

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5023 of 2009 (O&M)
Date of Decision: 18.10.2016

Sunita Maudgil and others

.... Appellants

vs.

Union of India

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Somesh Gupta, Advocate for the appellants
Mr. Rohit Suri, Advocate for Mr. R.M. Suri, Advocate
for the respondent

Kuldip Singh J.(Oral)

This is an appeal against the judgment dated 23.7.2009 passed by the Railway Claims Tribunal, Chandigarh vide which the claim application filed by the appellants-applicants was dismissed.

The facts of the case are that Davinder Maudgil was a Bank Manager by profession. On 2.5.2007, he was to go to Delhi from Hoshiarpur. He purchased a reserved Railway ticket for Train No.4034-A ex-Hoshiarpur to Delhi. The train was scheduled to depart at 7:15 p.m. Davinder Maudgil missed the said train. However, one of his friends Surinder Singh met him and advised him to board passenger Train No.15-JH from Railway Station, Khurd as there was enough time to reach Railway Station, Khurd. Then, Surinder Singh took him in his car to Khurd Railway Station. When they reached at the Station, the train was about to move, Davinder Maudgil tried to board the train but could not hold the handle and fell down and died on the spot.

In the written statement, the Railway has claimed that deceased

was not a bona fide passenger and not having a valid ticket for said train No. 15-JH. He tried to board the running train which is his own Criminal act and negligence.

The Railway Claims Tribunal held that the deceased was not a bona fide passenger as he was not having the valid ticket for said train No.15-JH and that the alleged act was result of his own neglect. Hence, the application was dismissed.

I have heard learned counsel for the parties and have also gone carefully gone through the file.

Now, two questions arising for consideration in this case are:-

- (i) Whether on account of purchasing the train ticket for Express Train and trying to board the passenger train, the deceased is held not to be a bona fide passenger on the said passenger train?
- (ii) Whether for the Act of the deceased in trying to board the running train and dying in this process amounts to criminal neglect or self inflicted injury on the part of the deceased?

In this case, the admitted facts are that the deceased had purchased a reserved ticket from Hoshiarpur to Delhi of Jammu Tawi-New Delhi Express No.4034-A. However, he could not board the said train and on the advise of his friend Surinder Singh, he tried to board a passenger train No.15-JH from Railway Station, Khurd which was to depart about two hours late. As per the statement of the Guard as well as the Driver, the train was in motion when the deceased was trying to board the train and in that process, he fell down and died. The distinction has to be made where a

person has a no ticket and where he is having a ticket for a higher class train and on account of missing the same, trying to board a passenger train which is of lower category.

Learned counsel for the respondent has relied upon Regulation 649 of Indian Railway Commercial Manual Volume I which is reproduced as under:-

649. "Validity of reservation tickets- Reservation tickets are valid only for the particular train and the particular date for which they are issued. If reservation is required on days or by trains other than that originally arranged, fresh reservation tickets must be purchased. The reservation fee will be treated as part of fare if the passengers fail to avail themselves of seats or berths".

It has been pressed that the said reserved ticket does not amount to valid ticket for the passenger train. In any case, the fact remains that the deceased had a valid reserved ticket which was valid only for Jammu Tawi-New Delhi Express, which shows his bona fide as a passenger. As he missed the said Express Train, he tried to board the passenger train from Khurd Railway Station to reach Delhi. He could otherwise purchase a ticket of the passenger train in the train itself on the ground that he had a valid journey ticket for another train and have missed the same.

Therefore, in these circumstances, it has to be held that the deceased was a bona fide passenger of Railway, though for some other train. The said train also belongs to the Indian Railway. So far as the second question is concerned, the deceased was trying to board a running train and fell down. The liability for compensation is provided in Section 124 A of

the Railway Act which reads as under:-

“Section 124-A Compensation on account of untoward incidents:

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to :-

- a) suicide or attempted suicide by him;*
- b) self-inflicted injury;*
- c) his own criminal act*
- d) any act committed by him in a state of intoxication or insanity.*
- e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation- For the purposes of this section “passenger” includes:-

- i) a railway servant on duty; and*
- ii) a person who has purchased a valid ticket for traveling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”*

It goes to show that it is a case of strict liability whether there is any neglect or wrongful act on the part of the Railway or not? The act of the

deceased trying to board a running train cannot be called self inflicted injury nor it is a Criminal act. Therefore, under Section 124-A, the Railway is liable to pay the compensation. Under Section 123 (c) (2), the accident occurred due to falling of the passenger from the train is covered within the definition of untoward incident.

In similar circumstances, Union of India Vs. Prabhakaran Vijaya Kumar and Ors. (2008) 9 SCC 527, when a passenger accidentally fell from the train, the Railway was held liable.

It being so, it is held that it was an untoward incident, involving the Railway. Deceased was a bona fide passenger. Therefore, his legal heirs are entitled to compensation. As such the impugned judgment is set aside. The appeal is allowed. The respondent-Union of India is ordered to pay Rs.4,00,000/- compensation to the appellants with the interest @ 9% per annum from the date of filing of the claim petition till payment.

18.10.2016

gk

(Kuldip Singh)

Judge

Whether speaking / reasoned

Yes

Whether reportable

Yes