

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.483 of 1999 and
XOBJ No.54-CII of 2003 (O&M)
Date of Decision: 04.05.2016.**

Union of India

....Appellant.

VERSUS

Chand Singh and another

....Respondents-Cross Objectors.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jagdish Marwaha, Advocate
Special counsel for the appellant-Union of India.

Mr. Paul S. Saini, Advocate
for the respondents-cross objectors.

SNEH PRASHAR, J.

Assailing the judgment dated 20.11.1998 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (for short, “the Tribunal”) awarding compensation to the tune of Rs.2,00,000/- to the respondents-claimants in claim Case No.OA-II/68/97 filed under the provisions of the Railways Act, 1989 (for short, “the Act”), the appellant-Union of India, through General Manager, Northern Railway, Baroda House, New Delhi preferred this appeal.

Precisely, the facts are that Vijay Singh, son of the claimants-respondents, aged 19 years was serving as a security guard at Delhi and was commuting daily from Asaudah to Mangolpuri on a valid second class monthly railway pass. On 02.09.1997, he was returning home from Delhi after performing duties by IDR passenger train. When the train reached at the outer signal of Asaudah, the driver of the train suddenly applied brakes which caused jerk and all the passengers including Vijay Singh, who was standing near the seat close to the door of the coach due to heavy rush, lost balance and fell on each other. In that process, Vijay Singh fell out of the train and died at the spot.

The claimants-respondents, being parents of deceased Vijay Singh, filed an application claiming compensation to the tune of Rs.4,00,000/- on account of death of their son in the railway accident. The application was contested by the appellant-railways. In the written statement filed by them, they denied that the incident in question comes within the ambit of Section 123(c) of the Railways Act, 1989 (for short, "the Act") or that the application for claim was maintainable. They also denied that the deceased was a bonafide passenger. As an alternate plea, it was submitted that the deceased himself was responsible for the mishap which took place due to his own criminal act.

On the basis of the pleadings of the parties, issues were settled.

Both the parties adduced evidence to discharge the onus of the issues on

them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal partly allowed the application and held the claimants entitled to receive a sum of Rs.2,00,000/- as compensation from the appellant-railway administration on account of death of their son, Vijay Singh, in equal shares. The railway administration were allowed 60 days time to make payment, failing which the claimants were held entitled to recover the said amount with interest at the rate of 15% per annum from the date of order till realization.

Feeling aggrieved with the judgment dated 20.11.1998, the appellant-Union of India preferred the instant appeal. The claimants-respondents also filed cross objections seeking enhancement of the compensation amount.

The submissions made by Mr. Jagdish Marwaha, learned special counsel for appellant and Mr. Paul S. Saini, learned counsel for the respondents-cross objectors have been heard and record perused.

The foremost argument raised by learned counsel for the appellant was that learned Tribunal wrongly held the deceased to be a bonafide passenger on the basis of the identity card (Annexure-A6) and the second class monthly railway pass (Annexure-A7). Both the documents appear to have been procured by the claimants in connivance with the railway staff with a view to claim compensation. The second class monthly pass was issued on 1st September, 1997 whereas the date of the occurrence is 2nd September, 1997. It is also doubtful that both the said documents

relate to the deceased. In the identity card (Annexure-A6), the name of the official is mentioned as 'Vijay Singh' whereas in the certificate dated 23.09.1997 (Annexure-A8) issued by OMNI Services, with whom the deceased was alleged to be working as a security guard, the name was mentioned as 'Vijay Kumar'.

Learned counsel further asserted that the claimants named one Inder Singh as an eyewitness of the accident in their claim application, but during evidence said Inder Singh was not examined and in his place one Satpal appeared as an eyewitness. Learned Tribunal accepted the statement of Satpal as a gospel truth whereas he was apparently a procured witness. Lastly, learned counsel urged that the deceased suffered fatal injuries due to his own criminal act. He jumped from the moving train when it slowed down near his village but could not control his balance, fell down and suffered injuries. Therefore, seen from every angle, the railway administration had no liability to pay compensation to the claimants.

Learned counsel for respondents-cross objectors controverted the arguments of learned counsel for the appellant. He submitted that the deceased held a monthly railway pass and therefore was proved to be a bonafide passenger of the train in question. There was not just one eyewitness of the incident, rather all the passengers, who were travelling with the deceased in the train at the relevant time, had witnessed fall of deceased Vijay Singh from the train. Satpal examined by the claimants was co-passenger and had given a crystal clear eyewitness account of the

incident. No evidence could be led by the appellant-railways to rebut his testimony.

Learned counsel further submitted that by way of cross objections filed by the claimants, they pray for enhancement of the compensation amount from Rs.2,00,000/- to Rs.4,00,000/-. The Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 (for short, “the Rules, 1997”) came into force w.e.f. 01.11.1997. Part-I of the Schedule under Rule 3 of Rules, 1997 provides for compensation of Rs.4,00,000/- in case of death of a passenger in a railway accident or untoward incident. It has been held by Hon'ble Supreme Court in **Rathi Menon Versus Union of India, A.I.R. 2001 Supreme Court 133** that the amount of compensation to be paid by the railway authorities must be fixed as per the rates prevalent under the Rules at the time of making order for payment of compensation and not on the basis of Rules prevalent on the date of accident.

Having considered the arguments submitted by learned counsel for the parties, I find that the arguments of learned counsel for the appellant are completely devoid of merit. Learned Tribunal held the deceased to be a bonafide passenger on the basis of the documents tendered in evidence by the claimants. The identity card No.594567 (Annexure-A6) and the second class monthly railway pass (Annexure-A7) are both in the name of 'Vijay Singh'. In the monthly pass, the number of the identity card issued by the Northern Railway is mentioned. It is unfortunate for the claimants that the

monthly pass was issued on 01.09.1997 and the untoward incident took place on the very next day i.e. on 02.09.1997 but that is no ground to disbelieve or reject the identity card and the monthly pass. It is not the case of the appellant-railways that they had conducted an enquiry into the genuineness of the documents and found some staff of the railways responsible for falsely manipulating the said documents. There being no rebuttal to the said documents, it stood established that the deceased was travelling in the train on a valid effective pass at the time of untoward incident and therefore was a bonafide passenger.

As far as occurrence of the untoward incident is concerned, Satpal examined by the claimants deposed that deceased Vijay Singh was travelling in the train with him in the same coach and that the train was over crowded. When the train reached at the outer signal of Asaudah railway station, the passengers came close to the door of the coach in order to get down. When the train was at the outer signal, the driver of the train suddenly applied full brakes, consequent to which there was a jerk, the passengers standing in the train lost balance and fell on each other and in that process due to push from the passengers the deceased fell out of the train, suffered head injury and died at the spot. During cross-examination, the appellant failed to derive anything from the witness which could render his credibility doubtful. He admittedly was not a relative of the claimants or the deceased and had no reason to depose falsely with regard to the incident.

As against the unequivocal testimony of Satpal, no witness could be examined by the appellant to disprove the factum of untoward incident. The two witnesses RW1 and RW2 examined by them did not state that they had witnessed the incident. In the said set of facts, there was no reason to disbelieve or reject the testimony of Satpal. Accordingly, it is held that learned Tribunal rightly concluded that the deceased accidentally fell from the train and succumbed to the injury. There being no merit in the appeal of the appellant, it is hereby dismissed.

Coming to the cross objections filed by the claimants, it is noteworthy that the instant appeal by the appellant was filed on 06.03.1999. It came up for hearing on 16.03.1999 and on that date execution of the award was stayed by this Court. After the claimants-cross objectors appeared, the appeal was admitted vide order dated 17.07.2000 and the order of stay was modified to the extent that a direction was given to the appellant to pay the compensation to the claimants on their furnishing adequate security to the satisfaction of the executing court. Learned counsel for the appellant submitted that it could not be denied by counsel for the claimants-cross objectors that the compensation amount was paid in August, 2000. It is after a delay of 4-1/2 years i.e. in December, 2003 that the claimants came up with the cross objections. They filed an application under Section 5 of the Limitation Act for condonation of delay but could state no sufficient ground to explain the same. Their submission that after they came to know about the latest law the cross objections were filed,

deserves to be rejected out rightly as they were being represented by a counsel during proceedings before the Tribunal as well as when they had put in appearance in the present appeal on 28.04.1999. Therefore, their plea that the latest law was not known to them is not tenable. Thus, there being no sufficient cause to condone the delay of 1542 days, the application filed in that behalf as well as the cross objections are dismissed.

(SNEH PRASHAR)
JUDGE

04.05.2016.
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