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

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Judgment delivered on: 20.05.2019

+ **FAO 251/2015**

ALKA JAIN & ORS

..... Appellants

Through: Mr. Jatin Rajput and Mr. Sandeep Kumar,
Advs.

Versus

UNION OF INDIA

..... Respondent

Through: Dr. Chaudhary Shamsuddin Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. This petition impugns the order dated 19.12.2014 passed by the Railway Claims Tribunal, whereby the appellants claim application for compensation of Rs.10 lacs under section 16 of the Railways Claims Tribunal Act was dismissed.
2. The appellants are the wife, sons and daughter of the deceased. It is the appellants' case that on 21.02.2013, the deceased left his house for Shahdara Railway Station to travel to Agra and met with an accident at Km. Pole no. 5/24-5/26 near Bihari Colony, Shahdara, Delhi; a DD bearing No. 2PP dated 22.05.2013 was registered at Police Station ODRS, Shahdara, Delhi. The respondent disputed the said claim and denied liability to pay any compensation.
3. The following issues were framed by the Tribunal:

“1) Whether the deceased was a bona fide passenger on board a train (train name and number not mentioned) on 21.05.2013 from Shahdara to Agra?

2) Whether the death of the deceased was on account of any untoward incident, as alleged in the claim application?

3) Whether the applicants are the legal heirs and dependants of the deceased and are entitled to receive compensation? If so, to what extent?

4) Relief, if any?”

4. The Court notes that both Alka Jain (AW-1) and Deepak Jain (AW-2) stated in their evidence that the deceased left the residence on 21.05.2013 for Shahdara Railway Station to travel to Agra and met with a train accident. Both have admitted in their cross examination, that neither of them were eye witnesses to the said incident. It is also to be noted that neither the witnesses nor the appellants stated that the death of the deceased was due to an accidental fall from the train. The police investigation is also silent on this aspect.

5. The railway memo mentions that at 00.50 hrs on 22.05.2013, as per information of an unknown person, one dead body was found lying on the railway track near point no. 77B of Delhi Shahdara Railway yard; having injuries on the head; from the circumstances obtained at the site where the body was found, it appeared that the death of the deceased was due to a train accident. After inquiry, the DRM report concluded that the death was due to the deceased being run over by a train. The report also suggests that the body

was found in between the tracks, thereby indicating that it was a case of getting run over, while the person was crossing the tracks.

6. The impugned order has observed, as under:

“9. The site sketch in the death report, Ex.A-2 shows the dead body lying in between the lines of the track. The post mortem report, Ex.A-1 records fracture of skull bones and cause of death as a result of ante mortem injury to head produced by blunt force impact. If a person falls from the door of the coach of a train, he would have a trajectory which will throw him a few feet away from the track and not in between the lines of the track. The fact that the dead body was lying on the track with only head injury supports the contention of the respondent that the deceased was hit on the head by some train while crossing the track. The post mortem report also records clothes are blood and grease stained, dried blood and grease stains present over face. Grease is liberally applied on train locomotive parts and the grease stains on the cloths and face of the deceased are likely to be caused by the grease on the train locomotive when the person comes in its contact and support the respondent's contention that the deceased was hit by the train while crossing the track. Based on the evidence available on record the only reasonable inference that can be drawn is that the deceased was hit by some train in the night of 21/22.5.13 and therefore, it was referred to only as railway accident in every document.

10. There is no averment from the applicants that the deceased had purchased any journey ticket. AW-1 and AW-2 in their evidence have only stated that the deceased had left home for Shahdara railway station to go to Agra. They are not aware whether the deceased purchased any journey ticket. It is not in the averment of the applicants also that the deceased was having any journey ticket. DD no. 4 PP dated 22.5.13, copy enclosed with the DRM report shows that no journey ticket was

recovered from the person of the deceased. The entry in the RPF diary at 02.10 hours on 22.5.13 by Hd. Constable Yogendra Sharma also mentions that no railway journey ticket or pass was found from the person of the deceased in the Jamatalashi taken by GRP. There is no evidence on record that the deceased was having any journey ticket or was travelling by any train. In these circumstances, he cannot be considered to be a bona fide passenger onboard any train on 21.05.2013.

11. Under Section 124-A of the Railways Act the dependants of the deceased would be entitled to claim compensation only in the event of death of a passenger occurring due to an untoward incident, which expression includes a case of accidental fall from a train carrying passengers in terms of Section 123 (c) of the Act. Every railway accident or railway track accident does not tantamount to untoward incident as defined under Section 123(c) of the Act. In the absence of any evidence duly establishing that the deceased was in fact a bona fide passenger and that injuries sustained by the deceased and his subsequent death was due to untoward incident, the claim of the applicants cannot be upheld. In these circumstances, it is held that the applicants have failed to establish that the deceased was a bona fide passenger onboard any train or that the death of deceased was due to accidental fall from the train amounting to untoward incident. The issues are answered accordingly.”

7. The learned counsel for the appellants’ argues that: i) mere non discovery of train ticket cannot lead to the conclusion that the deceased was not a bonafide passenger; ii) during recording of evidence the appellants/claimants had specifically deposed that the deceased proceeded to Shahdara Railway Station to board the train to Agra; iii) that the body was not found at the railway station but at a considerable distance from the

station, on railways track going towards Agra; iv) that there was no suggestion by the Railways that the deceased committed suicide due to some mental ailment or family distress; v) after the incident, the deceased's bag as well as wrist watch went missing from the site, this raises a doubt that some person had stolen the deceased's personal belongings, due to which even the train ticket was not recovered; vi) the Tribunal failed to consider the settled legal position that once a body is found, lying on the railway tracks, far away from his/her residence, such incident will have to be considered as having occurred due to a fall of the deceased from a train; vii) merely because a body is found in a particular position or location it would not negate the attendant indications of an untoward incident i.e. of the deceased passenger falling off the train. The appellants' rely upon the decisions in *Smt. Sushma Vs. UOI in FAO 295/2012* dated 17.04.2014, Delhi High Court, *Prahlad Singh Vs. UOI in FAO No. 535/2011* dated 23.05.2014, Delhi High Court and *Anupam Sharma Vs. UOI in FAO No. 354/2012* dated 15.11.2014, Delhi High Court.

8. The learned counsel for the respondent contends that: i) the appellants have no documentary evidence to substantiate their contention that the deceased was a bonafide passenger; ii) that the claim had been filed without any affidavit/ police statement/ proof of an eye witness; iii) that in the said railway yard where the body was found, operations are carried out in a restricted area, where only authorised entry is permitted, except at the level crossing gate; and iv) no ex-gratia amount was ever paid by the Railways nor was any amount claimed by the appellants.

9. No evidence has been produced by the appellants to prove that the deceased was a bonafide passenger on a train to Agra or elsewhere, and/or

that he was carrying a valid train pass in his name. The post mortem report records fracture of the skull and cause of death being the result of ante-mortem injury to head produced by blunt force impact. The Court agrees with the reasoning in the impugned order, that ordinarily it is not possible for a person who falls from a passenger compartment of a running train to come in between the railway tracks, because when a person falls from a moving train, the momentum of the moving vehicle would create a trajectory which would throw the falling person a few feet away from the tracks. The order notes that the body was found on the tracks with only head injuries, which supports the contention of the Railways that the deceased was hit on the head by a train while he was crossing the tracks. The post mortem report records that the clothes of the deceased were stained with blood and grease, and that there were dried blood and grease stains over his face. It further noted, that it is a known fact that grease is liberally applied on a train's locomotive parts and the grease stains on the clothes as well as the face indicates that the deceased came in contact with the underbody/chassis locomotive parts of the train, which supports the contention that the deceased was hit by the train while crossing the tracks, with the impact from the train he fell between the railway lines and was run over. Except for stating that the deceased had left home to travel to Agra, the appellants have not claimed that a ticket was purchased by the deceased. The entry in the RPF diary at 02.10 hrs on 22.05.2013 also mentions that no ticket was found on the person of the deceased. There is no evidence on record to show that the deceased was travelling with a valid ticket, or was travelling in a train at all.

10. The Court would refer with benefit to the dicta of the Supreme Court in ***Union of India vs. Rina Devi*** (2019) 3 SCC 572, which held, *inter alia*:

28. *In Kamrunnissa v. Union of India, (2019) 12 SCC 391, from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of “untoward incident” but a case of run over. It was observed:*

“7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of Paras VII and VIII extracted hereinabove, the report also reveals that besides a pocket diary having been found from the person of the deceased a few telephone members were also found, but importantly, the deceased was not in possession of any other articles, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere Railway Station.”

29. *We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending*

circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

11. Section 124-A of the Railways Act stipulates that the dependents of the deceased would be entitled to claim compensation only in the event of death of a passenger occurring due to an untoward incident, which includes a case of accidental fall from a train carrying passengers in terms of section 123(c) of the Act. Every railway accident or railway track incident does not tantamount to untoward incident, as specified in section 123(c). The claim of the applicants cannot be granted as there is no evidence on record to show that the deceased was a bonafide passenger and that his death was due to an untoward incident.

12. In the first instance, a claimant has to show that the death was due to an untoward incident i.e. a fall from a train and also show that the deceased was a bonafide passenger. Even if it is assumed that the passenger had a valid ticket, the circumstances of each accident would themselves, indicate to some degree the nature and cause of death. The circumstances of the present case show that it is a case of run-over and not a case of death due to an accidental fall from a moving train.

13. The impugned order calls for no interference. The appeal is without merits, and is accordingly dismissed.

NAJMI WAZIRI, J.

MAY 20, 2019

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