

Union of India Vs. Durga Devi and ors.

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Court : Delhi

Decided On : Apr-15-2014

Judge : Valmiki J. Mehta

Appellant : Union of India

Respondent : Durga Devi and ors.

Advocate for Def. : Mr. Yogesh Swaroop

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % UNION OF INDIA FAO No.97/2012 15th April, 2014Appellant Through: None. VERSUS DURGA DEVI & ORS. Through: Respondents Mr. Yogesh Swaroop, Adv. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) CM No.4092/2012 (delay of 42 days) For the reasons stated in application delay in filing the appeal is condoned. CM stands disposed of. FAO972012 & CM No.11219/2012 (stay) 1. No one appears for the appellant, although it is 4.10 PM. I have heard the counsel for the respondents and after perusing the record am proceeding to dispose of the appeal.

2. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 21.9.2011 by which the Tribunal allowed the claim petition filed by the respondents herein. Claim petition

was allowed for the statutory compensation of Rs.4 lacs on account of death of Sh. Banwari Lal, and who was the husband of respondent no.1 herein. The other respondents are sons and daughters of late Sh. Banwari Lal.

3. The facts of the case are that Sh. Banwari Lal was travelling on 25.6.2007 from Delhi Junction to Nangloi Railway Station in Train No.1DR and while passing through Km. 16/4-5 near Kavita Colony, Phatak No.2, Nangloi Railway Track, on account of sudden jerk and jolt of the train, Sh. Banwari Lal fell down from the train and died in the untoward incident as per the meaning of the expression found in Section 123(c) and Section 124A of the Railways Act, 1989.

4. The Railway Claims Tribunal has allowed the claim petition by making the following observations. ISSUE NO.1 & 2 Since both the Issues are co-related, these are taken up for consideration simultaneously for the sake of convenience. The case of the applicants is that on 25th June 2007, Sh. Banwari Lal purchased second class ordinary railways ticket from Delhi Junction for journey upto Nangloi railway station. The claimants have also alleged in the claim petition that purse containing money & railway journey ticket was lost in the accident. It is admitted case of the parties that no ticket was recovered from the possession of the deceased, and, the body of the deceased was identified by Sh. Sunil Kumar, who is the son-in-law of the deceased. On 25th June 2007 the statement of Sunil Kumar was recorded by A.S.I., who has stated that his father-in-law came along with him to the Old Delhi Railway Station where he purchased a railway ticket for his father-in-law for 1DR train, for journey up to Nangloi Railway Station, and, in his presence, his father-in-law, Sh. Banwari Lal boarded 1-DR train, and, thereafter he received a telephonic message from Chowki Kishanganj about his death. The statement of Durga Devi was also recorded by A.S.I. on the same day i.e. 25 th June 2007. The respondent has filed a copy of the message, which was received at 11.24 hrs. From the driver of goods train TKD/EBCNUCA along with the D.R.M.s Report, and according to this message, the driver of the goods train informed Station Supdt., Nangloi that a man run over the train. According to the respondent, the passenger train 1-DR reached Nangloi railway station at about 11.38 hrs. The learned counsel for the respondent has relied upon Section 191 of the Railways Act 1989, but in support of their case, the respondent has not adduced any oral

evidence to prove the contents of the message, which was received by the Station Supdt., Nangloi from the driver of the goods Train. The driver of the goods train was a material witness in the instant case to prove that the deceased died due to run over from the train, of which he was the driver, on the relevant day. It is admitted case of the parties that the body of the deceased, Sh. Banwari Lal, was recovered from the track, and, from the message, it is also evident that the driver has also conveyed to station Supdt. Nangloi that a body in the track at Kms. 16/4-5 Up Line between SSB/NNO is lying. The respondent has also not adduced any oral evidence to prove that passenger train No.1-DR left Shakurbasti at 11.26 hrs. And reached Nangloi railway station at 11.38 hrs. The C.M.I., who submitted the Report dated 12th May 2011, was also not examined by the respondent to prove the Report. There is also no oral evidence adduced by the respondent that the deceased was not a bonafide passenger of the train on the relevant day. The Judgments, which have been cited by the learned counsel for the applicant reported in 2009 (1) T.A.C. 644; 2005 ACC page 126; 2011 ACC88 specifically provides that oral evidence is needed to prove the allegation made in the written statement. The contents of the statement of Sh. Sunil Kumar, which was recorded by the A.S.I on 25th June 2007, cannot be ignored, as he has specifically stated that he along with the deceased went up to Old delhi railway station, and, he purchased an ordinary second-class ticket for 1-DR train for his father-in-law. The statement of applicant No.1, Smt. Durga Devi, was also recorded by the A.S.I. on 25th June 2007, and, she has also stated that her husband has fell down for the moving train. I, therefore, hold that the deceased, Banwari Lal, was a bonafide passenger of the train No.1-DR on 25th June 2007. Issue No.1 is decided in favour of the applicant. The body of the deceased was recovered from the railway station. There is no evidence adduced by the respondent to the effect that Banwari Lal committed suicide. The applicants are successful in establishing that the deceased while travelling in the train fell down, had sustained injuries which eventually led to his death. I, therefore, hold that it is an untoward incident prescribed under Section 123(c) of Railways Act 1989. The Issue No.2 is decided in favour of the applicants and against the respondent.

5. I do not find any illegality in the judgment of the Tribunal inasmuch as no doubt the train ticket was not found, however, it is not unknown that train tickets in

considerable number of cases get lost when the passenger falls from a moving train. There is no malafides of the respondents/claimants because on the same date of the incident mention is made of the train travel by both the widow/respondent no.1 and son-in-law of the deceased Sh. Sunil Kumar. The Railway Claims Tribunal has rightly held that driver of the goods train who talked of a body lying on the tracks and even if this deposition of driver is considered, at best that will show a body lying on the tracks and not that the deceased did not fall down from a running train. I may at this stage mention that the original claim petition was filed with a delay of 503 days, and which delay was condoned by the order of the Tribunal dated 4.5.2010. This order was not challenged by the appellant and the same has become final. The delay in filing the claim petition in fact shows that respondents/claimants would have no malafides of mentioning the factum of happening of an untoward incident of falling from the train, inasmuch as, if the claim was a make believe one, the same would have been filed immediately after the accident and not after a delay of 503 days i.e after the expiry of period of limitation.

6. There is hence no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. APRIL15 2014 ib FAO972012 VALMIKI J.

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