

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

**CM No.7388-CII of 2013 in/and
FAO No.1199 of 2013
Date of Decision: 02.12.2016**

Ram Sakal Rai and others Appellant(s)
Versus
Union of IndiaRespondent(s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Harsimran Kaur Bedi, Advocate for
Mr. S. K. S. Bedi, Advocate
for the appellant(s).

Mr. Sanyam Malhotra, Advocate
for the respondent.

KULDIP SINGH J. (ORAL)

CM No.7388-CII of 2013

This is an application for condonation of delay of 289 days in re-filing the appeal.

For the reasons mentioned in the application, delay of 289 days in re-filing the appeal is condoned.

CM stands disposed of.

FAO No.1199 of 2013

The appellants have impugned the judgment dated 31.01.2012 passed by the Railway Claim Tribunal, Chandigarh Bench, Chandigarh vide which the claim application filed by the applicants (appellants herein) was dismissed.

The facts of the case are that the deceased-Krishana Nandan Ray boarded a train from Muzaffarpur (Bihar) to Sirhind (Punjab) on 12.06.2010. He reached New Delhi railway station at 4.25 a.m. on 13.06.2010. He boarded train No.2919 for Sirhind. Later, he came to know that the train will not stop at Sirhind as there was no stoppage in between

from Ambala Cantt and Khanna and consequently the train did not stop at Sirhind station. When the train was about to reach Khanna, the deceased started collecting his luggage near the door so that he could get down from the train. When the train was changing the lines for going to the platform, due to jerk, the deceased fell down from the running train near Godown and suffered fatal injuries and died at the spot. The luggage of the deceased remained lying in the train. Present applicants (appellants herein) are the father, widow and minor children and claim compensation.

In the reply, the respondent took the plea that incident is not covered under the ambit of “*untoward incident*” as defined in Section 123 (c) of the Railway Act, the deceased suffered injuries due to his own negligence and by way of self-inflicted injury and a criminal act as the act of the applicant (appellant herein) in standing near the door and endeavouring to get out from moving train in careless and negligent manner amounts to criminal negligence. It was further stated that deceased was not a bona fide passenger. From the pleadings, following issues were framed.

1. Whether at the time of accident deceased was valid passenger in railway?
2. Whether deceased has died in such accident, which is an untoward incident under Section 123(C)(2)?
3. Whether the applicant is sole surviving legal representative of the deceased?
4. Relief.

After hearing both the parties and examining the evidence, the Railway Claim Tribunal, Chandigarh Bench, Chandigarh dismissed the application primarily on the ground that deceased was travelling in train

No.2919, UP, when Malwa Express and the ticket was only for Amarpali Express that was to up to Sirhind and the incident took place near Khanna. The Tribunal also concluded that most probably the deceased jumped from the moving train when it was approaching Khanna Railway Station, in order to avoid being intercepted by the railway checking staff for travelling unauthorizedly from Sirhind to Khanna. It was also held that the injury was a self inflicted injury and is a criminal negligence.

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

In this case, the perusal of the records of the Railway Claim Tribunal, Chandigarh Bench, Chandigarh shows that it was a ticket from Muzaffarpur (Bihar) to Sirhind Junction for superfast train. The ticket was valid till Sirhind Railway Station, however, in case where the passenger is unable to get down at the destination for one or the other reason, the railway can only claim the excess charges plus penalty, if any. The Railway Tribunal has no ground to believe that deceased jumped from the train in order to avoid checking by the railway staff. The conduct of the deceased shows that he had purchased a valid ticket from Muzaffarpur, Bihar to Sirhind Junction which shows that he was a law abiding citizen. If he could purchase a ticket for such a long journey then he could also pay a minor difference of the fare from Sirhind Junction to Khanna.

The circumstances also shows that deceased did not jump from the train. The luggage of the deceased was lying in the train. If he had jumped from the train, he would have jumped along with the luggage. Deceased admittedly fell from the moving train i.e. Malwa express, therefore, it is untoward incident and the deceased was a bonafide passenger

as the railway had a right to recover the difference of the fair, with penalty only.

Learned counsel for the respondent has argued that the ticket was for Amarpali express and not for Malwa express, however, perusal of the ticket shows that it was not restricted to Amarpali express only. The ticket was from Muzaffarpur, Bihar to Sirhind, Punjab junction and for superfast train. It being so, the deceased could avail any superfast train. It was due to illiteracy and the error that the deceased boarded the train which was not having halt at Sirhind junction and stopped on the next junction i.e. Khanna. In this way, there was no criminal or negligent act on the part of the deceased nor it was a self inflicted injury. Consequently, it is a case of untoward incident involving the railway. The railway has a strict liability to pay compensation in case of untoward incident as such the impugned judgment is set aside.

The appeal is allowed and respondent is directed to pay a sum of ₹ 4 lac compensation to the applicants (appellants herein) with interest at the rate of 9% per annum from the date of filing the claim application till its payment.

December 02, 2016

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**(KULDIP SINGH)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No