

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No. 3917 of 2012(O&M)

Date of decision: 27.07.2016

Indu Bala and others

.....Appellants

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.S.K. Rana, Advocate for the appellants
Ms.Chetna Rao, Advocate for the respondent

- 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. (Oral)

This is first appeal against the judgment dated 3.4.2012 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'). vide which the claim application of the applicants (appellants herein) for grant of compensation on account of death of Bhim Singh in untoward incident was dismissed.

The case of the appellants is that Bhim Singh aged about 33 years was milk vender by profession. He was having monthly seasoned pass (MST) from 14.3.2005 to 13.4.2005. On 30.3.2005, the deceased was returning from Delhi by train after selling milk. He was run over by train No.4791-UP Mail between railway stations Inchhapuri and Khalilpur at KM No.67/2-3 and sustained multiple grievous injuries and died. Monthly seasoned pass was recovered from the personal search of the deceased at the

time of inquest report.

The railway in the written statement took the plea that no untoward incident as claimed took place. It is stated that on inquiry it was found that the death of the deceased is on account of suicide as coming out from the statement of the guard and driver of train No.4791 UP mail. As such, applicants are not entitled to compensation in terms of the provisions of Section 124-A of the Railways Act. It was also denied that the deceased was bonafide passenger of the train involved. 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*

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

The claimants had examined widow of the deceased AW-1 Indu Bala, brothers of the deceased AW-2 Parveen Kumar and AW-3 Dinesh Kumar, who are not eye witnesses and have stated merely that the deceased used to sell milk and go from Ichhapuri to Bijwasan and that on the said day he had left for Bijwasan on train but did not return. Crucial in this case is testimony of Bhagwan Singh Meena, railway guard (RW1). According to Bhagwan Singh Meena railway guard, who was railway guard on train No.4791 UP from Delhi Sarai Rohilla to Sadalpur, the train did not have any

stop at village Ichhapuri. The accident took place two kms away from village Ichhapuri. Bhagwan Singh Meena had stated that driver Din Dyal stopped the train at KM No.67/2-3 and informed him that one person, who was in naked condition, suddenly came in front of the train and was run over. The train stopped there for 1 hour and 20 minutes to clear the track. The train stopped at the distance of 350 meters after applying emergency brakes. The guard clearly stated in cross-examination he had not seen the naked man but driver had seen him. In this way, driver of the train Din Dyal was the only eye witness of the occurrence and was a material witness. However, for the reasons best known to the railway, the said driver was not produced to show as to in which manner the untoward incident took place. Only from the examination and cross-examination of Din Dyal driver, it could be known whether deceased jumped in front of the train in a naked condition as claimed by the guard or fell from the moving train and died. The driver could also be confronted with the inquest report and photographs wherein deceased is in fact shown wearing some clothes, which is contrary to the information received by the guard from the driver. In this way, the statement of Bhagwan Singh Meena, railway guard of the train is not primary evidence and is only a hearsay evidence based on the information given by Driver of Din Dyal and cannot be believed.

Now, this Court is left to examine the facts of the case. Admittedly, the railway station Bijwasan is one of the stations falling in Delhi. Train started from Sarai Rohilla railway station in Delhi and Bijwasan is also one of the stations. Therefore, practically, both the stations are in Delhi. Therefore, one could board the train from one or the other station from Delhi. From the dead body, the monthly seasoned pass was

recovered, which was valid on the day of death which makes it evidence that the deceased was a daily commuter and that is why he had obtained a monthly seasoned pass. Thus, it supports the story of the applicants that he used to go to Bijwasan (Delhi) to sell the milk on daily basis.

Now, the question would arise as to whether it is a case of suicide or fall from the train? According to the stand of the railway, the train did not have any stoppage at Ichhapuri. The train was destined to go to Sadalpur. Therefore, the possibility of boarding a wrong train is also there being unaware of the fact it does not have a stoppage at Ichhapuri. Now, the perusal of original file shows that in the photographs, the deceased is shown to be wearing some clothes. Even in the inquest report, it is mentioned that the deceased was wearing a shirt, under garments and trousers. This falsify the stand of the railway guard that the deceased was naked. Therefore, the information given by the driver to the guard which is otherwise secondary evidence, could not be believed.

Now, in order to see whether it is a case of suicide or untoward incident, one is to examine the injuries suffered by the deceased. As per inquest report as well as railway report, the right and left leg of the deceased were cut below the knee joint. The deceased was also having some injuries on the forehead. Left hand was also crushed from the shoulder and there was a fracture on the left hand elbow joint. If a person jumps from the train, the front portion of the body receives most of the injuries. As a result of the impact of the hitting of the train one is thrown backward resulting into the injuries on the back side of the head and body, which are missing in the present case. However, in case of fall from the train, due to speed of the train, the falling passenger is sucked under the train with the result that in

most of such cases, the legs of the falling passenger are either crushed or chopped off which has exactly happened in this case. Therefore, the fact that the deceased was carrying a railway monthly pass and identity card issued by the railway, goes to show that he was a regular commuter and since the suicide theory is ruled out, as claimed by the railway. It has to be held that it is a case of untoward incident. As such, the findings of the Tribunal are reversed. Consequently, the application is allowed. The applicants along with the mother of the deceased are held entitled to compensation to the tune of Rs.four lacs from the railway, which shall be equally shared by them. The compensation be paid with interest @ 9% per annum from the date of filing of the claim petition till its payment.

The appeal is accordingly allowed.

27.07.2016

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes/ No

Whether Reportable:

Yes/No