

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.6273 of 2011(O&M)

Date of decision: 24.10.2016

Pinki and another

.....Appellants

versus

Union of India and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Subhash Chander Manotra Advocate for the appellants
Mr.Karamjit Verma, Advocate for the respondents

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

Kuldip Singh, J.

Appellants have preferred this appeal against judgment dated 19.5.2011, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, vide which, their application for grant of compensation was dismissed.

Facts of the case are that appellants claim that Ravel Chand son of Shri Krishan Chand was temporarily permitted by Divisional Traffic Manager, Railway Station, Jammu – respondent No.3 for cleansing purpose, as provided by a private contractor to the railways from 1.11.2007 onwards at Railway Station, Jammu. On 8.11.2007, at about 8.00 p.m. when Ravel Chand was on duty from 2.00 p.m. to 10.00 pm. When after cleaning the platform, he was picking up the garbage which he had collected from the track of platform No.1 and 2, Happa Super-fast train No.2478 was being

reversed. Ravel Chand was busy in picking up the garbage when the train came near him he tried to escape but slipped over the railway track and was run over by the train with the result that his legs were badly crushed. He was removed to Government Medical College, Jammu, where he remained under treatment and ultimately succumbed to the injuries on 21.2.2008. Rs.50,000/- were spent on his treatment.

The respondent Railway in the written statement took the plea that the deceased was not a bonafide passenger nor covered under the definition of employee on duty in the Railways nor he was employee of private contractor of the railways. Hence, the claimants are not entitled for any compensation. The incident also does not fall under Section 124-A of the Railways Act. From the pleadings, following issues were framed:-

- 1) Whether the deceased was a bonafide passenger, as alleged?*
- 2) Whether the incident in question is covered within the ambit of section 123(c) read with section 124-A of the Railways Act?*
- 3) Whether the applicants are the only dependents of the deceased?*
- 4) Relief.*

After recording evidence of both the parties and hearing them, the petition was dismissed.

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

Perusal of the claim petition shows that it is claimed that said Ravel Chand was engaged by a private contractor as Sweeper w.e.f.

1.11.2007 and that on 8.11.2007, he was working at Railway Station, Jammu on the track when he met with said untoward incident as a result of which he died. In the claim application, name of said private contractor is not mentioned. However, in his affidavit, in examination-in-chief, applicant No.1 Pinki wife of the deceased stated that the deceased was employed by a private contractor, namely, Nitin on the monthly salary of Rs.2500/-. Employment was from 1.11.2007. Said Nitin was not examined by the applicants to prove that said Nitin was a contractor of the railways and that the deceased Ravel Chand was employed by said Nitin nor any record by said Nitin was got produced before the Tribunal. The claimants also examined one Satnam Singh who stated that he along with three others Bakka and Tinku and Ravel Chand (deceased) were provided to the railway Station Jammu by one contractor, namely, Nitin Bassi, resident of F-5, Sector 14, Nanak Nagar, Jammu on 1.11.2007 for cleaning purpose and that said contractor used to mark their attendance on the attendance register maintained by him. He stated that on 8.11.2007, two others, namely, Bakka and Tinku were brooming the track of the platform when the incident took place. Satnam Singh himself was not present at the time of said incident. He further stated in examination-in-chief that identity cards were issued to him and two others on 5.1.2009. He produced the photocopy of the same. He stated that the photograph was taken from Ravel Chand but the identity card was not issued to him. Satnam Singh also produced photocopy of his identity card dated 5.1.2009. In cross-examination, he stated that one Manjit Singh Gorla was the contractor and Nitin contractor was his brother-in-law which means that according to him the principal contractor was Manjit Singh Gorla and that he might have engaged his brother-in-law Nitin as sub-

contractor. Record of said Manjit Singh Goria was also not produced nor Manjit Singh Goria, contractor was examined. Tinku also appeared in the witness box to state that he along with Ravel Chand and Bakka were deployed at Railway Station Jammu by one contractor Nitin Bassi. He along with three others, including Ravel Chand commenced the duty on 1.11.2007 at 2.00 p.m. Contractor also marked their attendance in his register. He further stated about the incident. The cross-examination of said witness reveals that Pinki is the aunt of said witness Tinku from in-laws side. He had no document to prove that he was engaged as contract labour by contractor Nitin. He stated in cross-examination that he was engaged as contract labour with Nitin 3-4 months prior to the incident. Deceased Ravel Chand had been working with Nitin Contractor since 1-1 ½ years earlier to the incident. He admitted that his name does not find mention in duty chart of the contractor. There was 17-18 persons as contract labour with the contractor Nitin. He claims that he has seen Ravel Chand getting monthly wages 3-4 times. He stated that Manjit Singh Goria was the principal contractor and Nitin Bassi was his brother-in-law which suggests that on behalf of Manjit Singh Goria, Nitin Bassi was looking after his contract. Petitioner also examined Soni Ram. His cross-examination also reveals that 14-15 persons were employed as Safai Karamchari by Nitin. He admitted that in the duty chart Ex.R1/A, his name has been written as Soni and name of Kala is also there. Name of Ravel Chand does not find in the duty chart Ex.R1/A.

Now, I come to the documentary evidence. From the documentary evidence, it comes out that ASI Ali Mohd after having recorded the statement of Ravel Chand, who was then injured and lying admitted in

the emergency ward of GMC Hospital, Jammu, recorded report No.14 in Daily Diary on 9.11.2007 at police post, Railway Jammu East. Perusal of the DDR shows that Ravel Chand has stated before police that on 1.11.2007, he was temporarily deputed to work as Safai Karamchari through contractor and contractor had fixed Rs.2500/- per month as wages for him. He was to work from 2.00 p.m. to 10.00 p.m. in night. While stating about the incident, he stated that on 8.11.2007, when he was performing his duties and was picking up garbage which he had collected from the platform, a superfast train was reversing from the track, came close to him. He tried to run away but his foot slipped and he fell down and both his legs were crushed under the train. The inquiry report into the said incident dated 8.3.2009 shows that the name of the deceased was not found recorded in the list of labour provided by the contractor before start of the work.

After considering the entire evidence, I am of the view that the claimants/ appellants have miserably failed to prove that said Ravel Chand was employed as contract labour/ Safai Karamchari to clean the railway platform. In fact, in the duty chart, his name was not present nor the record of the said Nitin Bassi and Manjit Singh Gorla Contractor was produced to show that said Ravel Chand was ever employed by the said contractor for work on the railway platform. Though the other workers were issued identity cards, but as per statement of Satnam Singh who was working for the last 3-4 months, no identity card was found to have been issued to deceased. In the absence of the best documentary evidence, which could prove that Ravel Chand was employed by contractor Nitin Bassi or Manjit Singh Gorla, the oral evidence of co-workers cannot be accepted to hold that the deceased was employed by the contractor. It is not the case of the

appellants that the deceased was a bona fide passenger of the railways. Once, the appellants have failed to prove that the deceased was employed by the contractor and deputed to work on railway platform and died during the course of duty, claimants/ appellants were rightly held to be not entitled to any compensation from the railways.

Learned counsel for the appellants has produced the authority of Kerala High Court in the case tilted as Philomina and another vs. Indian Railways rep. by Divisional Manager, AIR 2007 KERALA 210. The said authority is not attracted in the present case as in the said case, the deceased was a licensed porter of the railways.

The other authorities produced by learned counsel for the appellants in the cases titled as Ramesh Kuraria vs. Union of India, AIR 2007 Madhya Pradesh 106, Smt.Karri Nagamani and others vs. Union of India, AIR 2007 Andhra Pradesh 241, Inderjit Singh and another vs. Union of India and another, AIR 2007 Rajasthan 144, Shyamlal Sahu vs. Union of India, AIR 2008 (NOC) 2201 (M.P.), Union of India vs. Aleykutty Devasia and others, AIR 1997 KERALA 321, Union of India vs. Smt.Ahalya Prusti and another, AIR 2009 ORISSA 68 are also not attracted as it is not claimed that the deceased was a bonafide passenger.

As a result of the foregoing discussion, I do not find any illegality or infirmity in the impugned judgment. Consequently, the present appeal is dismissed.

24.10.2016

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes