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

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Judgment delivered on: 14.05.2018

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FAO 553/2016

KAMLA & ORS.

..... Appellants

Through: Mr. Ajit Rajput and Mr. Raj Kumar
Rajput, Advocates.

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Mazumdar, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. At the outset, the learned counsel for the appellants states that the name of appellant No. 2 be deleted from the array of parties. It is so ordered.

2. The appellants' claim for compensation for the demise of their son Munna in a rail accident, was declined by an order dated 07.03.2016 by the Railway Claims Tribunal on a technical ground. It is the appellants' case that on 03.09.2014 her son Munna aged about 17 years, who was travelling on a train from Hazrat Nizamuddin to Kota, died in a Railway accident at Bhakuli, when due to a sudden jerk and push from inside, he fell outside the railway compartment; his body hit against a pole due to which he suffered fatal injuries and died on the spot. This is not in dispute. Indeed, the inquiry

initiated by the Railways resulted in a report. It has been so recorded in the impugned order:-

“8.....The respondent have annexed the Memo issued by the Station Superintendent, Makholi wherein he has recorded that one passenger has fallen from train No.12218 at Km 1047/17 and steps may be taken to guard the body.”

3. In other words, the falling of the passenger from the train and his subsequent demise due to the said accident is not in doubt. What has to be seen now is whether he had a valid train ticket. It is the appellant's case that a valid train ticket for Rs.140/- was bought and handed over to him at Hazrat Nizamuddin Railway Station, which he had kept in his bag. Deposition to this effect was led by the appellant- mother of the deceased. It was stated that the deceased had lost his bag containing the railway ticket, clothes and some of the articles. This deposition has not been shaken; therefore, her evidence would have to be accepted. It would be now for the Railways to establish that the deceased had no ticket or that he was not a *bona fide* passenger. The Railways have not discharged this burden. The impugned order had reasoned, inter alia:

“...8. The respondent filed the DRM report, along with the report of the Sub Inspector, RPF, Gangapur City and also annexed the documents placed on record by the applicant. In the DRM Report it has been recorded that on the basis of the information gathered by Shri Gordhan Singh, Sub-Inspector, Gangapur City it is concluded that the deceased Munna was not a bonafide passenger of the railway because no railway journey ticket was recovered from the deceased and the death of the deceased Munna has occurred due to injuries sustained on his head after his head collided with the up starter signal at Makhauli railway station and he fell down from the moving train while travelling in train no.

12218 Kochhiwali Sampark Kranti express. The Sub-Inspector, RPF, Gangapur City in his investigation report has also concluded that the deceased was not a bonafide passenger of the railway because the GRP did not recover any railway ticket during their search of the deceased, so the deceased was travelling without ticket and the deceased was not travelling by sitting at the allotted place but was travelling by standing at the gate and was looking out of the train and during the process the deceased collided with the up starter signal and died on the spot and if the deceased had been travelling by sitting at the allotted place then the said incident would not have occurred. The respondent have annexed Memo issued by the Station Superintendent, Makholi wherein he has recorded that one passenger has fallen from train no. 12218 at Km 1047/17 and steps may be taken to guard the body.

9. I have carefully perused all the documents placed on record by the applicant as well as the DRM report along with its enclosures. The applicants had placed on record the FIR No. 36/2014 but the same was not legible, however the respondent also placed on record the certified copy of the said FIR wherein it is recorded that the information about the incident was received on 03.09.2014 at 9.0p0 hrs and it was also recorded that the death of the deceased had occurred due to injuries sustained on his head after his head collided with the UP starter signal as a result of which he fell from the moving train no. 12218 Kochhiwali Sampark Kranti express at Makhauli railway station. The said fact is reiterated by the Inspector- In-charge, GRP, Thana Gangacity (Raj) in his report annexed with the DRFM Report (page 12). The Panchas in the Panchayatnama are also of the same opinion that the death of the deceased has occurred due to injuries sustained on his head when his head collided with the up starter signal and as a result of which he fell down from the moving train no. 12218 Kochhiwali Sampark Kranti near Makhauli railway station and as per the Panchayatnama during the search of the deceased one mobile of Nokia make and Rs. 290/- were

recovered and apart from this no railway ticket was recovered. Thus in the very first document i.e. the FIR No. 36/2014 it has been recorded that the death of the deceased has occurred due to injuries sustained by him after his head collided with the up starter signal and as a result of which he fell down from the moving train no. 12218 Kochhiwali Sampark Kranti express at Makhauli railway station. It is surprising that the ticket on the strength of which the deceased was supposed to be travelling was not recovered whereas his mobile phone and even Rs. 290/- were recovered. Thus, it is evident that though there was an incident of fall from the train but it was only due to carelessness and negligence of the deceased himself as he was travelling by leaning from the door of the compartment which resulting in his colliding with the up starter signal due to which he sustained injuries on his head and fell down from the moving train No. 12218 and died on the spot....”

4. Even otherwise, this Court in FAO No. 61/2017 titled as ***Bhola vs. Union of India*** (decided on 27.02.2018) observed that:-

*“6. The logical corollary to the aforesaid is that the appellant would be deemed to be a bona fide passenger, unless rebutted by the Railways. There is no such rebuttal, therefore, there would be no doubt that he was a bona fide passenger. This Court is of the view that the ticket could have popped out of the pocket of the passenger or otherwise was lost after he fell down from the train. In terms of the reasoning in **Maurice K. Lai** (supra), rejection of the claim on the ground of non availability of the passenger ticket is not sustainable, because a lighter object would always fly-off from a pocket if the unfortunate body is violently tossed about at immense velocity in a gruesome and fatal train accident. A heavier object, like a cell phone being better ensconced deeper in the pocket, is likely to stay in the pocket. Additionally, the ticket could have been lost during 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 the clothes/ pockets of the deceased/unconscious persons.”

5. In view of the aforesaid, two things are established; i) that Mr. Munna died in a train accident and that ii) he was a *bona fide* passenger or otherwise deemed to be a *bona fide* passenger. In the circumstances, strict liability would be applicable to the Railways under section 123 of the Railways Act, 1989.

6. 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.”

7. 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 Dwivedi¹, 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.

¹ ***Ashutosh Dwivedi vs. Union of India*** in F.A.F.O. No. 82/1999 decided on 12.01.2009

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 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

² **Juhi Parveen and Another vs. Union of India** 2015(1) TAC 167 (Del.)

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."

8. In view of the aforesaid, the impugned order cannot be sustained. 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.

9. 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. 03.09.2014. 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 Munna". Upon deposit, Rs. 2 lac shall be released to claimant/ appellant no.1 – Kamla, the mother of the deceased, in her Bank account maintained in a Bank near her place of residence. The remaining amount shall be kept in an interest bearing FDRs of Rs. 75,000/- each to mature every successive year. The details of the appellant's account 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 Bank account of Kamla – appellant no.1. The Manager, UCO Bank shall retain the original FDRs. In case of exigency, the appellant may move the Court for directions.

10. The appeal is allowed in the above terms.
11. List for directions on 23.05.2018.

NAJMI WAZIRI, J.

MAY 14, 2018

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