

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

**FAO No.5822 of 2012(O&M)
Date of decision: 28.11.2016**

Heena and others

.....Appellants

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Subhash Sachdeva, Advocate for
Mr.S.K. Rana, Advocate for the appellants
Mr.Nitin Kumar, 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?*

Kuldip Singh, J. (Oral)

This is first appeal against the judgment dated 13.7.2012, passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'), vide which, application filed by the present appellants along with Keni, mother of the minors, was dismissed. Keni died during pendency of the claim petition before the Tribunal.

On 14.11.2010, Naresh Kumar, husband of Keni and father of appellant Nos.1 to 4 and son of appellant No.5, after purchasing ticket from Tohana to Narwana, boarded the footboard of Jammu Tawi Express 6032-Dn at Railway Station Tohana. As the train gathered speed, due to jerk, Naresh Kumar fell down from the train and received injuries. He was removed to General Hospital, Tohana, where he succumbed to the injuries.

The General Railway Police, Tohana was informed, which recovered

Rs.110/- and one railway ticket ex-Tohana to Narwana from the personal search of the deceased.

In the written statement, the respondents has taken a stand that the deceased was admittedly travelling on the footboard of the train. Therefore, the alleged incident comes within the purview of the self inflicted injuries and the railways is not liable for the same. At the same time, the railway in the reply on merits denied all the facts including that the deceased has purchased the ticket and was traveling on the railway.

From the pleadings, the following issues were framed:-

- 1. Whether injured/ applicant was a bona fide passenger?*
- 2. Whether the case of the applicant comes under the category of untoward incident u/s 123 (c) (2) of Railways Act?*
- 3. Whether the injury of the applicant comes under the category of self inflicted injury as explained u/s 124 (a) proviso (b) of Railways Act as claimed in para 6 (b) of the written statement by the respondent?*
- 4. Whether the injured / applicant is authorized for any compensation? If yes, to what extent?*
- 5. Relief.*

Tribunal came to the conclusion that the deceased was the bona fide passenger. However, it took the view that the perusal of post mortem report shows that injuries are not possible due to fall from the train. It was also noticed that although the investigating agency has concluded that the deceased died due to fall from the train while boarding the moving train but in view of the testimony of railway guard this conclusion was not accepted.

Hence, injuries fall under exception (b) “self inflicted injuries” as defined

under Section 124(A) of the Railways Act, 1989. Therefore, the railway is not liable to pay the compensation.

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

It is not denied that the deceased was having a valid ticket. Written statement of the respondents shows that in the preliminary objections itself, it is admitted that the deceased was traveling on the footboard of the train and not fallen from the train.

Now, it is to be seen as to whether it is self inflicted injury or not?

I am of the view that under the provisions of the Railways Act, the railway has strict liability to pay the compensation unless the case of the railway is covered under one of the clauses of the proviso to Section 124(a) of the Railways Act, 1989. The clause (b) relates to self inflicted injury. Clause (c) talks of injury due to criminal act.

I am of the view that if somebody falls from the footboard of the train, it cannot be called as self inflicted injury. Self inflicted injury is normally understood to mean the injury caused by the injured himself. It is a case of accidental fall from the train and is covered within the definition of untoward incident as defined in Section 123 (c) of the Railways Act, 1989. Act of the deceased in traveling on the footboard of the train may be foolish or negligent act but it is certainly neither a criminal act nor falls under the definition of self inflicted injury. So far as, the fall from the train is concerned, memo of the Railway Station Master Tohana (Annexure A1) shows that he informed the SMO Civil Hospital, Tohana that one person has fallen down from the train and has received injuries. Learned Tribunal has

referred to the post-mortem report to conclude that these injuries cannot be a result of fall from the train. Inquest report shows that there were injuries on head, forehead, nose, lips caused by the railway. Left leg was crushed from the thigh. The fingers of the right leg were also crushed. Similar injuries are reflected in the post mortem report.

I am of the view that the view taken by the Tribunal is patently incorrect. When a person falls from the moving train, he is sucked under the train and therefore, his leg is likely to be sucked under the train and chopped off or crushed. Injury on the head, forehead, nose and lips shows all these injuries depicts that the deceased must have fallen down from the train and resultantly received injuries on his face and head. Therefore, the injuries are apparently result of fall from the train.

The report of SHO (Annexure A16) also shows that Naresh Kumar received injuries as a result of fall from the train. All these facts goes to show that it is a case of fall from the train and is an untoward incident. Hence, the impugned judgment is set aside. The claim application is allowed and the respondents are directed to pay Rs.four lac to the applicants/ appellants with interest @ 9% per annum from the date of filing of the claim petition till its payment.

The appeal is accordingly allowed.

28.11.2016

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes