

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.4376 of 2012(O&M)

Date of decision: 28.07.2016

Asha Devi and others

.....Appellants

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Satinder Kumar Rana, Advocate for the appellants
Mr.Neeraj Madan, Advocate for the respondent

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

Kuldeep Singh, J. (Oral)

The appellants have impugned the judgment dated 31.5.2012, passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') vide which, the claim application of the applicants -appellants herein was dismissed.

It is a case of applicants that on 9.11.2010, Surinder Thakur purchased two second class tickets for Mail train (Jan Nayak Express) from railway station Ambala Cantt to Muzaffarpur (Bihar), one for his son Ranjit (stated to be about 14 years during inquiry) and other for Chauthi Paswan @ Guddu Paswan (now deceased). The tickets were handed over to Chauthi Paswan @ Guddu Paswan who put the same in his bag. Ranjit sat on the seat in the coach of train No.5212 and deceased Chauthi Paswan @ Guddu Paswan was standing on the platform when the guard of the train gave the

signal to start train then Chauthi Paswan @ Guddu Paswan also boarded the train and Surinder Thakur witness returned back. It is stated that when the train reached between Ambala Cantt and Dukheri railway stations, which is about 1 ½ kms from Ambala Cantt, due to sudden jerk, Chauthi Paswan @ Guddu Paswan fell down from the train and received serious injuries and died at the spot. Ticket, cash and bag were lost.

Railway, in the reply took the stand that the deceased was not a bonafide passenger. No ticket was recovered. It was also denied that the deceased fell down from Jan Nayak Express Train. It is stated that in fact a dead body was noticed lying near railway tract and it is a case in which deceased was entangled with some moving train. From the pleadings, following issues were framed:-

- 1. Whether deceased was a bonafide passenger, at the time of accident?*
- 2. Whether the incident in question is covered within the ambit of section 123(c)(2) of the Railway Act?*
- 3. Whether the applicants are the only dependents of the deceased?*
- 4. Relief.*

After hearing both the parties, the application was dismissed holding that the deceased was not a bonafide passenger and that the alleged untoward incident is not proved.

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

Perusal of original file shows that Ranjit son of Surinder Thakur (AW2) was aged about 14 years, as coming out from inquiry. Ranjit

was a material witness to prove that the deceased was travelling with him in the train and that the tickets were handed over to deceased Chauthi Paswan @ Guddu Paswan and that he had fallen from the train. Ranjit was not produced before the Tribunal to say so. He was the best witness to say about the said untoward incident, as in the normal course if the co-passenger falls from the train, surviving passenger is likely to raise hue and cry, pull the chain or at least complain to the railway official in the train or on the next station. The non-production of said Ranjit entails adverse inference against the appellants. Now, left is the statement of Surinder Thakur, who stated that he left the platform after the deceased and his son boarded the train. Surinder Thakur is the neighbour of deceased Chauthi Paswan @ Guddu Paswan and his statement in this regard was rightly disbelieved by the Tribunal. The applicants have claimed that all the belongings of the deceased were lost. However, it comes out that the dead body was found between up and down lines and that from the personal search of the deceased, one mobile phone, one telephone diary, one broken wrist watch and Rs.135/- in cash were recovered. If cash, mobile phone and wrist watch could be recovered, had the deceased been carrying any railway ticket, the same was also likely to be recovered.

In these circumstances, this Court concurs with the finding of the Tribunal that it is a case where the railway ticket should have been found with the other belongings but the absence of the ticket coupled with the fact that Ranjit co-passenger was not examined, goes to show that the deceased was not a bonafide passenger and the appellants have failed to prove that he was travelling in the said Jan Nayak Express train. Further, I also agree with the finding of the Tribunal that if the tickets were with the deceased that

would mean that Ranjit travelled ticketless from Ambala till Muzaffarpur in Bihar. The journey might have taken around 20 hours plus time and it is not possible that during such long journey, nobody will check the ticket and further that if any untoward incident happens with the co-passenger then the person will not make any complaint to anybody that his co-passenger had fallen down from the train.

Learned counsel for the applicants has placed reliance on judgment of Patna High Court in Bhagmati Devi vs. Union of India, (2015) 3 ACC 799 and another judgment of Bombay High Court in Nirmala Pravinchandra Soni vs. Union of India, (2015) 3 ACC 615. However, in view of the facts of the present case, these judgments are of no help to the appellants.

In view of what has been discussed above, there are no merits in the present appeal. The same is accordingly dismissed.

28.07.2016

gk

(Kuldip Singh)
Judge