

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

FAO No. 4132 of 2008 (O&M)
Date of Decision: 24.10.2016

SANTOSH AND ORS.

... Petitioner

V/s

UNION OF INDIA

..Respondents

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH.**

Present: Mr. Rakesh Kumar Sharma, Advocate,
 for the appellants.

Ms. Abha Rathore, Standing Counsel for U.O.I.

KULDIP SINGH, J (ORAL)

Impugned in the present appeal is the judgment dated 21.04.2008 passed by the Railway Claim Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') vide which the claim application of the appellants for grant of compensation on account of death of Naresh Kumar in untoward incident involving the railways was dismissed.

The fact as claimed by the appellants are that on 06.03.2001 Naresh Kumar (now deceased), a native of Village Shera, District Panipat, Haryana, left his village and boarded the train No. 6 NPM from Panipat Railway Station to New Delhi at 9.30 P.M. When the said train covered 2-3 kilometers, it took heavy jerk and Naresh Kumar, who was standing in the corridor near the entrance of the compartment, fell down from the train and received multiple injuries. Thereafter, he was removed to the Civil Hospital, Panipat by the members of Sewa Samiti (an NGO) on 07.03.2001 and later on he was referred to PGIMS, Rohtak where he succumbed to injuries on

FAO No. 4132 of 2008 (O&M)

13.03.2001. The deceased was travelling with general class ticket bearing No. 8659-4318 from Panipat to Delhi.

In the written statement, the railways denied the occurrence of any such untoward incident as well as took the plea that the deceased was not a bonafide passenger. From the examination of the pleadings, the following issues were determined: -

1. *“Whether any untoward incident within the meaning of Section 123 (c) of The Railways Act took place, as alleged?*
2. *Whether the deceased was a bonafide passenger?*
3. *To what amount of compensation, if any, is the applicant entitled?*
4. *Relief.”*

The Railway Claims Tribunal, Chandigarh Bench, Chandigarh recorded the finding that the deceased was not a bonafide passenger and the ticket so produced by the claimants-appellants was a procured one. Consequently, the claim application of the claimants-appellants was dismissed.

In this case, one Ram Bharat Kaushik had appeared as AW-1 and stated that he was also travelling on the same train no. 6NPM from Panipat to Ganaur to see his daughter, Mukesh, who was suffering from gynae problem. He stated that when the said train covered 6-7 KMs, due to heavy jerk, a young man standing besides him fell down from the running train. Later on, he came to know that the person who had fallen from the running train was Naresh Kumar S/o Dayanand resident of VPO Shera, Distt. Panipat. During his cross examination, he also admitted that he did not know Naresh Kumar earlier. However, his testimony has apparently been wrongly disbelieved by the Tribunal.

FAO No. 4132 of 2008 (O&M)

I am of the view that a man travelling in the train is not supposed to know all the passenger travelling in the train. Ram Bharat Kaushik is an independent witness and the purpose of his journey to Gannaur is also mentioned by him and the same is not disputed in the cross-examination. Therefore, even if there is no eyewitness on account of any other person, the testimony of Ram Bharat Kaushik is sufficient to prove that the deceased had fallen from the running train when it had covered just few kilometers from Panipat towards Delhi. It being so, this is a case of untoward incident involving Railways.

Coming to the second question regarding the railway ticket being doubted, the railway ticket from Panipat to Delhi was produced by one Shiv Kumar Sharma before the GRP stating that the said ticket was handed over to him by the Sewa Samiti people who had removed the injured to hospital alongwith Gangman Raj Kumar. Undoubtedly, the said ticket was taken into possession by the General Railway Police (GRP) on 13.03.2001. Shiv Kumar Sharma claimed that the purse of the deceased carrying cash and ticket was handed over to him.

The Tribunal has taken the view that since the ticket was produced on 13.03.2001 i.e. after the lapse of 7 days from the incident, therefore, it is a procured one. The Tribunal has also taken the view that Shiv Kumar Sharma was not examined, therefore, the ticket cannot be believed.

I am of the view that the deceased in this case was seriously injured and was removed to Civil Hospital, Panipat and then to PGIMS, Rohtak which means that all his near and dear ones were busy in the treatment of Naresh Kumar. Therefore, it would be unusual, if they first start

FAO No. 4132 of 2008 (O&M)

pursuing their legal remedy by producing the documents to the Railways. It was only when on 13.03.2001, the injured Naresh Kumar died, the GRP conducted the inquest report. In the said inquest report, it is mentioned that the ticket has been produced by one Shiv Kumar Sharma. The separate recovery memo was also prepared in this regard. The railways did not claim that the said ticket was a fake one. Mere late production of the railway ticket cannot be made a ground to disbelieve the genuineness of the railway ticket.

In view of the above, the findings of the Tribunal on issues No. 1 and 2 are hereby reversed. Accordingly, the appeal is allowed and respondent is ordered to pay compensation of ₹ 4,00,000/- in equal shares to the appellants alongwith interest @ 8% per annum, from the date of the filing of the claim application i.e. 28.02.2002 till its payment.

October 24, 2016

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

Whether speaking / reasoned

✓
Yes / No

Whether Reportable

✓
Yes / No