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

RESERVED ON : DECEMBER 05, 2017

DECIDED ON : JANUARY 10, 2018

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FAO 330/2014

SAVITRI DEVI & ORS.

..... Appellants

Through : Mr.Yogesh Swaroop, Advocate.

versus

UNION OF INDIA

..... Respondent

Through : Mr.Amitava Poddar, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 has been filed by the appellants to challenge the legality and correctness of an order dated 22.07.2014 of the Railways Claims Tribunal (hereinafter 'the Tribunal') by which their claim petition was dismissed. The appeal is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. Perusal of the file reveals that the claim petition was filed by the appellants and it was averred that on 13.06.2012 Chhote Lal while travelling by a local train from Faridabad to Okhla accidentally fell down and died at the spot. The claim petition was contested by the

Railways and it was urged that the victim was a vendor and was not a bonafide passenger in the train.

3. Savitri Devi- victim's wife, examined herself as AW-1 and relied upon documents A-01 to A-20. The respondent did not produce any evidence in defence but relied upon documents Mark R-1 to R-28. After considering the rival contentions of the parties and on appreciating the evidence, the Tribunal observed that Chhote Lal was an unauthorized vendor selling water bottles in trains/station and was not a bonafide rail passenger; the appellants were not entitled for any compensation.

4. On perusal of the record it reveals that no credible evidence has been adduced on record by the parties upon which the findings regarding the victim to be the water-vendor have been recorded. The learned Tribunal relied upon various documents filed by the respondent (Mark R-1 to R-28) without examining any witness to substantiate their authenticity or genuineness. The appellants did not get any opportunity to cross-examine the witnesses whose documents were relied upon by the learned Tribunal to arrive at a specific finding. The appellants' case before the Tribunal was that the victim was not a vendor and had come to see his brother from the village. During the enquiry conducted by GRP, a ticket is stated to have been recovered from his possession on his personal search. The investigation conducted by RPF, however, did not show recovery of any ticket noticed in possession of the deceased. It was noticed that the deceased was having ₹800/- in the denomination of ₹100/- and ₹10/- notes. The conflicting reports have been submitted one by GRP and other by RPF. The Tribunal did not summon relevant

witnesses to find out as to which report, in fact, was correct. The reports/findings based on investigation conducted by RPF without examining any witness on their behalf and rejection of the statements recorded by GRP cannot be sustained. The findings are based upon the documents Mark R-1 to R-18 which have not been proved by the Railways.

5. The findings based upon unacceptable evidence cannot be sustained. The impugned order is set aside.

6. The matter is remanded to the Tribunal to afford opportunities to both the parties to produce their respective evidence to substantiate their claims.

7. The parties shall appear before the Tribunal on 1st February, 2018.

8. The appeal stands disposed of in the above terms.

S.P.GARG
(JUDGE)

JANUARY 10, 2018/sa