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

***Decided on:- 21<sup>st</sup> October, 2019***

+ FAO 277/2017

SANTOSH DEVI

..... Appellant

Through: Mr. D. Sabharwal, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Ms. Rashmi Malhotra,  
Advocate with Mr. Shailendra,  
Advocate

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. This appeal brings a challenge to the decision of the Railway Claims Tribunal dated 27.03.2017 whereby the accident claim case of the appellant was dismissed.

2. On 02.04.2016, Mr. Vinit Gupta, son of the appellant was found on the railway tracks in the vicinity of Faridabad railway station having suffered injuries and was taken to B.K. hospital, Faridabad where in spite of attempt to afford medical aid and treatment he succumbed to the said injuries. An accident claim case OA(Ilu)195/2016 was filed on 05.08.2016 by the appellant before the Railway Claims Tribunal, *inter alia*, contending that the deceased was travelling as a *bona fide* passenger on a valid railway journey ticket

from Nizamuddin to Mathura railway station and that he had fallen down from the moving train at the aforementioned place due to a heavy jerk in its movement and, thus, this constituted an untoward accident for which she was entitled in law to compensation.

3. The appellant examined herself as the solitary witness, her evidence apparently not being sufficient in so far as it concerned the circumstances in which the accident had occurred since she was not present with the deceased at the time of the accident in which he would have suffered the fatal injuries. The Railway Claims Tribunal, as per usual practice called for response not only from the railways but also obtained report of DRM's office. The report of the said office was sent to the Head Office (claims) under the cover of forwarding letter dated 16.01.2017 which was signed by the Divisional Commissioner Manager. It had actually forwarded the report dated 08.12.2016 of the Senior Divisional Security Commissioner (Railway Protection Force). As per the said report, the deceased was travelling in a railway train with one Sushil Kumar Sharma @ Sonu whose statement narrating the sequence of events up to the time of fall from the moving train had been recorded and made part of the report. Though in the statement attributed to Sushil Kumar Sharma, it was indicated that the victim had fallen off the train while it was moving, in the opinion expressed by the Senior Divisional Security Commissioner, the deceased had jumped out of the moving train.

4. Be that as it may, the tribunal dismissed the claim case by the impugned judgment dated 27.03.2017 observing that the victim was

not a passenger within the meaning of the expression defined in Railways Act, this conclusion being reached primarily for the reason that no railway journey ticket was produced. It is noted that while taking on record the effect of the DRM's report, the tribunal mentioned in the impugned order that the deceased had suffered injuries "*while crossing the railway track*". This observation seems to indicate that DRM's report was not properly perused by the tribunal as the same does not seem to indicate in any which way that the injuries were sustained while the deceased was on the ground moving across railway lines.

5. The impugned decision of the tribunal does not discuss the evidence that was adduced, not the least making any reference to the version of Sushil Kumar Sharma who had been examined by the officials of Railway Protection Force in the wake of the incident, this being part of the material submitting with DRM's report. This renders the decision perverse and bad in law.

6. During the hearing, it was fairly conceded that Sushil Kumar Sharma was a crucial witness to the case whose version could throw better light. The said version, noticeably, includes the claim that he (Sushil Kumar Sharma) and the deceased had embarked on the train journey after having purchased railway tickets.

7. In the above facts and circumstances, the counsel for the appellant submitted that on account of deficiency in proper aid and assistance by the counsel earlier representing the appellant, proper evidence was not adduced. He seeks remit with prayer that

opportunity be given for Sushil Kumar Sharma to be called in as an additional witness. On being asked, the learned counsel for the respondent submitted that he leaves the matter to the discretion of the court.

8. The impugned judgment is set aside. The evidence of Sushil Kumar Sharma being crucial, the matter arising out of claim petition of the appellant before the railway claims tribunal is remitted for further inquiry in the course of which opportunity would be given for additional evidence in the above nature to be adduced by the appellant. Needless to add, the respondent will also have liberty to adduce such evidence as may be relevant to be presented in rebuttal.

9. The parties are directed to appear before the tribunal for further proceedings on 15<sup>th</sup> November, 2019.

10. The appeal is disposed of in above terms.

**R.K.GAUBA, J.**

**OCTOBER 21, 2019**

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