

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

FAO No.2211 of 2012 O&M).

Date of Decision: 20.05.2016.

Angrejo Devi and others

....Appellants.

VERSUS

Union of India

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Somesh Gupta, Advocate for the appellants.

Mr. Karamjit Verma, Advocate for the respondent.

SNEH PRASHAR, J.

Assailing the judgment dated 27.01.2012 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”) by virtue of which the claim application filed by the appellants claiming a sum of Rs.6,00,000/- as compensation was dismissed, the appellants filed the instant appeal.

Precisely, the averments of the appellants in the claim application filed by them were that on 17.01.2010 Jaspal Singh (since deceased) informing his wife that he was going to Rajpura in connection with some work, had come to Ambala Cantt. railway station and after purchasing railway ticket No.95439228 for his journey from Ambala Cantt.

to Rjpura, had boarded train No.2919-Up. The train was late on that day. When the train reached near KM No.332/15-17 and Gate No.155C, Jaspal Singh accidentally fell down from the train and got seriously injured. A railway employee, who saw the accident, gave information to the Station Master, Khanna, who in turn issued a memo to GRP, Khanna. The officials of the GRP reached the spot and got the injured admitted in Civil Hospital, Khanna. The doctor referred the injured to Rajindra Hospital, Patiala where he succumbed to the injuries.

A detailed report was prepared by GRP, Khanna. A computerized ticket and a mobile slip were recovered by the GRP officials during personal search of the deceased. The family members were contacted by dialing the numbers written on the slip. The appellants reached the hospital and identified the dead body.

An application claiming compensation to the tune of Rs.6,00,000/- was filed by the appellants, being widow and minor children of Jaspal Singh, invoking the provisions of Section 124-A of the Railways Act, 1989 (for short, “the Act of 1989”) on account of death of Jaspal Singh in an untoward incident.

The application was contested by the respondent-railway administration. By way of preliminary objection, it was denied that Shri Jaspal Singh had died in an untoward incident or railway accident, within the meaning of Section 124-A of the Act of 1989 read with Section 16 of the Railway Claims Tribunal Act, 1987 (for short, “the Act of 1987”). Maintainability of the application was also challenged as the deceased was

said to be not a bonafide passenger as defined under the Act of 1989. All averments of the appellants were controverted for either being wrong or for want of knowledge.

On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal dismissed the claim application.

Feeling dissatisfied with the judgment dated 27.01.2012, the appellants preferred the instant appeal.

The submissions made by Mr. Somesh Gupta, learned counsel for appellants and Mr. Karamjit Verma, learned counsel for the respondent have been heard and record perused.

Section 2(29) of the Act of 1989 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, Ex.A5 is the journey ticket of the deceased which was recovered during his personal search and was taken in

possession by the GRP officials vide Fard Jamatalashi Ex.A4. It was valid for travelling from Ambala Cantt. to Rajpura. The respondent-railway has not denied that the deceased boarded train No.2919-Up on 17.01.2010 for his journey from Ambala Cantt. to Rajpura. It is also not the case of the respondent-railway that the ticket recovered from the deceased was not genuine. Rather the contention of the respondent is that since the alleged journey ticket was meant for travelling from Ambala Cantt. to Rajpura only and the deceased fell down near Khanna railway station, which is about 43 kilometers ahead of Rajpura railway station, therefore, the deceased cannot be termed as a “bonafide passenger”. It was on the said ground that learned Tribunal non suited the appellants and dismissed their petition.

To support his argument that merely because the deceased had travelled beyond the station for which he held a railway ticket, he cannot be termed as a 'malafide passenger', learned counsel for the appellants referred to railway rules contained in Organization of Commercial Department of Indian Railways which read as under:-

If a passenger unintentionally travels beyond the station for which he holds a ticket, he will be allowed to return to the station to which he was originally booked on purchase of a fresh single journey ticket of any class, provided he returns by the next passenger train available and does not, in the meanwhile, leave the premises of the station to which he has over ridden. In such circumstances, he will not be required to pay any excess fare or penalty for the distance over ridden by him. This also applies to the holders of return and concession tickets.”

Learned counsel also referred to Section 138 of the Act of 1989 which provides levy of excess fare for travelling without proper pass or ticket or beyond authorized destination and submitted that even if the deceased had over travelled the ticket purchased by him, he could have been made to pay excess charge in addition to the ordinary single fare for the distance which he has travelled but he could not be called a 'malafide passenger'. In this context, learned counsel relied upon ***Vaishali Nitesh Bhalerao vs. Union of India, 2011 ACJ 106*** and ***Smt. Anoki Devi and Others vs. Union of India, 2013 ACJ 1206.***

Indeed, Section 138 of the Act of 1989 postulates that if a passenger travels beyond authorized distance, at the most he would be liable to pay excess fare or charge for over travelled distance. When there is specific provision for charging excess fare for over travelled distance, it would not be judicious to categorize a passenger on that ground as a 'malafide passenger' having no pass or ticket.

In the instant case, deceased Jaspal Singh had purchased a ticket for travelling from Ambala Cantt. to Rajpura. When he accidentally fell down from the train and suffered injuries, the train was about 43 kilometers ahead of Rajpura railway station which means the deceased had over travelled the ticket purchased by him, but there is nothing to prove that in doing so the conduct of the deceased was malafide.

Learned counsel for the respondent argued that it has come in the affidavit of Parkash Chander, Commercial Inspector of Railways that train No.2919-Up is a 'super-fast train' and has no stoppage at Rajpura as

per the railway time table. He also stated that the ticket was purchased at 16:00 hours whereas the time of department of 2919-Up train is 8:55 a.m. How the deceased was able to board that train is not known but he was apparently travelling in a wrong train.

In his affidavit, Parkash Chander, Commercial Inspector did not state that on the day of occurrence the train departed from Ambala Cantt. railway station at 8:55 a.m. No evidence was led by the respondent-railway to prove that train No.2919-Up was in time on the day of accident. From the documents prepared by the GRP, it is proved that the accident occurred at 18:10 hours which is sufficient to indicate that the deceased after having purchased the ticket had boarded the train. Had it been known to the deceased that the train had no stoppage at Rajpura, it does not appeal to reason that he would have boarded that train. He would also not then travel for 43 kilometers ahead of Rajpura and then jump from the train just to avoid payment of excess charges on being intercepted by the railway officials. Otherwise also, the deceased, who had a ticket upto Rajpura, could have been allowed to return to Rajpura to which he was originally destined. In case he would have returned to his original destination, he was not even required to pay excess fare or penalty for the distance over ridden by him as provided under the Rules. Under these circumstances, the deceased cannot be termed as 'malafide passenger' or 'fraudulent passenger', but it must be held that he was a 'bonafide passenger'. Accordingly, the findings of learned Tribunal to that effect are reversed.

As regards the untoward incident, it was held by learned

Tribunal that it stands established from the memo issued by Station Master, Khanna to the RPF and GRPF (Ex.A7) that on 17.01.2010 at 18:10 hours the deceased had a fall from train No.2919-Up near Khanna railway station. The 'untoward incident' has been defined in Section 123(c) to include even an accidental falling of any passenger from a train carrying passengers. Section 124-A of the Act of 1989 provides that 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.

In **Union of India v. Aggalla Dilleswara Rao, 2006 ACJ 1470**

(AP), it was held that presumption should be drawn in favour of the claimant when no evidence is adduced by the railway with regard to negligence or carelessness on part of the deceased and it must be held that the accident was 'untoward incident' within the meaning of Section 123(c) of the Act of 1989. In the present case, no evidence worth consideration was led by the respondent-railway to prove that there was any negligence or carelessness on part of the deceased which led to the 'untoward incident'. It is only a presumption as recorded in the D.R.M. report that the deceased

had either suffered injuries while crossing the railway lines negligently or was illegally travelling by sitting on the door of the train because of which he fell down. That being so, in my considered opinion, the impugned order passed by learned Tribunal is indefensible and cannot be sustained in law and is hereby set aside.

As regards quantum of compensation, in view of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 the amount of fixed compensation for death in respect of any one person is Rs.4,00,000/- (vide Schedule to Part-I) and accordingly the respondent-railway is held liable to pay a sum of Rs.4,00,000/- as compensation to the appellants alongwith interest at the rate of 9% per annum from the date of claim application till the amount is paid to the appellants.

Appeal is allowed accordingly with costs.

(SNEH PRASHAR)
JUDGE

20.05.2016.
jitender