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

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Judgment delivered on: 13.04.2018

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FAO 312/2017

M. REHAN & ANR.

..... Appellants

Through: Mr. Ajit Rajput, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Ms. Suvira Lal, Advocate, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns an order dated 02.03.2017 dismissing the appellants' claim for compensation for death of their son Subhan in a railway accident on 17.11.2015. The deceased was travelling from Hazrat Nizamuddin to Ahmedabad in the general compartment of Train No.12918, Gujarat Sampark Kranti Express. Due to heavy rush of passengers, he could get space only near the gate of train compartment. In the intervening night of 17th and 18th November, 2015, while the train was passing between Ratlam and Raoti Railway Station, he fell from the train because of a sudden jerk in it. He sustained grievous injuries and died on the spot. His demise in the train accident is not in dispute. The claim has been contested by the Railways only on the ground that he was travelling without a ticket at the gate of the compartment. The appellants had lead evidence through Mr. Mohd. Meharban – the elder brother of the deceased, who stated that the

deceased had purchased a second class journey ticket for his travel from Hazrat Nizamuddin to Ahmedabad, when he had gone to see him off at the Railway Station. It is possible that the said ticket got misplaced or was lost either during the accident or while he was being taken to the hospital after the accident.

2. The claim was primarily dismissed on the ground that while the mobile phone of the deceased was found in a damaged condition, there was no reason as to why the ticket, if any, would be lost. Accordingly, accepting the contentions of the Railways, the impugned order held: (i) that the accident could not be held to be an untoward incident because the deceased had taken a train which takes a longer route i.e. 1085 kms. to reach Ahmedabad while there were many trains on a shorter route, i.e., Ashram Express, which takes 933 kms; and (ii) the deceased's first slipper fell after 20 ft. and the second one fell 30 ft. from his body, therefore, there was a suspicion that the site of the accident might have been manipulated. This Court is unable to agree with the said reasoning or suspicion. Apropos the choice of a passenger to take a longer route, the Railways have no right to question. The impugned order accepting the said contention to doubt the train journey itself cannot be upheld. The question to be considered would have been whether rail passengers normally get to travel in a train of their choice, especially if they have to travel in a hurry? Do people get to choose between the crowded general compartment of one train with a similarly crowded compartment of another train? What do people do when they do not get reserved seats or berths and must necessarily travel? Perhaps these and like queries would have obviated the unfounded doubt. The impugned order has failed to note that Constable-Mr. Bharat had stated that he was

deputed at 8 o'clock on the date of the incident to the site of the accident. He has deposed that he reached the said site: K. No. 625/2013 on Up-line, where after sometime ASI Yadav also reached and inspected the body. They found a mobile phone from the body of the deceased. A number was taken from the said mobile phone and the family of the deceased was contacted. ASI Yadav was told that the unknown person's name was Subhan and his father's name was M. Rehan; that Subhan was travelling by the said train. Although no travel document or ticket was found on the body of the deceased but visually it appeared that he had fallen from an unknown train after which he was taken to the administrative hospital. On 28.11.2015, the father of the deceased stated that his son had died in an accident and it was so evident from various injuries on his body. It was also narrated that he was travelling from Delhi to Ahmedabad. The Post Mortem Report dated 19.11.2015 is as under:-

“Body is identified by relative who signed above. A dead body of male lying supine on pm table rigor mortis well develop all around body. Mouth and eye are closed. Both upper and lower limb are extend in position.

External injury- (i) Lacerated wound in Head R/F temporal region (M.) 5 cm reddish brown,(ii) abrasion in (LT)forearm (M.) 6x4 cm reddish brownish (iii) abrasion in (LT)leg (M.)5x2 cm (iv) abrasion in face (RT) side (M.) 8x6 cm reddish brownish (v) abrasion in (RT) forearm (M.) 4x3 cm reddish brownish.

Internal Injury- (i) Fracture in skull bone right temporal frontal region (ii) intracranial haemorrhage in frontal region of brain and (RT) temporal region brain.”

3. This evidence was neither considered by the impugned order nor has it been disputed by the Railways. Its evidentiary value, a Post Mortem Report from a government hospital, remains unshaken. It has to be accepted as true. Furthermore, the Court is unable to accept the impossible reasoning in the impugned order that because a cell-phone was found on the body of the deceased, there is no reason why a lighter object – a railway ticket would not be found on him. It is common sensical that a lighter object is more likely to fly-off from a pocket, than a cell-phone which may be esconded deeper into a persons' clothing pockets. The unfortunate grievous, multiple fatal injuries, to the deceased – the distance between his body and the slippers would lend to the reasonable intercourse that he must have violently tossed-over a few times, considering that he fell from a fast moving train. The loss of his passenger ticket in such fast paced motion cannot be ruled out.

4. 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 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”.

“.....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.”

5. In view of the aforesaid, it is clear that the appellant died in an untoward incident. Strict liability of the Railways is made out. The claim petition would have to be and is allowed. Considering the judgment of the Supreme Court in **Sardar Tajender Singh Gambhir vs. Sardar Gurpreet Singh, 2014 (10) SCC 702**, the compensation would be payable according to the revised Schedule dated 27.12.2016 applicable to the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016. The current Schedule to the aforesaid Rules specifies a compensation amount of Rs.8,00,000/- on account of death in a railway accident.

6. Accordingly, the appellants shall be paid by the Railways a compensation of Rs. 8,00,000/- with interest @ 9% per annum on Rs. 4,00,000/- from the date of filing of the claim petition till 26.12.2016 and @ 9% per annum on Rs. 8,00,000/- thereafter till payment. The claimants shall be paid within six weeks, from the date of receipt of this order, the above said amounts in their bank accounts maintained in a Bank near their place of residence.

The appeal is allowed and disposed off in the above terms.

NAJMI WAZIRI, J

APRIL 13, 2018

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