

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

FAO No.6019 of 2011 (O&M)

Date of decision : August 05, 2016

Puran Devi and others

..... Appellants

Versus

Union of India and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Hitesh Ghai, Advocate for the appellants.

Ms. Abha Rathore, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Appellants, who are the mother, brothers and sisters of deceased Damodar Dass had filed an application for compensation before the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal'), on account of death of Damodar Dass in alleged railway untoward incident, which occurred on 08.05.2006 at about 10.10 p.m. It is stated that the deceased was religious preacher. On 08.05.2006 at about 10.10 p.m., he purchased a valid railway ticket No.17736 from Ropar to Morinda. He was sitting on a bench under the tree at platform, waiting for the Himachal Express 4554. Suddenly, there was a thunderstorm followed by heavy rain. As a result of which, a tree fell on the deceased. As a result of which, he received injuries. He was removed to the Civil Hospital, Ropar, where he succumbed to injuries.

The railway in its reply had taken the stand that the deceased was not bonafide passenger and that provisions of Railways Act, 1989 (in short 'the Railways Act') are not attracted.

From the pleadings, following issues were framed:

- “1. Whether the alleged incident took place due to act of God as per preliminary objection raised in the written statement as per or on analogy of Railways Act or RCT Act and or any other relevant law of land? If so, does the respondent have immunity from payment of compensation to the applicants as claimed?*
- 2. Whether the deceased was the bonafide passenger?*
- 3. Whether the alleged incident falls within the ambit of section 123(c) read with Section 124-A of the Railways Act?*
- 4. Whether the applicants are the sole dependants of the deceased?*
- 5. Relief.”*

The Tribunal held that it is the act of God and railway is not responsible for the same. Therefore, the compensation was refused.

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

The facts alleged by the appellants themselves show that on the day of occurrence, the deceased after purchasing a valid ticket was waiting for Himachal Express under a tree on a bench at the railway platform in Ropar. Suddenly, a thunderstorm came followed by heavy rain. As a result of which, the tree fell on the deceased due to which he suffered injuries. He was removed to the Civil Hospital, Ropar, where he succumbed to the injuries.

Now, the law point arises 'whether the railway is responsible for the such act'. For the application of Section 124(A) of the Railways Act, necessary following conditions are required:

1. There should be untoward incident.
2. It should be during the course of the working railway and that person involved must be bonafide passenger.

Untoward incident itself is defined under Section 123(c) of the Railways Act, which is reproduced as under:

“(c) "untoward incident" means-

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ; or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.

I am of the view that the present case is an act of God. The deceased was sitting under a tree on a bench at the railway platform. There was a thunderstorm followed by heavy rain. When there is a sudden thunderstorm, the velocity of wind followed by heavy rain is so high that even healthy trees are uprooted or broken. Therefore, due to thunderstorm, the tree was either broken or uprooted and fell on the deceased, who was sitting beneath the tree. Therefore, the said act cannot be called an untoward incident involving railway. Rather, it is an act of God. Thus, there is no illegality or infirmity in the impugned Award passed by the Tribunal.

Accordingly, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

August 05, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No