

Rekha Devi and ors Vs. Union of India

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Court : Delhi

Decided On : Feb-10-2014

Judge : Valmiki J. Mehta

Appellant : Rekha Devi and ors

Respondent : Union of India

Judgement :

\$~11 * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO122012 10th February, 2014 REKHA DEVI & ORS Through: Appellant Mr.S.S.Sisodia, Adv. versus UNION OF INDIA Through: Respondent Dr.Ashwani Bhardwaj, Adv. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This First Appeal u/S23of the Railway Claims Tribunal Act, 1987 is filed by the appellants against the judgment of the Railway Claims Tribunal dated 14.10.2011 which has dismissed the claim petition.

2. The case of the appellants, and who were the applicants before the Railway Claims Tribunal, was that the deceased Mukesh Kumar, husband of applicant no.1 and the father of the applicants no.2 to 4 and son of applicants no.5 and 6, died on account of untoward incident of falling from the train on 23.10.2009. It was pleaded that the deceased was a resident of Khekra in District Baghpat (UP) and was aged about 32 years at the time of the incident. The deceased Mukesh Kumar was

stated to have been travelling for his work of making switches on contract at Shahdara in Delhi from his residence in Khekra. It is pleaded that deceased Mukesh Kumar was accompanied by his brother Ravinder and both of them after purchasing two tickets boarded Passenger Train No.4-SD at about 5.30 a.m. The train was stated to be crowded and on account of a certain jerk of the train, the deceased Mukesh Kumar fell down from the train and sustained injuries on his person at Khekra Railway Station, and which led to his death on the same date i.e 23.10.2009. Claim petition was accordingly filed claiming the statutory compensation totaling to Rs.10 lakhs.

3. The Railway Claims Tribunal has dismissed the claim petition by arriving at the following findings/conclusions: (i) The deceased Mukesh Kumar cannot be said to be a bona fide passenger, although a train ticket was filed and proved as Ex. AW1/10, inasmuch as, if the deceased was really travelling in the train along with his brother Ravinder, the train ticket of the brother Ravinder should have been produced, but which was not produced. (ii) Deceased was in fact strolling along with other persons near the railway station Khekra near which he was living and he got hit by the train during his strolling near the railway station. (iii) It is difficult to believe that the deceased was travelling in the train along with his brother Ravinder, inasmuch as, the information with regard to the incident was given to the applicants not by the deceaseds brother Ravinder, but admittedly by some persons in the locality as admitted by the applicant no.1 in her cross-examination. If the deceased was travelling with his brother then surely it is the said Ravinder who would have first informed the appellants/applicants and not the residents of the colony, and which normally happens when nobody was with the deceased. (iv) The deceased Mukesh Kumar was working to manufacture switches at a location in Shahdara, Delhi and it does not sound reasonable for the deceased to leave his residence at Khekra at 5.30 in the morning when the time to travel to Shahdara in Delhi is just about 45 minutes, and which indicated that the deceased was actually not travelling in the train because no factory/work commences at 6.30 in the morning.

4. In addition to the above said reasons the Tribunal has relied upon the newspaper report of a local newspaper that the deceased Mukesh Kumar died on

account of having been hit by train while strolling in the morning with other persons. Of course, I must state that newspaper reports cannot be believed because the content of any report has necessarily to be proved in accordance with law and a news report is not taken as proof of the contents of the report.

5. Counsel for the appellants has argued before this Court that the deceased Mukesh Kumar was a bona fide passenger inasmuch as a train ticket was filed and which was given to the father Shri Dharampal, Ex. AW1/1 in the hospital, therefore the findings of the Tribunal of the deceased Mukesh Kumar not being a bona fide passenger is illegal. In my opinion, the argument urged on behalf of the appellants does not merit acceptance inasmuch as the Tribunal has rightly rejected the evidence in the form of train ticket Ex. AW1/10 has relied upon because of the fact that no train ticket has been filed of the brother Shri Ravinder who was said to have been travelling with the deceased Mukesh Kumar. A civil case is decided on balance of probabilities and considering the specific case that Ravinder was travelling with the deceased, in my opinion, the Tribunal has rightly along with other circumstances come to a finding of fact that mere filing of the train ticket allegedly to be of the deceased would not prove that the deceased was a bona fide passenger on the train in the facts of this case.

6. Learned counsel for the appellants next argued that the Tribunal has wrongly relied upon the newspaper report to which I agree, but that would not make any difference to the conclusions arrived at by the Railway Claims Tribunal as stated above inasmuch as various aspects and facts have been considered by the Tribunal to hold that the deceased in fact did not fall down from a running train but died on account of his strolling near the railway tracks at Khekra and where the residence of the deceased was.

7. To the above aspects I would like to add that the respondent/Railways led the evidence of the guard of the train Shri M.L.Gupta and the station superintendent Shri Ram Singh, as RW-1 and RW-3, and both of whom deposed to the fact that no incident of the falling from the train of any person was reported on 23.10.2009 when the deceased Mukesh Kumar is said to have fallen down from the train, and I would agree to such deposition because there is no reason why an employee of

the Railways in the present case would give a false statement of not falling down from the train of the deceased Mukesh Kumar on 23.10.2009.

8. I agree with the conclusions of the Railway Claims Tribunal except with respect to relying upon the newspaper report, and in my opinion therefore, the present appeal has no merit, and the same is dismissed, leaving the parties to bear their own costs. FEBRUARY10 2014/mm FAO No.12/2012 VALMIKI J.

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