

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

+ **FAO No. 345/2012**

% **15th January, 2014**

ANUPAM SHARMAAppellant
Through: Mr. Anshuman Bal, Advocate.

VERSUS

UNION OF INDIA THR. GM NORTHERN RAILWAY Respondent
Through: None.

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

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

1. This matter was called out in the pre-lunch session but no one appeared for the respondent though counsel for the appellant was present. Even on the second call after lunch although it is 2.50 PM, no one appears for the respondent. I have therefore heard the counsel for the appellant and after perusing the record am proceeding to dispose of the appeal.

2. This first appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment dated 27.2.2012 by which the claim petition filed by the applicant /appellant was dismissed.

The Railway Claims Tribunal by the impugned judgment has held that

compensation cannot be awarded inasmuch as the deceased has been run over by a train and it is not that he fell down from a train.

3. The facts of the case as pleaded by the appellant/applicant are that the applicant is the son of the deceased Sh. Bishan Sharma who died in an untoward incident on 12.6.2009. It is pleaded in the claim petition that the deceased father of the applicant was going from Kishanganj Railway station to Shakurbasti in an EMU Train when he fell down from the moving train due to heavy rush and sudden jerk of the train near Pole No. 8/2-8/5 Rampuriya Railway Colony. The deceased was said to have a valid ticket No. 75134948. The respondent-Railways contested the case by pleading that deceased was neither a bonafide passenger and nor the deceased expired on account of fall from the train.

4. The Railway Claims Tribunal by the impugned judgment has given the following reasons for dismissing the claim petition.

“4.3 The documents, placed on record by the applicant, as indicated in Para 1 above are examined as under:-

4.3.1 DD Entry dated 12.6.09 (AW1/3) reveals that ASM, Shakurbasti Railway Station Anil Kumar informed that at 11.50 a.m. at K.M 8/5, Up Line between Daya Basti Railway Station and Shakurbasti Railway Station, one person is run over by HS-1 train.

4.3.2 Brief facts (AW1/4):- It discloses that the I.O, on reaching the spot, found the dead body of a male cut into multiple pieces. During search of the dead body, one mobile Tata phone of S/Grey color, one

DVB I. Card and one railway ticket ex-Delhi Kishanganj Railway Station-Shakurbasti Railway Station was recovered. It further reveals that while he was travelling from Kishanganj Railway Station to Shakurbasti Railway Station by HS-1 EMU Train, suddenly fell down and came under the wheels of the said EMU Train.

4.3.3 Railway ticket (AW1/5):- It is computerized IInd class ordinary rail journey ticket dated 12.9.09 bearing No.75134948 ex-Kishanganj Railway Station to Shakurbasti Railway Station. The ticket was issued from Kishanganj Railway Station, Window No.2 at 6.08 hours.

4.3.4 Statement of Naresh Kumar (AW1/6):- He is an alleged eyewitness to the incident and gave his statement to the police that at about 11.30 a.m., he was standing outside the Railway Colony towards the railway line. At that time, one EMU passed, in which, one person fell down from the moving train and came under the wheels. The alleged eyewitness Naresh Kumar was, however, not produced before this Tribunal for examination.

4.3.5 Exht.AW1/7 and AW1/8:- These are the statements of Rajinder Kumar, brother-in-law of the deceased and Anupam, son of the deceased, who identified the dead body to be of Bishan Sharma.

4.3.6 DD 14-PP dt 12.6.09 Exht. AW1/9:- Averments in this police document are the same as in Brief Facts, AW1/4.

4.3.7 Postmortem Report (AW1/10):- The M.O. has opined therein that the cause of death of deceased is shock due to ante-mortem crush injury to whole body produced by blunt force impact.

4.4 The oral evidence of Court Witness, RW-1 and the documentary evidence, filed by hi, are examined as under:-

4.4.1 RW-1 deposed during oral evidence that HS-1 arrived Shakurbasti Railway Station via Patel Nagar at 11.50 hrs on 12.6.09. On 12.6.09 Anil Kumar was Y.M in the Yard from 08.00 hrs to 16.00 hrs shift. He further deposed that there is no mention of the incident in the Diary brought by him.

On being questioned by the Court, he deposed that HS-1 train comes from Nizamuddin to Shakurbasti Railway Station and goes back to Nizamuddin Railway Station. It is a circular train and that HS-1 goes via Up Line K.M Pole No.8/5, which is between Daya Basti Railway Station and Shakurbasti Railway Station. He further deposed that if there is any incident, the same is reported to GRP and RPF by outdoor ASM and if ASM due to any work have gone outside, the information is given by the Yard Master. RW-1 filed documents, RW1/1, RW1/2 and RW1/3 in support of his evidence.

4.5 The applicant has stated in the claim application that the deceased Bishan Sharma, while going from Kishanganj Railway Station to Shakurbasti Railway Station in EMU Train, fell down when the train crossed Pole No.8/2-8/5 between Daya Basti Railway Station and Shakurbasti Railway Station.

As per the police documents, AW1/3 and AW1/4, placed on record by the applicant, the incident in question happened by EMU Train HS-1.

RW-1 deposed during oral evidence that HS-1 on 12.6.09 arrived Shakurbasti Railway Station at 11.50 hrs via Patel Nagar. On being questioned by the Court, he deposed that HS-1 goes from Nizamuddin Railway Station to Shakurbasti Railway Station and it passes through K.M. No.8/5 via Up Line between Daya Basti Railway Station and Shakurbasti Railway Station.

The evidence of RW-1 is supported by the Northern Zone Public Time Table (for the period 1.7.08 to 30.7.09), which reveals in Table No.21, page B-15 that HS-1 runs from Nizamuddin Railway Station to Shakurbasti Railway Station via Kirti Nagar and Patel Nagar railway stations and it does not run between Kishanganj Railway Station and Shakurbasti Railway Station.

In view of the above, the pleading of the applicant and also the averments in the police documents, AW1/3 and AW1/4 that the deceased fell down while he was going in an EMU Train from Kishanganj Railway Station to Shakurbasti Railway Station, appears to be false.

4.6 The applicant has filed the statement of Naresh Kumar, the alleged eyewitness to the incident (AW1/6). However, there is no mention of the alleged eyewitness in the police documents of AW1/4 and AW1/9. The said Naresh Kumar was also not produced before this Tribunal for cross-examination. Thus, his statement cannot be read in evidence.

4.7 Exht. AW1/4 mentions that the dead body was cut into multiple pieces.

In this regard, Learned counsel for the respondent, during arguments, cited the case of Dharambiri Devi & others v/s Ministry of Railways, reported in 149 (2008) DLT 435 (Delhi High Court), wherein, the Hon'ble Delhi High Court in their judgment has held in Para 14 that "the body of the deceased being cut into two halves is not possible if the deceased fell out of the bogie through the exit if the train received a sudden jerk."

This Tribunal has been deciding the cases of persons falling down from running train almost on daily basis. It has been a common observation that when a person falls down from a running train, he falls outside the track and suffers multiple injuries all over the body, but does not come under the wheels of the train. The cutting of the body into multiple pieces is possible only when a person either commits suicide or is run over while crossing the railway line.

I have perused the judgments of the Hon'ble Apex Court and High Courts, filed by the learned counsel for the applicant. Since the facts and context of the judgments referred to are different, they have no relevance in this case.

In view of the aforesaid reasons and taking all the oral and documentary evidence into account, I am of the considered opinion that the applicant has miserably failed to prove that the deceased fell down from the train in question, as alleged in the claim application. Rather the case appears to be of the deceased having been run over by a train. Thus, the deceased has not died due to an untoward incident, as defined under Section 123(c) of the Railways Act.

The pleading of the applicant and also the averments in the police documents, AW1/3 and AW1/4 that the deceased fell down while he was going in EMU Train from Kishanganj Railway Station to Shakurbasti Railway Station has been held to be false, as discussed above. Hence, the question of the deceased being a bonafide passenger at the relevant time of the incident loses significance, and the ticket, placed on record, is held to be a invalid and a procured one for the purpose of this case.

These issues are decided accordingly against the applicant.”
(underlining added)

5. A reading of the aforesaid paragraphs shows that the train in question HS-I is a circular train between Nizamuddin to Shakurbasti Railway Station. The train does in fact pass the site where the deceased was found lying. The basic reason given for dismissing of the claim petition is the reasoning given in para 4.5 of the judgment of Railway Claims Tribunal doubting the train not running between Kishanganj Railway Station to Shakurbasti Railway Station. Accordingly, the Tribunal has held that the applicant/appellant failed to prove that the deceased fell down from the EMU train from Kishanganj Railway Station to Shakurbasti Railway Station. Tribunal has also observed that once a body is cut into multiple pieces, the normal conclusion is that the person in question has died either because he has committed suicide or is run over while crossing railway line. The Railway Claims Tribunal has also held that the ticket is a procured one and the deceased could not be said to be a bonafide passenger.

6. In my opinion, the impugned judgment is quite clearly unsustainable in the facts of the present case and law as laid down by the Supreme Court in the cases of *Union of India Vs. Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527* and *Jameela and Ors. Vs. Union of India (2010) 12 SCC 443* that liability of the Railways is a strict liability.

7. In my opinion, the Railway Claims Tribunal has committed an error in trying to be too specific and going in unnecessary fine details about the liability of the applicant/appellant so as to exactly re-create the entire sequence of events which results in the death. Recreation of sequence of events need not be exact for being put in a golden scale. The fact of the matter is that a ticket was placed on record and thus applicant/appellant has discharged the onus that the deceased was a bonafide passenger. It is therefore not understood as to how the Tribunal without any evidence came to a finding that ticket placed on record is an invalid and a procured one. I therefore hold that the deceased was a bonafide passenger of the train and which is sufficiently proved as required in law from the train ticket in question which has been proved and exhibited as Ex.AW1/5. I may note that it is not as if the deceased was a passing by labourer or vagabond loitering near the railway line or was otherwise residing or had his place of work nearby the spot of death, and, the deceased was in fact in service and earning

handsomely an amount of about Rs.17,000/- pm. There is therefore no reason for the deceased either to have committed suicide or to have been run over while crossing the line as is sought to be implied by the Railway Claims Tribunal in para 4.7 of the impugned judgment. Without any evidence to this effect such a finding could not have been arrived at by the Tribunal in the facts of the present case. In fact, even a suggestion of the deceased having committed suicide is most unacceptable to say the least because there is no factual basis in this evidence for arriving at such an important conclusion by the Tribunal. Para 7 of the judgment in the case of *Jameela (supra)* in this regard is relevant and the same reads as under:-

“7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section [124A](#) of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section [124A](#) of the Act.”

8(i) Once the deceased is said to have a valid train ticket of travel, and the deceased was otherwise not a vagabond or labourer loitering near the

tracks, the deceased was in fact in service and that the deceased died at a place which is not found to be near the residence or the place of work of the deceased, then, the appellant/applicant in my opinion has discharged the onus of proof that deceased was a bonafide passenger who died on account of fall from the train.

(ii) In my opinion, the Railway Claims Tribunal has in fact committed a gross illegality in ignoring the statement of eye witness Sh. Naresh Kumar whose statement has been exhibited as Ex.AW1/6 and in which statement it is clearly noted that the deceased died on account of fall from the EMU Train and got crushed under the same train. Sh. Naresh Kumar had absolutely no relation or connection with the deceased or the applicant and he was clearly an independent witness whose statement should have been believed because Sh. Naresh Kumar is a person who gave a statement to the Railway Police independently of his own. In my opinion, the statement of this independent witness is itself sufficient to set aside the findings of the impugned judgment and it is thus to be held that the deceased in fact died on account of fall from the train. It may be noted at this stage vide sub-Sections (1) and (2) of Section 18 of the Railway Claims Tribunal Act, 1987 that the strict rules of CPC and Evidence Act do not apply to proceedings before the Tribunal and therefore the appellant need

not have summoned Naresh Kumar. If at all it was the Railways who should have summoned Naresh Kumar whose statement to the authorities was made in the course of an independent enquiry by the authorities. It is further noted that even in the document Ex.AW1/4 which was the report prepared by the railway authorities on 12.6.2009; which is the date of the incident; the said report Ex.AW1/4 also states that the deceased suddenly fell down from an EMU Train and came under wheels of the same. Therefore, in view of the documents Ex.AW1/4 and Ex.AW1/6 clearly the appellant had discharged the onus of proof of showing that there was an 'untoward incident' within the meaning of the expression as found in Sections 123(c) and 124-A of the Railways Act, 1989. I must also further note that in the present case, respondent led no evidence before the Railway Claims Tribunal and did not examine any witness to contradict the statement of the witness Sh. Naresh Kumar whose statement as a document has been exhibited as Ex.AW1/6 and the report of the Railways itself which has been proved and exhibited as Ex.AW1/4.

(iii) The Railway Claims Tribunal was also not justified in arriving at a conclusion that if a person has been cut by a train then it is to be held that actually he could not have been travelling on the train on which he is said to have fallen down from. In the facts of this case it is not impossible

that the deceased could have got entangled in the steps of the train which resulted in his coming under the very train in which he was travelling.

9. In view of the above, I hold that the deceased Bishan Sharma was a bonafide passenger of the EMU Train and he fell down from the train near Pole no. 8/2-8/5 Rampuriya Railway Colony between Kishanganj Railway Station to Shakurbasti Railway Station. I further hold that there was an untoward incident within the meaning of the expression as found in Section 123(c) and Section 124-A of the Railways Act, 1989 and the respondent-Railways having a strict liability is accordingly liable to pay compensation to the appellant/applicant in terms of the Railways Act, 1989.

10. The appeal is therefore allowed. Appellant/applicant will be granted compensation of Rs.4 lacs alongwith interest at 7 ½ % per annum simple from the date of filing of the claim petition on 8.7.2009 till payment. The compensation amount in terms of present judgment be paid by the respondent within a period of six weeks from today. Parties are left to bear their own costs.

JANUARY 15, 2014
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VALMIKI J. MEHTA, J.