incident the victim had a valid MST No.17532605 from Sakurpur Basti to Rohtak. The occurrence took place on 18.09.2012 at around 03.00 p.m. near Housing Board Colony short of the destination station. Record reveals that after the accident, the victim sustained grievous injuries and finally he succumbed to injuries on 27.09.2012. Post-mortem examination on the body was conducted. Post-mortem report dated 28.09.2012 reveals that the cause of death was due to the suffering of the injuries described therein. The information as furnished by the police revealed that the cause of death was 'railway accident'. No valid reasons exist to disbelieve the contents of the post-mortem report

prepared much prior to the filing of the claim petition i.e. on 28.09.2012.

9. DD No.32 dated 27.09.2012 also records that the victim sustained injuries on 18.09.2012 in a 'railway accident' and had expired on 27.09.2012. Death report (Ex.AW-1/14) also records that the victim had sustained injuries in 'rail accident' (columns No.7, 12 & 20). Other proceedings conducted by the GRP police record that the victim had sustained injuries in the 'rail accident'.

10. Prior to that, on 18.09.2012 itself MLC was prepared at the hospital where the alleged history has been recorded as 'railway accident' on 18.09.2012 at around 03.00 p.m. All these documents cannot be expected to be manipulated. It is pertinent to mention that soon after the incident, an application (Ex.AW-1/9) was filed by the investigating agency to record the statement of the victim. It was mentioned therein that the victim Mohan had sustained injuries due to 'rail accident' and the Investigating Officer be permitted to record his statement. Since the victim was unable to give statement, it could not be recorded that day. On 19.09.2012 the Investigating Officer recorded the statement of the victim Mohan when he was declared fit to make statement (Ex.AW-1/10). In the said statement which can be taken as dying declaration, the victim had given detailed account as to how and in what manner while travelling in Janta Express 19023 on 18.09.2012 he had sustained injuries due to sudden jerk and had fallen down beneath the rail.

11. Rajbir Singh – victim's father examined himself as AW-1 and filed his evidence by way of affidavit (Ex.PW-1/1). He also relied

on various documents (Ex.AW-1/2 to Ex.AW-1/19). The material facts deposed by him remained unchallenged in the cross-examination. He elaborated that at 04.15 p.m. he came to know about the accident. He denied that the victim died while crossing the railway track. Nothing was suggested to him that the victim had not sustained injuries in the 'railway accident' or that the police officials had manipulated his statement.

12. The defence of the respondent is not consistent. It was denied if any accident had taken place near Housing Board Colony, Rohtak on 18.09.2012. This defence in the written statement is contrary to the suggestions put to the victim's father that at the time of incident the victim was crossing the railway track.

13. It may be noted that liability of the railways under Section 123(c) read with Section 124(a) of the Railways Act, 1989 is a strict liability. Once the deceased with a valid train ticket is found on the railway track and which is not near the place of residence or the place of work, onus of proof shifts upon the railway to show that the deceased was not a bonafide passenger travelling on the train. This onus, in my opinion, the respondent has miserably failed to discharge. No witness was examined in defence to prove that no such accident had taken place at the spot that day.

14. In view of the above, the findings of the learned Tribunal cannot be sustained and are set aside. The appeal is allowed. The appellants shall be entitled to statutory compensation of ₹8 lacs along with interest @ 6% per annum from the date of filing of the petition till the date of payment.

15. The amount shall be deposited before the Roster Bench within six weeks.

16. List before Roster Bench on 17th April, 2018 for further proceedings regarding disbursement of the amount so deposited.

(S.P.GARG)
JUDGE

APRIL 05, 2018 / sa / tr

