

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

FAO No.589 of 2011 (O&M).

Date of Decision: 24.05.2016.

Rajdeo Pal

....Appellant.

VERSUS

Union of India and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Surinder Sharma, Advocate for the appellant.

Mr. Banni Thomas, Advocate for the respondents.

SNEH PRASHAR, J.

CM-1799-CII-2011

There being delay of 743 days in refiling the appeal, an application under Section 151 of the Code of Civil Procedure for condonation of delay was filed by the appellant.

Considering the reply filed by the respondents and the averments made in the application, the delay in refiling the appeal is condoned and the application is disposed of.

FAO-589-2011

Challenge in this appeal is to the judgment dated 30.11.2007 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal") vide which the application claiming compensation of Rs.4,00,000/- filed by the appellant was dismissed.

The facts averred by the appellant-claimant in the claim

deceased) alongwith her brother-in-law Suresh Pal was going to Vaishno Devi and was travelling in 3073-Up Himgiri Express train on ticket No.056121022 dated 26.09.2004 ex. Jhajha to Jammu Tawi. Due to heavy rush, they both could not go inside the compartment and were standing near the door. As there was water spread on the floor, it was slippery. When the train was crossing Achuara Railway Station Halt, as there was heavy rush and push the foot of Lalti Devi slipped and she accidentally fell down from the running train and sustained serious injuries. Suresh Pal raised shouts and tried to pull the chain, but the train did not stop. Ultimately, after the train stopped at Patna junction, he came back at the place of occurrence and then went to Bhakhtiyalpur where he came to know that Lalti Devi had died.

The petition was contested by the respondents-railways. In the written statement filed by them, they denied that the incident in question comes under the ambit of Section 123(c) read with Section 124-A of the Railways Act, 1989 (for short, “the Act”). They also denied that the deceased was a bonafide passenger.

On the pleadings of the parties, issues were framed. Both the parties were given opportunity to adduce evidence. Considering the evidence led by both the parties and the submissions made on their behalf, learned Tribunal finding that the appellant is not entitled to any compensation, dismissed the application vide judgment dated 30.11.2007.

Feeling aggrieved, the appellant-claimant preferred the instant appeal.

The submissions made by Mr. Surinder Sharma, learned counsel for appellant and Mr. Banni Thomas, learned counsel for the

Section 2(29) of the Act defines the word 'passenger' as under:-

"passenger" means a person travelling with a valid pass or ticket."

As is clear from the definition, a person travelling with a valid pass or ticket is a bonafide passenger. Payment of compensation to the injured or to the legal heirs of a victim of an incident/railway accident arises when the injured/deceased is proved to be a "bonafide passenger" and the incident is held to be an "untoward incident".

In the case in hand, the version of the appellant was that Lalti Devi (since deceased) alongwith her brother-in-law Suresh Pal was going to Vaishno Devi and was travelling in 3073-Up Himgiri Express train on ticket No.056121022 dated 26.09.2004 ex. Jhajha to Jammu Tawi when on the way she accidentally fell down from the running train and sustained serious and fatal injuries. Admittedly, no train ticket was recovered during personal search of the body of the deceased. The number of the ticket on which the deceased was travelling was stated by Suresh Pal, brother-in-law of the deceased, who was allegedly travelling with her at the time of accident. He stated that ticket No.056121022 was of two passengers, meaning thereby that there was a joint passenger ticket of the deceased and her brother-in-law. Since the ticket number was stated by Suresh Pal in his affidavit and it had not been recovered during personal search of the deceased, it can be well assumed that the ticket was in possession of Suresh Pal. However, neither original nor photocopy of the passenger ticket was placed on record by Suresh Pal during trial of the application. For having withheld an important and material document, an adverse inference against the appellant is irresistible.

Suresh Pal, claimed to be an eyewitness of the accident, through his affidavit, he deposed that there was water and mud scattered near the washbasin in the compartment which had made the floor slippery and that as there was heavy rush and the passengers were pushing each other, deceased Lalti Devi lost balance and accidentally fell from the running train when the train was crossing Achuara railway station halt. He stated that he got confused and raised shouts, but the train did not stop. Ultimately, the train stopped at Patna junction. He got down and telephonically informed his family members about the occurrence and went to Achuara halt by another train. At the spot of accident, he came to know from the people that the lady who had fallen from Himgiri Express train had been taken by the guard of 503-Up train to Bhakhtiyalpur for treatment. He then went to Bhakhtiyalpur and came to know that Lalti Devi had died.

It is difficult to believe the story presented by Suresh Pal. His own conduct makes it doubtful that he was travelling with the deceased or was an eyewitness of the accident. The statement of Suresh Pal was recorded by the police on 29.09.2004 i.e. after three days of the incident. It does not appeal to a prudent mind that a near relation, who was travelling with the deceased, saw her falling from the running train but except for raising shouts did not take any concrete step to get the train stopped immediately. When there was heavy rush in the compartment not just Suresh Pal but several other passengers in the compartment must have witnessed falling of the deceased from the running train. The natural reaction of the passengers in the compartment would have been to pull the chain and get the train stopped. Had Suresh Pal or some other person of the compartment pulled the chain of the train, it would have certainly stopped at

some distance from where Suresh Pal could have immediately approached the deceased who was lying injured. Moreso, as submitted by learned counsel for the respondents, the deceased was said to have boarded the train from Jhajha which is about 180 kilometers from Patna. The deceased was stated to have fallen when the train was crossing Achuara railway station halt. Vishnu Nath Ram, driver of the train stated in his affidavit that there was no detention of train on account of any untoward incident from Jhajha to Patna on 26.09.2004. It appears strange that Suresh Pal, a close relation of the deceased, saw her falling from the running train but firstly did not pull the chain to stop the train immediately; secondly did not deboard the train at the first possible railway station where the train halted after the accident and carried on to travel in the train upto a long distance i.e. upto Patna where he deboard the train; and thirdly appeared before the police for making statement with regard to the incident after three days of the accident.

From the aforesaid facts, the conclusion irresistible is that neither the appellant was able to prove that the deceased was a bonafide passenger of the train nor it could be proved that an untoward incident within the meaning of Section 123(c) had ever occurred. The findings of learned Tribunal warrant no intervention and there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

24.05.2016.

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