

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

**FAO No.2235 of 2009 (O&M).  
Date of Decision: 03.05.2016.**

Kanchan and others

....Appellants.

VERSUS

Union of India and others

....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. Somesh Gupta, Advocate for the appellants.

Mr. Karminder Singh, Advocate  
for respondent No.1-Union of India.

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**SNEH PRASHAR, J.**

This appeal was filed assailing the judgment dated 27.02.2009 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”) in Case No.OA-II/75/2004, vide which the claim application of the appellants was dismissed.

The facts extracted from the record are as under:-

On 10.04.2004, Naresh Kumar (since deceased) alongwith his relatives was travelling by Abha Express Train Ex.Mallot to New Delhi. They were having second class passenger tickets No.07750 to 07752. At Budhladha station, Naresh Kumar alighted from the coach to take water and when he tried to board the train, unfortunately the train started moving and

he fell down on the track and died on the spot. With regard to the accident, the Station Master, Budhladha issued a memo to Incharge, G.R.P. for necessary action. Personal search of the dead body was taken, inquest report No.26 dated 10.04.2004 was prepared and the dead body was sent to Civil Hospital, Budhladha for postmortem. The widow, two minor sons and parents of deceased Naresh Kumar filed a petition claiming compensation to the tune of Rs.4,00,000/- from the respondent-railways.

The respondent contested the petition raising preliminary objection that no untoward incident in terms of Section 123(C) read with Section 124 of the Railways Act, 1989 (for short, “the Act”) had taken place. It was also denied that the deceased was a bonafide passenger from Bathinda to New Delhi. According to the respondent, the deceased suffered injuries due to his own criminal and negligent act. He was running with the train when his foot slipped and he fell down, as such, the railway administration was protected under Section 124-A of the Act and was not liable to pay any compensation.

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 dismissed the claim application.

Feeling dissatisfied with the judgment dated 27.02.2009, the appellants preferred the instant appeal.

The submissions made by Mr. Somesh Gupta, learned counsel

for the appellants and Mr. Karminder Singh, learned counsel for respondent-Union of India have been heard and record perused.

To begin with, learned counsel for the appellants argued that in their evidence the appellants had tendered the memo issued by Station Master Budhladha to the Incharge, G.R.P., copy of the inquest report, statements of the witnesses recorded by the police during investigation, personal search memo of the deceased and the postmortem report. In addition to the said documents, the appellants examined Gaurav Juneja, co-passenger of the deceased, who gave a detailed narration of the accident and stated that while boarding the train the deceased fell on the track and died at the spot. In the inquest report, it was mentioned by the Investigation Officer that the death had taken place due to railway accident. The said documents coupled with the statement of Gaurav Juneja unequivocally prove that Naresh Kumar died in an untoward incident as defined under Section 123(c) of the Act.

As regards, the passenger ticket of the deceased, learned counsel pointed out that it was mentioned in the personal search memo Ex.A2 of the dead body that the pants of the deceased had got intricated with the train, got removed and could not be found at the site. Since the pants of the deceased got removed, his ticket was lost. To support his argument that the affidavit of the co-passenger to the effect that the deceased had purchased a ticket, even though it was not traceable after the accident, was good enough to prove that the deceased was a bonafide passenger, learned counsel relied upon **2007 ACJ 2380.**

On the other hand, learned counsel for the respondent-railways argued that admittedly no ticket was recovered during personal search of the dead body at the site. AW2 Gaurav Juneja, co-passenger of the deceased also did not produce his ticket. It was not pleaded by the appellants that the tickets were lost during the accident. In case it is accepted that the tickets were lost, the onus was on the appellants to prove the source from which they had known the ticket numbers mentioned in their pleadings. Moreso, AW2 Gaurav Juneja during his statement deposed that they were three persons travelling together and had purchased a joint ticket but it was not so pleaded by the appellants. The inconsistency in the pleadings and the evidence adduced by the appellants proves that the deceased was not a bonafide passenger. Apart from that the affidavit Ex.R1 tendered by RW1 Kartar Singh, special guard of the train and the affidavit Ex.R2 of RW2 Ishwar Dass, driver of the train, no untoward incident as narrated by the appellants had taken place.

Importantly, while deliberating on issue No.2, the finding of learned Tribunal is under:-

*“The bench has considered rival contentions and the case references made by the applicants. Death of deceased on the railway premises stands established in the case notwithstanding respondent's denial.”*

Despite having arrived at the aforesaid conclusion, learned Tribunal dismissed the petition of the appellants only on the ground that the appellants had failed to prove that the deceased was a bonafide passenger as

it could not be proved that the deceased was travelling on a valid ticket or pass. Admittedly, no ticket was recovered during personal search of the deceased, but the fact that the pants of the deceased got intricately with the train, got removed and were not found on the site, cannot be ignored. When the pants of the deceased got removed during the accident, for the reason that the ticket was not recovered during his personal search, it cannot be concluded that he was not a bonafide passenger. The statements of co-passengers of the deceased, namely, Gaurav Juneja and Puran Chand were recorded by the police on the day of accident itself i.e. 10.04.2004. They both unequivocally stated that they alongwith the deceased had boarded Abha Express Train Ex.Mallot to New Delhi. As proved by the memo issued by Station Master Budhladha to Incharge, G.R.P., the accident occurred at Railway Station Budhladha which is on way from Mallot to New Delhi. The sequence of events prove that the deceased had reached Railway Station Budhladha by travelling in Abha Express Train. The witnesses stated that the deceased had alighted from the train to take water and when he was trying to reboard the train, it started moving and he fell down on the track and died. In said set of facts, non recovery of ticket from the dead body becomes irrelevant. There is no reason to disbelieve the co-passengers who were available in that very train and during enquiry held by the G.R.P. had made statement with regard to the accident.

The Railway Passengers (Manner of Investigation of Untoward Incident) Rules, 2003 (for short, “the Rules of 2003”) provide that on receipt of final report prepared by the police on completion of investigation,

the Divisional Railway Manager has to examine the same and has to pass an order in accordance with sub Rules 2,3 and 4 of Rule 11. That final order passed by the Divisional Railway Manager besides being communicated to the Station Superintendent who maintains the records has to be placed alongwith the investigation report by the railway administration while filing written statement in the case in which compensation has been claimed on the basis of an untoward incident.

Admittedly, in the instant case, the report of the Divisional Railway Manager was neither filed by the respondent-railways alongwith the written statement nor was even subsequently tendered during evidence. The Divisional Railway Manager did not prepare any report in compliance with the mandatory provisions of Rule 11 of the Rules of 2003 whereas the police while preparing the inquest report stated that the death of the passenger had taken place due to railway accident. Since the respondent-railways intentionally withheld the report of the Divisional Railway Manager, there is no reason why an adverse inference should not be drawn against the said respondent and it be not held that the deceased was a bonafide passenger.

As regards the contention of the respondent-railways that the deceased was trying to board a moving train when the accident took place and therefore he himself was guilty of negligence, in **Union of India vs. Prabhakaran Vijaya Kumar & Ors., 2008(3) R.C.R. (Civil) 577** it was found that the deceased fell down from the compartment of the train when the train was moving. It was held by Hon'ble Supreme Court that it will not

legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.

In *Jameela & Ors. vs. Union of India, 2010(4) R.C.R. (Civil)*

362 the deceased was standing at the open door of running train compartment from where he fell down. It was held that the act of the deceased may be a negligent act, even a rash act, but the railway is liable to pay compensation. It was also laid down that the negligence of this kind which is not very uncommon on Indian trains, is not the same thing as a 'criminal act' mentioned in clause-C to the proviso to Section 124-A.

As a consequence to the above decision, the appeal filed by the appellants is allowed and they are awarded compensation to the tune of Rs.4,00,000/- on account of death of Naresh Kumar in untoward incident. The respondent-railway is allowed 60 days time to make payment, failing which the appellants shall be entitled to interest at the rate of 12% per annum from the date of this order till realization.

**(SNEH PRASHAR)**  
**JUDGE**

**03.05.2016.**

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