

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.532 of 2008 (O&M)
Date of Decision:16.02.2015

Shimla Devi and anotherAppellants

Versus

Union of IndiaRespondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Paul S. Saini, Advocate for the appellants.

Respondent ex parte.

NAVITA SINGH, J.

1. Since respondent is ex parte, counsel for the appellants has been heard.

2. This appeal is directed against the order dated 30.8.2007 passed by Railway Claims Tribunal, Chandigarh (Tribunal for short), whereby the claim preferred by the appellants was rejected.

3. The case of the appellants was that on 10.1.2003, deceased Sanjeev Kumar was travelling from Karnal to Ambala Cantt. and had fallen out of the train due to heavy rush. He had purchased a ticket for general class in Jammu Mail.

4. The Tribunal dismissed the claim on the ground that no ticket was recovered from the deceased and, therefore, he was not a bonafide passenger. Recovery of other belongings was made but no ticket was recovered.

5. Learned counsel for the appellants argued that onus lay on the railway authorities to show that the deceased was travelling without ticket and that the Tribunal could not presume that he was the ticket less passenger simply

because no ticket was recovered. It was contended that liability under the Railways Act (Act for short) was a strict liability and it was sufficient for the appellants to say that the deceased was travelling from one place to another and accident had occurred which resulted in his death. The basic facts were not disputed by the respondent and, therefore, under Section 124-A of the Act, a strict liability or no fault liability was placed on the railways.

6. In view of the above contention, reliance was placed on the judgment of the Supreme Court reported as Union of India Vs. Prabhakaran Vijaya Kumar and others (2008) 9 Supreme Court Cases 527. It was held by the Supreme Court that it was inconsequential whether the passenger was actually inside the train or not. But it was all the same held that falling down of a bonafide passenger (i.e. a passenger travelling with a valid ticket or pass), from the train while trying to board it or otherwise would be covered. It is, therefore, clear that the passenger has to be a bonafide passenger for his legal representatives/heirs to claim compensation for his death. Reliance was also placed on Leelavathamma Union of India 2004 ACJ 1761 wherein the High Court of Karnataka held that where deceased had fallen from a train and his body was recovered later on and then transported to nearby station, it could well be presumed that the ticket got lost as the body was handled by different agencies. The facts of the case were different and also this Court is not bound to follow the view taken by the other High Courts. In any case, it can very well be said that in that case the High Court of Karnataka worked on the assumption that the ticket got lost because the body was handled by different agencies. Applying the same analogy, it can be assumed/presumed here that since all the other belongings of the deceased were found near his body, ticket would have also been found had it possessed it.

7. It came in evidence that one diary containing addresses, one purse and two slips of papers were recovered from the person of the deceased when fard jamatalashi was prepared but strangely no ticket was found. The Tribunal, therefore, was absolutely of the correct view that if all other articles were found then ticket would also have been found. In a situation where none of the belongings of the deceased could be traced or found near his body, matter could be different. Here even slips of papers were found but ticket was not found.

8. The last argument of counsel for the appellants was that according to Section 124-A of the Act, where the cause of death was not as given in the proviso, the Railways were bound to compensate the heirs of the deceased. This argument would, however not be acceptable because explanation (ii) of the same section provides that the word 'passenger' would include a person who had purchased a valid ticket. Thus for the death of a person, who was not a bonafide passenger, compensation is not liable to be paid by the respondent. When the appellants claimed the deceased to be a passenger, it would follow that they were to show that he was a bonafide passenger. Onus cannot be shifted to the other side for showing that he was not a bonafide passenger. In any case from the evidence here, it can very well be construed that the deceased was a ticketless traveller.

9. The appeal is dismissed.

(NAVITA SINGH)
JUDGE

16.02.2015
Ishwar

Whether to be referred to reporter: Yes