

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

+FAO 499/2017, CM APPL. 46733/2017 and CM APPL. 46736/2017

Reserved on : 07/10/2022

Date of Decision : 17/10/2022

IN THE MATTER OF:

VIKRANT & ORS

..... Appellants

Through: Mr. S.K. Vashistha, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. J.K. Tripathi, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, the appellants/claimants have prayed for the following reliefs:-

"i) To call for the Trial Court Record of the case No. OA (Ilu) No. 174/2016 Titled as "Vikrant & Anr. Vs. U.O.I" decided on 07/07/2017 passed by Hon'ble Mr. Justice K. Kannan, Chairman & Hon'ble Shri S.C. Jethi, Member (Technical) Railway Claim Tribunal, Principal Bench, Delhi;

ii) To set aside the judgment and order dated 07/07/2017 passed in OA (Ilu) No. 174/2016 by Hon'ble Mr. Justice K. Kannan, Chairman & Hon'ble Shri S.C. Jethi, Member (Technical) Railway Claim Tribunal, Principal Bench, Delhi;

iii) Allow the claim petition of the appellants and direct the respondent to the appellants a compensation amount of Rs. 8 Lac (or as amended from time to time) along with interest @ 18% per annum from the date of filing the claim petition i.e. before Hon'ble Railway Claim Tribunal, Delhi till realization in favour of the appellants herein; ”

2. The appellants claim to be children of deceased/*Smt. Meena Mishra*, who is stated to have passed away in a railway accident. Appellant Nos.1 and 2 had preferred a claim petition before the Railway Claims Tribunal, stating that on 18.06.2016, their mother/*Smt. Meena Mishra* was travelling from *Shakur Basti* Railway Station to *Mathura Junction* Railway Station alongwith her neighbour/*Sh. Jitender* and one *Smt. Vinod*. Reportedly, the deceased was holding a valid ticket bearing No. 92197835. There was heavy rush inside the train and she was standing near the door of the train compartment. When the train reached near *Bhuteshwar* Railway Station, due to sudden jerk and push of the crowd, she lost her balance and fell down from the running train, receiving fatal injuries.

3. Mr. S.K. Vashistha, learned counsel for the appellants, while assailing the impugned judgment, contended that in spite of holding the deceased to be a *bonafide passenger*, the Tribunal erred in concluding that the accident was not an *untoward incident* as defined under Section 123(c) of the Railways Act, 1989. In support of his submissions, learned counsel placed reliance on the *Panchnama* as well as statement of co-passenger of the deceased, viz. *Sh. Jitender*, which was recorded before the Tribunal.

4. Per contra, Mr. J.K. Tripathi, learned counsel for the respondent, submitted that the accident occurred when the deceased was crossing the railway lines after getting down at *Bhuteshwar* Railway Station and hit by

an oncoming train. In this regard, learned counsel placed reliance on DRM Report dated 25.11.2016. It was further submitted that while the train in which the deceased was travelling reached the platform at 10:02 p.m., the incident was reported to the Station Master at about 10:30 p.m. and thus there was a delay of about 28 minutes in reporting. With respect to the evidence of *Sh. Jitender*, it was contended that he was not an eye-witness to the incident.

5. I have heard the learned counsels for the parties and perused the entire records of the Tribunal.

6. From the material placed on record, it is apparent that a valid journey ticket was recovered from the deceased, and accordingly, she was held by the Tribunal to have been a *bonafide passenger*.

7. Insofar as the issue of the incident in question having been *untoward* or not is concerned, it is noted that a *Panchnama* was prepared, wherein it was recorded that on 18.06.2016, *Smt. Meena Mishra*, accompanied in her travel by one *Sh. Jitender* and *Smt. Vinod*, suffered injuries near *Up main line, Starter S-1, Bhuteshwar Railway Station* on account of fall from train and the same resulted in her death.

It was also noted that as per the *Panchnama* investigation, death had occurred due to injuries suffered by the deceased on account of fall from the train. The report was prepared by one *HC Harish Chand Tyagi, Chowki GRP, Kosikalan Railway Station, P.S. Mathura Junction* and the cause of death mentioned was injury on account of fall from the train.

8. The respondent has relied upon DRM Report dated 25.11.2016, which states that the death occurred on account of collision with another train, to counter the claims of the appellants. However, it appears to be incorrect in

view of the result of investigation mentioned in *Panchnama*. Notably, point-wise report prepared by one *Giriraj*, In-charge, RPF Post, *Mathura Junction* also stated that no blood spot or damage was found on engine of the train.

9. Reference may also be made to the evidence of witness-*Sh. Jitender*, who stated that the deceased was travelling on a valid joint journey ticket and was standing at the door of the train on account of heavy rush inside the train compartment. In cross-examination, he testified that though he and other passengers were able to get down at *Bhuteshwar* Railway Station, the deceased could not de-board and rather fell down, whereafter public gathered and the Station Master was informed. A suggestion was given to the witness that death of the deceased had occurred after her deboarding at *Bhuteshwar* Railway Station and upon an incoming train hitting her while she was crossing railway lines, but the same was denied.

10. It is an admitted case of the respondent that the accident in the present case took place on 18.06.2016. However, it seeks to rely on the DRM Report dated 25.11.2016 to oppose the appellants' case. Before proceeding further, it is deemed expedient to analyse the position of law on belated DRM Reports.

11. The aspect of belated filing/preparation of DRM report had come up before the Supreme Court in Kalandi Charan Sahoo and Ors. v. General Manager, South-East Central Railway reported as **MANU/SC/1811/2017** where, while holding the appellants entitled to compensation, it was observed as under:-

“2. Though Rule 7 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (hereinafter referred to as 'Rules') mandates the railway authorities to investigate into such an untoward incident. Admittedly, no

such inquiry was conducted immediately after the incident. It is only when the Appellants filed the claim before the RCT on 27.2.2009 that investigation into the incident was ordered on 23.4.2009. ...

3. ...Going by the aforesaid provisions and in the peculiar facts of this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the Appellants shall be entitled to compensation payable Under Section 124-A of the Railways Act, 1989.”

12. This Court, in Bhola v. Union of India reported as **MANU/DE/3000/2018**, has held delay in initiation of DRM Inquiry to be fatal to the facts of the case, as what needs to be essentially gathered is what happened on the date of the accident. In the captioned case, it has been opined as follows:-

“2. There is a delay of 14 months in submitting the DRM Report. It states that in his statement to the Police, the claimant had stated that he was travelling in 14312-Ala Hazarat Express whereas in the statement before the Railway authorities, he had stated that it was 13111-Lal Qila Express. The report recorded that the appellant Bhola had been injured in an accident near Lal Qila. Evidently, this recording of an accident near Lal Qila led to the confusion that the accident happened while travelling in Lal Qila Express. The appellant requested for an amendment of his claim petition, for correction of this error but his request was declined. The claim was disallowed on the ground that neither a ticket was found on the claimant at the time of the accident nor was the claim petition supported by a railway ticket to prove his being a bona fide passenger.

xxx

4. The claim petition was filed on 27.07.2014, the DRM Inquiry was initiated thereafter and a report was filed 7

months later. The delay in initiating an inquiry is fatal to the facts of the case because what essentially needs to be gathered is what happened on the date of accident. The medical reports and the police records show that an accident happened on 08.10.2012 and the cause of the accident was, the appellant having been fallen from a moving train. The DRM Report does not address any of these aspects. On the contrary it says that since no ticket was produced to support the claim of the appellant, of him being a bona fide passenger, therefore by conjecture, he could have well suffered a self-inflicted injury while crossing the railway tracks. Reliance was placed upon the judgment of the Supreme Court in Kalandi Charan Sahoo and Anr. vs. General Manager, South-East Central Railways, Bilaspur in Civil Appeal No. 5608/2017.

5. The delay in intimation of the DRM Inquiry, the silence about the specifics of the accident makes the DRM Report of no consequence.”

13. While referring to the decision in Kalandi Charan Sahoo (Supra), this Court in Union of India v. Mithlesh & Ors. reported as **2018 SCC OnLine Del 8424** has reiterated that a belated DRM report would be of no consequence. Relevant excerpt from the decision is reproduced hereunder:-

“3. The learned counsel for the respondents submits that the DRM Enquiry was initiated in 2016 for an accident which occurred three years earlier. The Court is of the view that the said DRM Report would be of no consequence since all the relevant material would have been obliterated by that time. It could at best be an empty formality. For a DRM report in a railway accident, the inquiry ought to have been initiated immediately and not later than a day or two of the information of the accident/untoward incident. Some form of inquiry which is started after three years of the untoward incident, can only rely on the records and extrapolate on the same. Such explanation can attempt to persuade but it would be of no evidentiary value. Reference is made to the decision of the

Supreme Court dated 25.04.2017 in Civil Appeal No. 5608/2017, titled: Kalandi Charan Sahoo v. General Manager, South-East Central Railways, Bilaspur.”

It is worthwhile to note that the decision in Mithlesh (Supra) was assailed by way of an SLP, however, the same was dismissed by the Supreme Court.

14. In view of the judicial dicta referred hereinabove, this Court is of the view that reliance sought to be placed by the respondent on DRM Report dated 25.11.2016 is of no avail.

15. Another contention raised on behalf of the respondent is that there was a delay of about 28 minutes in reporting of the incident. In this regard, it is noted that as per the *Panchnama*, the accident had taken place at the ‘*Starter signal*’. A Starter signal is defined under the heading SIGNALS in Chapter III of the Indian Railways (Open Lines) General Rules, 1976 as:-

“3.01. GENERAL USE OF SIGNALS - The signals prescribed in these rules shall be used for controlling the movement of trains in all cases in which exceptions are not allowed by approved special instructions.

xxx

3.10. KINDS OF FIXED STOP SIGNALS FOR DEPARTING TRAINS –

(1) The Stop signals which control the movement of trains leaving a station are of two kinds, namely - Starter and Advanced Starter.

(2) When a train leaving a station is guided by only one starting signal, it is the last Stop signal of a station and is called the Starter.”

16. As per respondent's case, the train arrived at *Bhuteshwar* Railway Station at 10:02 p.m. *Sh. Jitender* has stated that while he alongwith others managed to alight from the train at the station, the deceased could not. It is thus clear that the accident took place when the train had left *Bhuteshwar* Railway Station and reached the Starter signal. Indisputably, the train must have stopped for sometime at the station. As such, on occurrence of the incident, people would have gathered and only then the incident was reported to the Station Master. In light of above, the contention that there was delay in reporting of the incident has no merit and is rejected.

17. Based on the foregoing discussion, this Court is of the opinion that the Tribunal failed to appreciate the *Panchnama* as well as the inspection report, which clearly spelt out that the death had occurred on account of injuries suffered by the deceased on account of fall from the train.

18. Accordingly, the appeal is allowed and the matter is directed to be listed before the Tribunal on 02.11.2022 to determine the amount of compensation to be awarded. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 17, 2022

ga