

(2011) 09 DEL CK 0319
In the Delhi High Court
Case No : FAO No. 174 of 2009

Prabhu Dayal and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123

Citation : (2012) 1 ILR Delhi 121

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : N.K. Gupta, Vidhi Gupta and Prateek Kohli, for the Appellant;
Jitendra Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The challenge by means of this First Appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment of the Railway Claims Tribunal dated 2.4.2009 which dismissed the Claim Petition filed by the parents of the deceased, one Sh. Rakesh Kumar who is said to have died in an untoward incident of falling from a train near Tilak Bridge Railway Station, New Delhi on 14.1.2008.

2. The facts as stated in the complaint by the Appellants were that the deceased had purchased a ticket for travel from Ghaziabad to Palwal and had boarded the Vaishali Express at Ghaziabad, and which train was going to New Delhi. It was further stated in the Claim Petition that when the train reached near Tilak Bridge Railway Station, the deceased Sh. Rakesh Kumar on account of a strong jerk of the train lost his balance and fell down from the moving train which resulted in his death on the spot. The Respondent/Railways contested the case and pleaded that the deceased was not a bonafide passenger and in fact no ticket was purchased by the deceased. It was also contended that assuming the ticket is shown to have been purchased, the ticket was a general ticket and not of a super

fast train Vaishali Express and therefore the deceased cannot be said to be a bonafide passenger of the train Vaishali Express from which he is alleged to have fallen down and died.

3. The Railway Claims Tribunal has arrived at a finding that the deceased did not have a valid ticket because a subsequent sentence was written in the Jamatalaashi report, Ex. AW1/3 that a ticket was recovered, and which sentence the Railway Claims Tribunal has found to be an interpolation. The Railway Claims Tribunal then held that even assuming that deceased had purchased a ticket, the said ordinary ticket cannot be used for travel in the Vaishali Express which is a super fast train and therefore the deceased cannot be said to be a bonafide passenger of the train in question. The Railway Claims Tribunal has disbelieved the statement of the eye-witness AW2, one Sh. Lokesh Kumar who deposed that he was travelling in the train along with the deceased and the deceased died on account of fall from the train and for which incident though he raised the hue and cry, the train did not stop and therefore on reaching the New Delhi Railway Station he informed the police and returned back to the spot with the police. The Railway Claims Tribunal has disbelieved the statement of eye-witness, AW2 Sh. Lokesh on the different grounds including that there was no prior acquaintance with the deceased and that no statement of the witness AW2 recorded by the police forthcoming. The Railway Claims Tribunal has held that the eye-witness was a "planted" witness and a blatant liar/obliging witness. Another adjective used for this witness is that this witness is not a trustworthy witness.

4. In my opinion, the Railway Claims Tribunal has clearly fallen into an error in dismissing the Claim Petition. The conclusion of the Railway Claims Tribunal that the deceased had not purchased a ticket is incorrect, and as will be shown in the latter part of this judgment on account of reports of the authorities of the Respondent itself. On the aspect that Ex. AW2 is not a trustworthy witness and an obliging witness and a blatant liar and a "planted" witness, these adjectives are unjustified as no interest has been shown with respect to this concerned person who took the trouble of not only trying to stop the train but subsequently informed the railway police and accompanying the police reached back to the spot of the incident. Further no rule has been placed on record that if an ordinary ticket is purchased for travel, then such a person cannot travel in a super fast train. Lastly no evidence was at all led by the railways to rebut the evidence in affirmative which was led on behalf of the Appellants before the Railway Claims Tribunal.

5. In my opinion, the Railway Claims Tribunal has fallen into a grave error in holding that the deceased did not have a valid purchased ticket simply because the line at the end of Jamatalaashi report, Ex. AW1/3 mentioned that a ticket of travel from Ghaziabad to Palwal found, is in smaller letters than the other letters. I have seen the Jamatalaashi report, Ex. AW1/3 and the handwriting of the last line which is in small letters is very much in the handwriting of the author of the document itself. Merely because this last line is added in small letters cannot

mean that this was not a genuine part of the report. If this last line is allegedly interpolated to show that the deceased had a ticket, then really, the Respondent ought to have summoned the author of the DD entry No. 6/7A dated 14.1.2008 with respect to the Jamatalaashi report, Ex. AW1/3, to establish this alleged fact and which admittedly was not done. In any case, no doubt remains of the deceased having travelled with a valid ticket inasmuch as the report dated 18.12.2008 of the Railway Protection Force gives a specific report of the ticket number showing that the deceased was in fact travelling as per a valid railway ticket.

6. I therefore hold that the Railway Claims Tribunal was not justified in arriving at a finding that the deceased had not purchased a ticket for travel. I therefore hold that the deceased had purchased a ticket, the number of which is mentioned not only in the Jamatalaashi report, Ex. AW1/3 but also in the report of the Railway Protection Force dated 18.12.2008. Finally I may note that the ticket of travel was filed and exhibited before the Railway Claims Tribunal as Ex. AW1/2.

7. Once it is held that the deceased had a valid ticket for travel from Ghaziabad to Palwal, the only issue which will remain was whether the deceased died on account of a fall from the train and was there an untoward incident within the meaning of that expression in Section 123(c) of the Railways Act, 1989. In this regard, the Railways themselves filed a report dated 31.12.2008 of the DRMs office and as per which the deceased Sh. Rakesh Kumar fell down from the train while trying to get down from the train. The fact that the deceased however fell down from the train therefore cannot be an issue. That the deceased fell down from the train is also again confirmed by the report dated 17.12.2008 issued by the Railway Protection Force which states that the deceased had fallen down from Vaishali Express. of course this report once again states that the deceased tried to get down from the running train and therefore died as a result of his own fault.

8. The issue therefore is as to whether the deceased fell down from a moving train or in fact was trying to get down from a running train. Admittedly, the Railways have led no evidence whatsoever. Even there is no DD entry or FIR of any Railway police official or any other Railway employee who had immediately reached the spot and was told that death was caused because the deceased was trying to get down from the train. Therefore, on the one hand, there is absolutely no evidence led on behalf of the Railways of there being any presence of an eye-witness or a person who immediately reached the spot after the incident, to show that the deceased had tried to get down from a running train, on the other hand, the Appellants have led the evidence of one Sh. Lokesh, and whom I would call a good samaritan and not a blatant liar/planted witness/untrustworthy witness/or obliging witness and which adjectives have been used by the Railway Claims Tribunal. This witness has deposed in his affidavit that he raised a hue and cry for the train to stop and in fact he informed the police at New Delhi

Railway Station of the incident and came back with the police at the spot. Firstly, all this could not have been a make-believe story, and if allegedly it was a make-believe one, the onus of proof had shifted on to the Respondent/Railways once the eye-witness AW2 deposed with regard to the deceased having died on account of a fall from the train. The Railways ought to have led its rebuttal evidence but no such rebuttal evidence was led on behalf of the Railways. I may also note that if the Railways/Respondent wanted to establish that the deceased in fact was trying to get down from a running train, then, surely, it could have led evidence that the death took place when the train was at the station itself, however as already referred to above, evidence of not a single witness was led on behalf of the Respondent. I, therefore, hold that the deceased in fact died on account of a fall from the train and not because he was trying to get down from the train. I am persuaded to hold so keeping also in mind the fact after all the deceased was a bonafide passenger with a proper ticket of travel.

9. The Railway Claims Tribunal has also arrived at an incorrect finding that if there is death of a person by falling from a train, the incident will not be an untoward incident if the ticket in question is a general ticket and the travel was in a train which was a super fast train. No such rule has been relied upon before the Railway Claims Tribunal and no such rule has been relied before me that a person with a valid train ticket of travel, cannot travel in the general compartment of a second class of a super fast train. I am fortified in my view by a decision of a learned single Judge of the Andhra Pradesh High Court in the case reported as *Parisa Anjali and Ors. v. UOI* (IV) 2010 ACC 99, and in which judgment the learned single Judge of the Andhra Pradesh High Court has held that merely because the ticket was not of that particular train in which the deceased was travelling, would not mean that the deceased was not a bonafide passenger of the train from which he fell down. I respectfully concur with the views of the Andhra Pradesh High Court in the case of *Parisa Anjali* (supra).

10. In view of the above, the impugned judgment dated 2.4.2009 of the Railway Claims Tribunal is set aside. The Appellants are held entitled to the statutorily fixed compensation of Rs. 4,00,000/-. The Appellants are also entitled to pendent lite and future interest till payment at 7 & 1/2 % per annum simple. I have seen the order sheets of the Railway Claims Tribunal and which show that considerable delay was caused by the Railways in taking many opportunities to file the written statement and which was filed on the fifth opportunity. Ordinarily, I would have granted interest at 9% per annum simple, however, considering the overall facts and circumstances of the case and that interest would be payable from 2.4.2008 I find that interest at 7 & 1/2 % per annum simple will serve the interest of justice in the present case. The appeal is therefore allowed in terms of the aforesaid. The Trial Court record be sent back.