

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.1399 of 2012(O&M)

Date of decision: 27.07.2016

Roji Jaggi and another

.....Appellants

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.R.S.Budhwar, Advocate for the appellants
Mrs.Abha Rathore, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

In this first appeal, the appellants who happen to be widow and minor daughter of Dheeraj Kumar Jaggi deceased, have impugned the judgment dated 13.5.2011, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'), vide which, their claim was dismissed.

The short facts are that on 12.5.2008 Dheeraj Kumar Jaggi purchased an ordinary ticket for rail journey ex-Hoshiarpur to Ferozepur Cantt and boarded Jammu Tawi -Ahmedabad Eexpress Train No.9224 Dn. Near Malanwala station, due to sudden jerk, Dheeraj Kumar Jaggi lost the balance and fell out of the train as a result of which he sustained grievous and multiple injuries and died during treatment in Civil Hospital, Hoshiarpur. During investigation, a ticket was recovered from his person.

Since previously, his identity was not known, therefore, post-mortem was done as of unknown passenger. Later on his dead body was identified on 13.5.2008 by his brother. It is stated that due to overcrowding the deceased was forced to travel while standing near the door of the compartment.

The railway in the reply denied the accident and took the stand that no untoward incident took place on 12.5.2008 at Railway Station Malanwala. A story was put forward that as per report of the Assistant Station Master, Malanwala, the deceased, who was in inebriated condition, got down from train No.9224 Dn and started strolling on the platform. After the departure of the train No.9224, he fell down on the platform and became unconscious. He is not victim of the railway accident. It was also stated that the ticket recovered from the deceased pertains to the passenger train. Therefore, he can not travel in mail / express train.

The Tribunal framed the following issues:-

- 1. Whether the deceased was a bonafide passenger at the time of accident, as alleged?*
- 2. Whether the incident in question is covered within the ambit of Section 123(c)(2) read with Section 124A of the Railways Act?*
- 3. Whether the applicants are the only dependents of the deceased?*
- 4. Whether the case is a self-inflicted injury and whether the respondent absolved of its liability to pay the compensation under Section 123A of the Railways Act, as pleaded by the respondent in the written statement.*
- 5. Relief.*

While deciding issue No.2, it was held that the deceased died due to untoward incident in the railway. For that purpose, postmortem report was considered to examine the nature of the injury to come to the conclusion

and believe the storey of the appellants. However, claim petition was dismissed after recording adverse finding on issue No.1, holding that the deceased was carrying a ticket for passenger train and could not board mail/ express train and therefore, he was not a bonafide passenger, as the ticket on which he was travelling was not valid one. Consequently, claim petition was dismissed.

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

The other facts are not disputed before this Court. The short law point raised before this Court is “if a person is having ticket for the passenger train, travels in mail/ express train and dies due to untoward incident, whether his legal representatives are entitled to compensation”?

In the present case, admittedly, the deceased was having ticket for the passenger train. Admittedly, the train, in which he was travelling was a mail/ express train. Now, the question would arise whether he can be called a bonafide passenger?

Section 124A provides as under:-

124A. Compensation on account of untoward incident.—*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 dependent 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 travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

The explanation talks about the passenger who has purchased a valid ticket for travelling by a train. Word passenger is defined in Section 2 (29) of the Railway Act, 1989 as under:-

(29) “passenger” means a person travelling with a valid pass or ticket.

Learned counsel for the respondents has vehemently argued that since a ticket for passenger train is not a valid ticket for the mail/ express train, therefore, the deceased cannot be said to be a bonafide passenger at the time of accident. Therefore, no compensation is payable as was held by the Tribunal.

On the other hand, learned counsel for the appellants has stated that the deceased was having a valid railway ticket though for a different kind of train. Learned counsel has referred to Section 138 of the Act. Sub-section (1) of the same provides as under:-

Section 138 in The Railways Act, 1989

138. Levy of excess charge and fare for travelling without proper pass or ticket or beyond authorised distance.—

(1) If any passenger,—

(a) being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on a demand being made therefor under section 54, or

(b) travels in a train in contravention of the provisions of section 55, he shall be liable to pay, on the demand of any railway servant authorised in this behalf, the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or in the case of their having been examined more than once, were last examined.....

The heading of the said section shows that it pertains to levy of excess charges and fare for travelling without 'proper pass or ticket or beyond authorized distance'. Therefore, Section 138 in my view covers the cases where the ticket or pass is there but it is not proper in relation to the train on which the passenger is travelling. In that case, the excess charges can be charged from the passenger. Therefore, I am of the view that in the present case, the deceased was having a ticket though it was not proper ticket for the mail/ express train. The distinction has to be made between a valid ticket and a proper ticket. The ticket was of ex-Hoshiarpur to Ferozepur and was issued for the same day and was valid ticket though it was not a proper ticket to travel in the express/ mail train. In such case, the excess payment

for travelling in the mail/ express train could be charged from him.

Section 55 of the Railway Act provides as under:-

55. *Prohibition against travelling without pass or ticket.*—

(1) No person shall enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket or obtained permission of a railway servant authorised in this behalf for such travel.

(2) A person obtaining permission under sub-section (1) shall ordinarily get a certificate from the railway servant referred to in that sub-section that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be travelled.

It shows that even if the passenger does not have a proper pass or ticket, he could obtain the permission of the railway servant authorized in this behalf for such travel.

Therefore, I am of the view that the deceased was having a valid ticket though it was not proper ticket to travel on mail/ express train. For travelling in mail/ express train excess charges could have been levied from him by the railway. However, in this case, the deceased died. Perusal of the award of the Tribunal shows that the railway tried to ward off its liability by putting up an entirely fabricated story, claiming that the deceased got down at Malanwala station and was strolling on the railway platform in inebriated condition and after the train passed, he fell down and received injuries. However, postmortem report made it clear that it was a result of fall from the train as coming out from the nature of injuries.

In case a person is allowed to travel in the railway though on improper ticket but which is otherwise valid for a different kind of train, the

railway has to be held liable in case of untoward incident. Recently, in Anil Kumar Gupta vs. Union of India (Writ Petition (Civil) No.68 of 2011) decided on 5.7.2016, the Apex Court held the railway liable to pay the compensation where the candidates who were appearing for the 416 posts of Class IV employee in Indo Tibetan Border Police, were travelling on the roof of the railway and were hit by the over bridge having low height as a result of which 14 persons died and 20 were seriously injured. The roof of the railway is not meant for journey and the plea of the railway that they were not bonafide passengers was repelled and rule of strict liability was applied.

Here in the present case also, the deceased was having railway ticket for journey though it was for passenger train but he boarded a mail/express train. In these circumstances, I am of the view that the deceased was a bonafide passenger and in case of untoward incident, the railway is liable to pay the compensation. Hence, findings on issue No.1 are reversed.

As a result of the foregoing discussion, railway is held liable to pay compensation @ Rs.four lacs to the appellants with interest @ 9% per annum from the date of death till payment.

Appeal is accordingly allowed.

27.07.2016
gk

(Kuldip Singh)
Judge