

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

FAO No.7214 of 2010.

Date of Decision: 29.04.2016.

Sunita Devi @ Anita and others

....Appellants.

VERSUS

Union of India

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Balkar Singh, Advocate for the appellants.

Mr. Jagdish Marwaha, Advocate
Special Counsel for respondent-Union of India.

SNEH PRASHAR, J.

Assailing the judgment dated 06.04.2010 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”) by virtue of which the claim application filed by the appellants seeking compensation on account of death of Lalan Singh (husband of appellant No.1 and father of appellants No.2 and 3) was dismissed, the appellants filed the instant appeal.

The facts are that an application claiming compensation to the tune of Rs.4,00,000/- was filed by the appellants pleading that on

26.05.2002 Lalan Singh (since deceased) was travelling in a passenger train from Hisar to Sirsa and when the train reached near Bhattu, there was a sudden jerk as a result of which her husband, who was standing near the gate of the train, fell down and suffered multiple injuries to the vital organs of his body and died.

The application was contested by the respondents alleging that the version of the appellants is false and that the deceased was not a bonafide passenger and further that the alleged incident does not come within the purview of Section 124-A of the Railways Act, 1989.

During evidence, appellant No.1 in addition to her affidavit tendered in evidence affidavit of Sharad Kumar, cousin and Parkash, brother of the deceased who were stated to be travelling with the deceased at the time of accident. Appellant No.1 appeared for her cross-examination, but she did not produce the other two witnesses for their cross-examination. Considering the ocular and documentary evidence on record, learned Tribunal dismissed the claim application of the appellants.

Feeling aggrieved with the judgment dated 06.04.2010, the appellants preferred the instant appeal.

The submissions made by Mr. Balkar Singh, learned counsel for appellants and Mr. Jagdish Marwaha, special counsel for respondent-Union of India have been heard and record perused.

At the very outset, learned counsel for the appellants argued that the two eyewitnesses Sharad Kumar and Parkash were important and material witnesses of the appellants, being eyewitnesses of the accident.

The appellants are residing in Sirsa whereas trial of the claim application by the Railway Claims Tribunal was being conducted before Chandigarh Bench, Chandigarh. They did not receive information from their counsel for producing the witnesses on the dates fixed for their evidence by learned Tribunal. On 18.03.2010 when it was last opportunity given for presence of the witnesses even the counsel for the appellants somehow did not appear. Learned counsel contended that since the claim application of the appellants has been dismissed for want of adequate evidence, they be given one opportunity to produce the witnesses whose sworn affidavits are already on record.

Learned counsel for the respondent resisted the prayer of the appellants submitting that they had availed sufficient opportunities for their evidence and only when they were unable to produce the witnesses, whose affidavits had been tendered, despite last opportunity given, learned Tribunal proceeded to hear the arguments and decided the application.

Perusal of the order dated 08.01.2010 passed by learned Tribunal indicates that it was concealed before learned Tribunal by the respondent that no D.R.M. report was prepared in respect of the incident in question. Preparation of the said report was mandatory under the Railway Passengers (Manner of Investigation of Untoward Incident) Rules, 2003. To prove the untoward incident, the appellants examined AW2 Sharad Kumar and AW3 Parkash. Their affidavits were tendered in evidence and were to be produced for their cross-examination as they were said to be the eyewitnesses. Despite opportunity given, the appellants failed to produce

them and it transpires from the order dated 08.01.2010 that on the said date the counsel for the appellants was also not present. In their absence, learned Tribunal observed that the affidavits of witnesses AW2 and AW3 shall not be read in evidence and proceeded to hear arguments of counsel representing the respondent and posted the case for 06.04.2010 for pronouncement of judgment.

When admittedly there was no D.R.M. report regarding the accident and it is also not clear from the record whether the G.R.P. had conducted an enquiry or not with regard to the incident, the statement of the witnesses said to be accompanying the deceased at the time of accident was indeed material for just and proper adjudication of the claim application of the appellants. Also, the appellants did not get the opportunity to make their submissions before the Tribunal.

In view of the matter, in my considered opinion, it shall be expedient and in the interest of justice that the case is remitted back to learned Tribunal for according one effective opportunity to the appellants for adducing their remaining ocular as well as documentary evidence, if any. On the date given, the two witnesses namely Sharad Kumar and Parkash will be produced by the appellants for their cross-examination as their affidavits are already available on record. The witnesses will be produced by the appellants at their own responsibility. After recording the evidence the claim application be decided afresh by learned Tribunal.

In the above premise, the judgment dated 06.04.2010 passed by learned Tribunal is set aside and the case with the above direction is

remanded back to learned Tribunal. Parties through their counsel are directed to appear before learned Tribunal on 30.05.2016.

The appeal is accordingly disposed of.

(SNEH PRASHAR)
JUDGE

29.04.2016.
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