

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3663 of 2012

Date of decision : November 23, 2016

Kaushalya

..... Appellant

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anand Singh, Advocate
for the appellant

Mr. Rahul Garg, Advocate
for the respondent

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)

This is the first appeal filed against the judgment dated 09.04.2012 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short “the Tribunal”) vide which the claim application filed by Kaushalya (appellant herein) was dismissed.

Brief facts of the present case are that deceased was working as a labourer at Kurukshetra and was a daily passenger from Dhirpur to Kurukshetra and back and was having Monthly Season Ticket (MST) bearing No. 66246900 which was valid from 14.06.2010 to 13.07.2010. On 29.06.2010, the deceased was coming from Kurukshetra by passenger train. When the train reached Dhirpur, during de-boarding and pull and push of passengers, the feet of the deceased was entangled between the footrest of the train which immediately started moving and

dragged the injured before he could save himself. The deceased tried to cross the railway line to reach his village but due to serious injuries he got unconscious. The injured was taken to Civil Hospital, Shahbad by the relatives of the deceased and thereafter was referred to PGI, Chandigarh where he succumbed to his injuries on 07.07.2010.

In reply the Railway took the plea that the deceased was not a bonafide passenger and he did not died due to negligence of the railway and the deceased died while crossing the Railway lines.

From the pleadings the following issues were framed: -

- 1. Whether the deceased was a bonafide passenger at the time of incident?*
- 2. Whether the incident is covered within ambit of Section 123 (c) (2) read with Section 124-A of the Railways Act?*
- 3. Whether the deceased was crossing railway lines unauthorisedly and had suffered self-inflicted injuries due to his own negligence and criminal act and therefore, respondent is absolved of liability to pay compensation to the dependants of the deceased under Section 124-A proviso (b, c) (para 2 of written statement)?*
- 4. Whether applicant(s) is/are the sole dependants of deceased?*
- 5. Relief.*

After hearing both the parties, the Tribunal came to the conclusion that the deceased got seriously injured while crossing the railway line, when he was not a bonafide passenger and hence the appellant is not entitled to any compensation.

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

First of all, the monthly season ticket, which is not claimed by the

Railway to be fake, shows that deceased was holding a valid monthly season ticket from 14.06.2010 to 13.07.2010 from Dhirpur to Kuruksehtra railway station and back. It goes to show that the averments of the appellant that deceased was working as labourer at Kuruksehtra and was daily passenger are correct. It further shows that deceased used to travel from Dhirpur to Kurukshetra and back. Now the question arises whether the deceased is proved to have been run over by train while crossing the railway line or the claim of the appellant is correct that while de-boarding the train his feet got entangled in the footrest and he was dragged by the train and received injuries? In this case, the internal communication between the railway dated 30.6.2016 goes to show that the Station Master had not issued any memo regarding the incident. During inquest proceedings initiated by the General Railway Police, statement of one Sahab Singh uncle of the deceased was recorded stating that the deceased has run over by the train while crossing the railway track when he was coming back after answering the call of nature. Sahab Singh AW-III has denied to have made any such statement before GRP.

I am of the view that the matter appears to have been investigated casually by the General Railway Police. The toilet facility is available in the Railway Coach itself and the passenger is not required to go for the same after de-boarding the train. Therefore, this ground can not be believed. In the DRM report it was recorded that the deceased was crossing the railway line unauthorisedly and was hit by train. Further, it is not mentioned as to which train hit the deceased. The railway keep the record of the movement of the trains and any train can be easily traced to know as to which train has hit the deceased.

In the form of evidence of the respondent, only one Sub Inspector Niaz Uddin of Railway Protection Force, Panipat was examined, who himself had not conducted enquiry into the case. Rather, he proved the enquiry conducted by his

was run over by unknown train while crossing the railway line on 29.06.2116. In this case, Inspector Madan Singh himself was the best witness to depose about enquiry. Here again, in the enquiry, the identity of the train is not mentioned. The inspector who had conducted the enquiry could check up from the railway chart as to which train had passed through the said station after the deceased de-boarded the passenger train from Kuruksehtra to Dhirpur. The deceased was picked up by the public and removed to Civil Hospital and, therefore, it means that the deceased was not dead at that time. The statement of the co-passenger namely Janak Raj AW-2 was not believed by the Tribunal. While appearing as witness, he has clearly supported the story put forward by applicant. During cross-examination he was asked about his own monthly season ticket and he produced the same. During cross-examination he stated he and deceased used to go for labour work and he had good family relations with the family of the deceased and he was also daily passenger from Dhirpur to Kuruksehtra and back. Therefore, statement of Janak Raj is reliable. He was an eye-witness of the incident. In this case, the respondent did not examine Station Master or any other employee of the railway or of the General Railway Police, who might have seen the deceased at the time of the occurrence to state as to how incident had occurred. Therefore, the claim of the respondent that incident occurred while deceased was crossing the railway line, can not be believed. Therefore, statement of Janak Raj was wrongly discarded. Since the deceased was daily passenger, the presumption is that he might be travelling in the passenger train. He is stated to have received injuries while de-boarding the train. The claim of the respondent was that he was hit by another train can not be accepted as it is not claimed that the deceased was found lying on some other railway line. The version that deceased was going to answer the call of nature is also not acceptable for the reason that the toilet facility is available in the train itself.

hit by the train or it is a case of fall from the train. The injuries given in the postmortem report are given below :-

1. Stitched lacerated wound 12 cm x 8 cm x bone deep over the left forehead starting from lateral end of left eye brow, having yelloish conture & margins.
2. Surgically amputated left upper limb, 15 cm below the aeromion, with clean cut margins of end of bone.
3. Lacerated wound 15x10 cm muscle deep over the frontal and outer aspect of left thigh with underlying fracture of shaft of femur in its lower 1/3rd of the flob of the wound covered with unhealthy granulation tissue. The wound being present 16 cm below left arterial superior iliac spine.
4. Lacerated wound 15x10 cm over the outer aspect of left thigh, 2 cm below outer superb itiac spine.

After going through the same, I am of the view that these injuries can not be caused if somebody is hit by a train. It is apparently result of fall from the train and run over by the same.

In view of foregoing discussion, the present appeal is allowed, impugned judgement dated 09.04.2012 is set aside consequently the findings of the Tribunal on issues No. 1 to 4 are hereby reversed. Since, the case of the appellant is covered under Clause 4 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, therefore, he is entitled to a compensation of ₹ 4,00,000/- alongwith interest of @ 9% per annum from the date of filing of the claim application till its payment.

(KULDIP SINGH)
JUDGE

November 23, 2016

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Whether speaking / reasoned Yes / No

Whether Reportable: Yes / No