

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

+ **FAO No.142/2012**

% **31st March, 2014**

SMT. RAM PAYARIAppellant

Through: None.

VERSUS

UNION OF INDIA Respondent

Through: Mr. T. K. Mukherjee, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the impugned judgment of the Tribunal dated 29.11.2011 dismissing the claim petition filed by the appellant and who is a widow of the deceased Sh. Ram Phal who died in an untoward incident by falling from Ala Hazrat Express train near the Old Delhi railway station. This appeal is an unnecessary burden on the appellant and thereafter at the end of this judgment I am giving certain directions because I find that in quite a few cases coming up before this Court it is noticed that certain

Benches of the Railway Claims Tribunal do not deal with the relevant documents which have been filed and proved on record.

2. The case as set up by the appellant was that her husband Sh. Ram Phal on 10.8.2010 was travelling by Ala Hazrat Express train to Bhiwani junction. When the train was approaching the Old Delhi railway station on account of the jerk/jolt in the train as well as thrust from the passengers inside the train, Sh. Ram Phal accidentally fell down from the train. This incident caused grievous injuries to Sh. Ram Phal and who as a result thereof died on the spot. The railway journey ticket of the deceased was said to have been lost in the incident.

3. On behalf of the respondent, it was pleaded that the deceased was not a bonafide passenger inasmuch as no journey ticket is placed on record. It is also the stand of the respondent that there is no proof of any fall from the train of the deceased Sh. Ram Phal.

4. The Railway Claims Tribunal has made the following observations for dismissing the claim petition:-

“ After perusal of record, I observe that in the document AW1/4 i.e DD no.12-A, dated 10.8.2010, P.S. ODRS, based on railway memo, it is clearly mentioned that one passenger was run over and killed on P/F no.12 by 4311 express train on 10.8.2011. In the other documents of the applicant i.e AW1/5 to AW1/10, it is mentioned that the neck and both arms of the deceased were badly

cut up from the incident, but no eyewitness was examined on behalf of the applicant in order to prove the falling of the deceased from the train & received injuries. The burden of proof rests entirely upon the applicants to prove the untoward incident, within the meaning of section 123(c) read with Section 124-A of the Railways Act. In this connection, a reference may be made to a decision of Hon'ble Delhi High Court titled as **Jamirul Nisha and another Vs. Union of India, 2009 ACJ 1393**, wherein it is held in para no.34 & 35 of the judgment as under;

“34. From the perusal of section 123 c (2) & 124A, it is clear that “sine qua non” for claiming compensation, on account of death or injury sustained in a train accident is that the victim of a train accident, or his dependants as the case may be, must first establish that the victim or the deceased had accidentally fallen from the train.”

35. In the instant case, applicants have failed to establish that the deceased had accidentally fallen from the train, therefore, the question of the proof by the Railways that the death of the deceased was not the result of untoward incident does not arise.”

Hence, it is clear that the applicant miserably failed to prove the untoward incident as the documents placed on record on behalf of the applicants, also do not prove the untoward incident.

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After relying upon the authority mentioned (supra), I consider that the facts of the present case fall under the exceptions of section 124-A of the Railways Act & for that Railway Administration is not responsible because the documents i.e AW1/5 to AW1/10 speak volumes that the body of the deceased was badly cut up & crushed & which happens only in a case, where a person is run over by a train. If a person falls from a train, then ordinarily, falling would be a few feet away from the train, unless proved otherwise. I also observe that no journey ticket was recovered either from the possession of the deceased or from the site of the incident and in this regard, I find momentum of force, when the Ld. Counsel for the respondent states that the story put forth by the applicant, is a mere concoction only to get false compensation and now a days, it is a

simple tendency of some people by adopting other means by referring that the injured/deceased was travelling, on the strength of valid railway journey ticket & the ticket was lost in the incident. However, the legal position of law is very much clear as it has been held in **Dinesh Kumar Singh Maurya Vs. Union of India, vide FAO no.1023 of 2010, decided on 28.8.2010 by the Hon'ble Allahabad High Court (Lucknow Bench)**, wherein it is observed as under:-

“True, may be in certain cases the ticket of bonafide passenger is lost, snatched or taken away by some criminal and unscrupulous persons but there cannot be a presumption that the ticket of every deceased necessarily is taken out or it is lost or mutilated. In case ticket is not found from the body of the deceased or from its vicinity, the presumption would be that such a person was not a bonafide traveler, of course, evidence can be led to prove otherwise. If any untoward incident takes place within the meaning of Section 124-A of the Railways Act, initial burden lies on the Railways to prove that the passenger was not a bonafide passenger, but the same having been discharged, onus shifts on the person claiming compensation, to establish by some believable evidence, that such a passenger was a bonafide passenger, moreso when contrary admissible evidence is produced by the Railways.”

There is momentum of force in the submissions of Ld. Counsel for the respondent and there is no modicum of merit in the submissions of Ld. Counsel for the applicant. Hence, I record my findings on Issue no.1 to 3 against the applicant and in the favour of respondent.”

5. In my opinion, the impugned judgment of the Railway Claims Tribunal is clearly unsustainable and is set aside for the reasons contained hereinafter.

6. Two reasons have been given by the Tribunal to dismiss the claim petition. First is that the deceased was not a bonafide passenger as no

train ticket was recovered from the person of the deceased. Second reason is that it is not proved that there is any untoward incident of falling from the train as per the meaning of the expression as found in Section 123(c) and Section 124-A of the Railways Act, 1989.

7. So far as the first aspect that no train ticket is filed, I may add that it is not unknown that in innumerable number of cases, including in the present case, the railway ticket can be lost. This is all the more so in the present case where admittedly the body of the deceased Sh. Ram Phal was badly cut up and crushed which would sufficiently explain the loss of the ticket. I may note that the place where the body of the deceased is found is not near the residence or the work place of the deceased Sh. Ram Phal or any reason found/attributed for the deceased to be on the tracks where his body was found, and therefore, really the incident in question could only have happened if the deceased Sh. Ram Phal had fallen from the train and the case cannot hence be an incident of the deceased being run over while crossing the tracks. This aspect will be further clear while discussing issue no.2, however, so far as this issue is concerned, I hold that the deceased was a bonafide passenger and the train ticket could not be filed and proved before the Tribunal in view of the fact that the ticket in a case such as the present would have been lost in the untoward incident.

8. The second aspect to be dealt with by this Court is whether there was a fall from the train of the deceased Ram Phal. I have already reproduced above the conclusions of the Railway Claims Tribunal. A reference to the judgment of the Tribunal shows that there was documentary evidence available before the Tribunal as regards the falling of Sh. Ram Phal from the train though the Tribunal has for some unexplained reason chosen not to refer to the portions of the relevant documents. Nothing more is further required to be proved when we refer to some of the proved documents, and in my opinion the facts of the present case show clear cut perversity of the Tribunal in not referring to the contents of the two most relevant documents Ex.AW1/8 and Ex.AW1/9, and which documents clearly show and establish that there was an untoward incident of falling from the train of the deceased Sh. Ram Phal.

9(i) AW1/8 is a DD entry No.12A of the same date of the incident i.e 10.8.2010, and this is the statement of one Sh. Jag Pal Singh who is a vendor selling “puri sabzi” in a trolley at the relevant platform in the station where the deceased fell from the train. In his statement made to the police it is clear that he states that Sh. Jag Pal Singh came to know of the incident as it was told to him that the deceased had fallen from the Ala Hazrat Express train which resulted in his death. Therefore, it cannot be said that there is no

evidence of a fall from train of the deceased Sh. Ram Phal, in view of the statement of Sh. Jag Pal Singh, Ex.AW1/8.

(ii) I also note that there is another document Ex. AW1/7 and which is a statement given by a Railway Protection Force constable Sh. Babu Lal that he was posted on duty on 10.8.2010 at platform nos.12 to 15 and he had come to know that just sometime back there was a death of a person by falling from the Ala Hazrat train.

(iii) Similar is the statement of Head Constable Ved Parkash in DD No.12A dated 10.8.2010 Ex. AW1/6 and which also states of his coming to know while being on duty on platform nos.11/13 and 12/15 of falling of one person from the train ie Ala Hazrat Express train and which resulted in his death.

(iv) In my opinion, therefore by virtue of the documents Ex.AW1/6 to Ex.AW1/8 it is clear that there was a fall from the train of the deceased Sh. Ram Phal.

10. Though I have referred to the documents Ex.AW1/6 to Ex.AW1/8 at the outset, and which are sufficient to show that the incident of falling from the train, however, the clinching evidence of the fact that there was a fall from the train, is the document Ex.AW1/9, which is again a DD No.12A of the same date of the accident i.e 10.8.2010, and which is a
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statement of Sh. Kesar Singh who was an employee working at a shop in platform nos.11/13 and he states that he saw a person falling from the Ala Hazrat Express train and that he died consequent to such fall from the train. In view of Ex.AW1/9, and which is a statement of an eye witness, no doubt whatsoever remains of the death of Sh. Ram Phal happening on account of an untoward incident of falling from the train.

11. I therefore hold that the Railway Claims Tribunal committed a clear cut illegality and perversity in holding that no evidence was led of falling from the train with respect to the deceased Sh. Ram Phal.

12. Learned counsel for the respondent argued as per the document filed before the Railway Claims Tribunal being the report of the DRM wherein it is mentioned that the case of the deceased Sh. Ram Phal was a case of being run over by the train, and which is also clear from the condition of the body of the deceased which was found cut up and crushed and therefore it is argued that there is no untoward incident of a fall from the train.

(ii) No doubt, counsel for the respondent is appearing for the respondent and therefore would like to argue for the respondent, however, I fail to appreciate the argument as also the report of the DRM in view of the specific documents referred to me earlier in this judgment ie the documents

Ex.AW1/6 to Ex.AW1/9, and more particularly Ex.AW1/9 which is a statement of an eye witness. In the face of this document, I refuse to believe the self-serving report of the DRM that merely because the condition of the body is cut up it must be held that the deceased died not on account of falling from the train but the incident was an incident of the deceased being run over by the train.

13. I would like to state that except for a divine camera which can capture each and every detail of falling from the train, it is surely not humanly possible to hold simply on the basis of a body being cut up that the body cannot be cut up on account of falling from the train, inasmuch as, in many incidents the deceased can get entangled in the steps and thereafter under the wheels of the same train in which he is travelling and hence the body can get cut. In another case the person who falls from the train can be hit by various railway equipments such as signals, poles, junction box, wires etc etc, and which are there on the tracks. Therefore, it depends on the facts of each case if a cut up body is found whether the same is a case of running over or it is a case of fall from the train. In the present case, I have no hesitation whatsoever in holding that the incident in question is an untoward incident of falling from the train in view of the documents Ex.AW1/6 to Ex.AW1/9.

14. I have noticed a disturbing trend in certain appeals which are coming up before this Court and which appeals show that certain Benches of the Railway Claims Tribunal do not discuss or refer to the contents of those documents which clearly establish the happening of the untoward incident. Why this is being done, I cannot say, but the same is not legally acceptable. There is no reason why any Bench of the Railway Claims Tribunal should not refer to the documents which directly touch upon the issue in question. Also, it is not as if there are dozens of documents in a Railway Claims Tribunal case because at best in most of the cases there are only 5 to 10 documents. In the present case except mentioning that the appellant had proved the documents Ex.AW1/1 to Ex.AW1/11, the Bench of the Railway Claims Tribunal does not refer to the contents of Ex.AW1/6 to Ex.AW1/9 and more importantly of Ex.AW1/9 which is the statement of an eye witness. Such a course of action should not be adopted by any Bench of Railway Claims Tribunal.

15. Accordingly, this appeal is allowed and appellant is held entitled to the statutory compensation of Rs.4 lacs alongwith pendente lite and future interest @ 7 ½ % per annum simple. Since no one appears for the appellant, the Registry will send by registered post AD, a copy of this judgment to the appellant. An official of the respondent posted at the
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railway station near the residence of the appellant will also deliver a copy of this judgment to the appellant within a period of six weeks from today. A copy of this judgment be sent to the Chairman of the Railway Claims Tribunal, Delhi for being circulated among all the Benches of the Railway Claims Tribunal so that the Benches of the Railway Claims Tribunal take appropriate notice.

MARCH 31, 2014
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VALMIKI J. MEHTA, J.