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

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Judgment delivered on: 17th April, 2018

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FAO 28/2016

DHARMVIR

..... Appellant

Through: Mr. D. Sabharwal, Adv.

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Joydeep Mazumdar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns an order dated 31.08.2015 passed by the Railway Claims Tribunal, Principal Bench, Delhi, dismissing the appellant's claim for compensation, which was sought on account of the demise of one Anuj Kumar in a train accident on 01.11.2012.

2. The appellant, i.e. the father of the deceased Anuj Kumar, had claimed that that on 01.11.2012 the deceased Anuj Kumar purchased a valid train ticket bearing No. 802729 for journey from Dankaur (Uttar Pradesh) to Faridabad (Haryana); he travelled upto Ghaziabad in one train, then boarded another train from Ghaziabad to travel upto Delhi, from where he was to board another for Faridabad. The appellant has contended that at the time when deceased boarded the train from Ghaziabad, there was huge rush

inside the train, compelling him to stand near the gate of the train compartment. When the train reached Tilak Bridge Railway Station, suddenly due to jerk and thrust from inside the train compartment, he fell down from it in New Delhi and received grievous injuries all over his body. He was taken to Lok Nayak Hospital in a precarious condition. He remained there under treatment upto 08.11.2012. Sadly he succumbed to his injuries on 08.11.2012. A post mortem was conducted vide P.M.R. No. 1180/2012 dated 09.11.2012. The deceased, a bachelor, has left behind the appellant, his father, as his dependent and legal heir. His mother had already predeceased him. The Railways registered the accident and initiated an inquiry. The crux of the DRM Report was that on 01.11.2012, the deceased had gotten injured after falling from the slow moving train No.12561 on Tilak Bridge Railway Station, at platform No.3; this information was given by on-duty loco pilot Shailender Singh to SS, Tilak Bridge. The SS called the police emergency telephone number 100; the injured was taken to the hospital for treatment; information was also given to R.P.F., New Delhi; on search by the R.P.F., New Delhi, a railway ticket was recovered. So, the injured would be deemed to be a *bona fide* passenger and he died during the course of treatment.

3. What emanates from the aforesaid is that Mr. Anuj Kumar died in the train accident. However, the claim for compensation was denied by the Railways on the ground that the death of the deceased was not on account of any accidental fall from the train amounting to an untoward incident within the meaning of section 123(c) r/w section 124-A of the Railways Act, 1989 (in short, 'the Act').

4. The appellants have placed on record a valid ticket bearing No. 802729 which shows that the deceased was indeed travelling from Dankaur to Faridabad. The ticket was in the possession of the deceased and was recovered from his pocket as per DD No. 13-A dated 01.11.2012, Fard Makbulji. The respondent however, contended that there are two routes and since the ticket was direct, the deceased should have been travelling via TKD (Tughlakabad Station) and he should not have travelled to Tilak Bridge Railway Station as such and though the ticket was recovered it was not an appropriate or valid ticket for the route.

5. However, the Court is of the view that since a travel ticket was found on the person of the injured/deceased, he will be held to be a *bona fide* passenger. Assuming he was travelling in a wrong train en route to Faridabad, his inadvertent error in doing so cannot be ruled out. The Tribunal has rejected the said evidence and has recorded as under:

“12. In Bimla Devi & Anr. Vs. Union of India in FAO No. 421/2012 wherein it has been observed that, “... I may note that the appellants themselves filed before the Railway Claims Tribunal as Ex. AW1/5 and Ex. AW1/6 the statement of independent witnesses recorded by the Railway Authorities and the Police Authorities immediately after the accident and which statements showed that when the train was slowing down at Sadar Bazar station, the deceased tried to get down from the running train and in this act he slipped and got cut on the same train in which he was travelling and therefore died.....it has been further observed that, “In my opinion, there is no reason to disbelieve the statement of the witnesses given to the police as also the Railway Authorities, and which

documents were filed by the appellants themselves before the Railway Claims Tribunal. There is a ring of truth in the statement made by these independent/impartial witnesses before the concerned authorities....". Hon'ble Court has further observed that, "....Supreme Court in another judgment in the case of Jameela and Ors. Vs. Union of India (2010) 12 SSC 443 has made reference to the provisions of Section 123(c) and 124 (A) and while observing that the liability is strict liability, however, it has also been observed that where the death is on account of criminal negligence or self inflicted injury, there is no liability of the Railways. Supreme Court has even in this judgment drawn a difference between negligence or criminal negligence because even if there is negligence of the deceased in view of strict liability damages can be awarded, however, where the negligence amounts to a self-inflicted injury or criminal negligence of the deceased then in such cases Railways are justified in disputing the claim of the dependents of the deceased....".

13. In the case under reference too criminal negligence is clear in that the deceased tried to get down from a slow moving train which did not have any scheduled stoppage. Hence, it is clear that the applicant miserably failed to prove the untoward incident and the documents placed on record on behalf of the applicants, also do not prove the untoward incident.

14. Under these circumstances it is held that the death of the deceased was not on account of any accidental fall from the train amounting to an untoward incident within the meaning of Section 123 (C) read with 124-A of the Railways Act as alleged by the applicant. He issues are held against the applicant."

6. The learned counsel for the appellant contends that once it is proven that a fatal injury has been caused in a railway accident, strict liability would be applicable and the Railways would have to pay the compensation.

In ***Union of India vs. Prabhakaran Vijaya Kumar & Ors.*** it was held that:-

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

8. 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”.

9. Apropos, non-availability of the railway ticket, the Madras High Court in ***Maurice K. Lai and anr. vs. Union of India*** C.M.A.No.1389 of 2016 decided on 31.01.2018, held that restrictive meaning of the expression ‘accidental falling of a passenger from a train carrying passengers’ would deprive a large number of railway passengers from getting compensation in railway accidents. It held:-

“..... 15. Section 2(29) of the Railways Act defines 'passenger' to mean a person travelling with a valid pass or ticket. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states:

"124 A. Compensation on account of untoward incident. -When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to - (a) suicide

or attempted suicide by him; (b) self-inflicted injury; (c) his own criminal act; (d) any act committed by him in a state of intoxication or insanity; (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Explanation - For the purposes of this section, "passenger" includes - (i) a railway servant on duty; and (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".

(ii) **2010 (5) ML J 676 [General Manager, Union of India owning Southern Railway, owning South Central Railway Secunderabad v. V. Lakshmana Rao and others]** wherein this Court held as follows:

"As per Section 124-A of the Railways Act, 1989, a passenger to be treated as a bona fide passenger need not possess a valid ticket for the same train in which he had an accidental fall, therefore, the liability to pay compensation by the Railways in case of an untoward accident cannot be disputed in such case and the dependants of the victim are entitled to compensation."

10. In view of the above, this Court's decision in the case of **Suman Lata v UOI, MANU/DE/2294/2017**, reads as under:

4. Section 124A of the Railways Act is based on the principle of no fault liability and the compensation cannot be denied to the appellant on the ground that the deceased was negligent and it is wholly irrelevant as to who was at fault. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. The word 'passenger' has been defined under Section 2 (29) of the Railways Act defines as a

person travelling with a valid pass or ticket. The Explanation to Section 124A clarifies that the word 'passenger' includes a railway servant on duty; and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket and becomes a victim of an untoward incident. As such, there are three categories of persons who are defined as passengers: - (i) a person with a valid ticket to travel; (ii) a person who holds a railway pass to travel and (iii) a person who holds a platform ticket. In every one of the categories, so long as he is in railway premises or a train, he shall be taken as a passenger. His or her presence in the railway premises or a train shall be taken as authorized. It is for this reason that there are decisions which make an extended meaning to the definition passenger to a person who comes into the platform and gets into a wrong train, *Gaurav Kapoor v Union of India*, MANU/DE/0552/2014 : III (2014) ACC 639 (Del) or a person who purchases a passenger train ticket and gets into an express train *Santoshi v Union of India*, FAO 267/2014 (Del); person travelling atop a train and not inside a passenger compartment *Raj Pal Goel v. Union of India*, MANU/DE/0155/2014 : 2014 ACJ 2315 or a person breaking journey without an endorsement and getting into another in continuation of the journey to the destination station *Dwarika Mahto v. Union of India*, MANU/DE/4384/2011 : 2013 ACJ 768. In all these situations, it is possible to feed meaning and logic to the decisions, only if we recognise that primacy always is the lawful authority to enter the railway premises when the incident of travel itself becomes secondary. The judicial tool of liberal construction for a welfare legislation could alone justify these decisions in order that the categories of persons to whom the benefit is intended to apply, being generally poor where only a modest compensation is provided under the Act, ought not to be denied even such a small benefit.

11. Apropos the fact that the appellant had suffered the injury in a train accident, there is no dispute. But whether it was a self-inflicted injury thereby leading to the exceptions to strict liability of the Railways under the proviso to section 124 A of the Act or it was on account of his having fallen from the train, is to be determined. The reasoning in the impugned order that because the deceased was trying to get down from the moving train, the death could not have been caused due to accidental falling from a moving train, is flawed. The impossibility of a passenger being crushed after falling from a moving train has not been conclusively established in law, so as to obviate all such claims for compensation. It is possible that the deceased while standing near the door/gate of the overcrowded passenger compartment, slipped down due to a sudden jerk, jolt and thrust from inside the compartment. There is no divine camera which could replay the fatality, but all the narrated facts lead to the inexorable conclusion that a *bona fide* passenger died in an untoward train accident.

12. That being the conclusion, strict liability of the Railways is made out. The claim petition 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. 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. The notified compensation amount for loss of life in a rail

accident was Rs. 4 lacs till 26.12.2016 whereafter it was revised to Rs.8 lacs w.e.f. 27.12.2016. Accordingly, an interest @ 9% per annum is awarded on Rs. 4 lacs from the date of the accident i.e. 01.11.2012 till 26.12.2016 and on Rs.8 lacs from 27.12.2016 till payment. The said amount shall be deposited within six weeks, from the date of receipt of this order, in the UCO Bank, Delhi High Court Branch and shall be kept by the Bank. Upon deposit, Rs.2 lac shall be released to the claimant/appellant – the father of the deceased, in his bank account maintained in a Bank near his place of residence. The remaining amount shall be kept in interest bearing FDRs of Rs. 50,000/- each, to mature every successive year. The details of the appellant's accounts 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 the appellant. The Manager, UCO Bank shall retain the original FDRs till their maturity. In case of exigency, the appellant may move the Court for directions.

13. The appeal is allowed in the above terms.

NAJMI WAZIRI, J.

APRIL 17, 2018

Parika