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

% *Judgment delivered on: 08.02.2018*

+ **FAO 316/2017**

**SHYAM BATI & ANR.** ..... Appellants

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

Versus

**UNION OF INDIA** ..... Respondent

Through: Ms. Suvira Lal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J (Oral)**

1. This appeal impugns the order dated 25.11.2016 of the Railway Claims Tribunal, Principal Bench, Delhi declining the appellants' claim for compensation, which was sought on account of the demise of one Rajvir in a train accident on 21.12.2014.

2. The appellants, i.e. the widow and daughter of the deceased Rajvir, had claimed that the latter was travelling in a train from Inchhapuri to Delhi alongwith Rahul, a three year old boy. He had a valid ticket bearing No. 73272 for Rs.11/-, which is not disputed by the respondent/Railways. It is alleged that due to heavy rush inside the train compartment, a sudden jerk from inside the compartment resulted in the falling of the appellant from the moving train due to which he received grievous injuries and died on the spot. Intimation of this incident was given to the family members of the

deceased from his mobile phone. The child, Rahul was found with the Police at Old Delhi Railway Station. The body of the deceased was discovered at 6 am from the railway track and was taken to Aruna Asaf Ali Government Hospital, where the post-mortem was conducted on 25.12.2014.

3. The claim was denied by the Railways on the ground that the fall had occurred due to the negligence of the deceased passenger. The DRM report admitted that the travel ticket was valid for the journey undertaken by the deceased. The impugned order records:

*"In DD No. IIA dated 22.12.2014, Ex.A-2 the ASI Lalit Mohan in his report has recorded to the effect that on receipt of information he reached the place of incident at platform No.2 Down line foot over bridge Km 7/2 Patel Nagar railway station Delhi and found an unknown dead person aged about 25/30 yrs ....who was lying inside the railway track cut from the stomach and on casual search Rs.500/- and three railway ticket numbers 01836 and 01835 from Ichhapuri to Gurgaon and third ticket No. 73272 from Ichhapuri to Delhi Jn were recovered. In the death report, Ex.A-4 it is recorded as 'train accident'. The Post mortem report, Ex. A-6 reveals that the cause of death in this case in my opinion is shock and haemorrhage due to severance of trunk consistent with train track episode which is necessarily fatal. Lalit Mohan, ASI in his letter Ex.A-13 has recorded that on 21.12.14 Rajvir.....was coming along with his brother in law Rahul and who (Rahul) was found alone at Old Delhi railway station and the dead body of Rajvir was found on platform No.2 of Patel Nagar due to rail accident and when the child was asked about the said incident then he*

*could only state about his name and the name of his father”*

4. From the above, it is evident that the deceased had come under the wheels of the train. The three tickets recovered from his body were also corroborated. The deceased was travelling with two other passengers, one of whom was his brother-in-law, who had deposed that on his return from the toilet in the moving train, the deceased fell-off the train because of a thrust from inside the crowded compartment.

5. However, the impugned order doubted the veracity of the claimants' case because Shyam Bati, widow of the deceased was informed about the incident on 21.12.2014, however, the body was identified only on 25.12.2014. This time gap was considered crucial by the Tribunal, leading to suspicion as to what the family members were doing during this period if they had suffered such a major tragedy in the family.

6. The Court is of the view that the said lapse of a couple of days cannot itself be fatal to the compensation claimed nor would it be caused to raise any suspicion about the claim, because when the young wife of the 27 year old deceased Rajvir received information about her missing three-year old son and her untraceable husband, she must have been in a state of shock and dismay. Later when she was informed that her husband had died in a railway accident, her mental condition could not be expected to be such that she would think rationally. In the first instance, she would have to bear the dual shock of loss of her husband and the unknown status of her missing son. These traumatic news, coupled with absence of wherewithal to reach Delhi as soon as possible from her village to trace her son, and then confronting her deceased husband's mortal remains would be a dreadful,

daunting and debilitating prospect for her. Nevertheless, she was united with her son at Delhi on 22.12.2014 with the assistance of family members and relatives and, thereafter, her husband's body was identified. In the circumstances, the passage of three days in her travel to Delhi, tracing of the child and identification of her husband's mortal remains, cannot be said to be unwarranted and such lapse of time would not prejudice her claim.

7. Furthermore, the other ground for rejection of the claim was that the documents placed on record did not show that the deceased fell down from the train and received injuries. In this regard, para 4 of the Claim Petition records that:

*“4. That there was huge rush inside the train compartment and when train reached Patel Nagar Railway Station he informed his brother in law that he is going to toilet and after returning from toilet he was standing at the gate of the train compartment all of sudden train jerked violently and due to this jerk he received a thrust from inside the train compartment and fell down from the train and received serious/ grievous injuries all over his body and died on the spot.”*

8. The impugned order, evidently suffers an error apparent on the face of the record. The Court is of the view that the occurrence of the death of the said passenger on the railway tracks, who had a valid train passenger ticket, stands established. In the circumstances, the exception under section 124-A of the Railways Act, 1989 would not be available, and the appeal would have to be allowed.

9. Accordingly, the appeal and the claim are allowed. As per the the revised Schedule dated 22.12.2016 applicable to the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016, Rs.8.00 lacs

is allowed to be paid to the claimants from the date of the filing of the petition till its realisation with interest @ 9% per annum. The said amount shall be payable to the appellant within six weeks of receipt of this order in the following manner – (i) Rs.1.00 lac shall be released in the first instance into her bank account, which shall be at a bank near the place of her residence; (ii) remaining amount shall be kept in an interest bearing FDR of Rs.1.00 lac each, which would mature every successive year. This amount, along with the interest accrued thereon shall be released into the bank account of appellant no. 1 alongwith the interest accrued thereon. The compensation amount as aforestated shall be deposited by the respondent in UCO Bank, Delhi High Court Branch. The Manager of the said bank shall disburse the said amount as directed hereinabove. Details of appellant's bank account shall be furnished to the said Manager.

10. The appeal is disposed-off in the above terms.

**NAJMI WAZIRI, J**

**FEBRUARY 08, 2018/acm**