

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.74 of 2012(O&M)
Date of decision: 27.07.2016

Smt.Sonia and another

.....Appellants

versus

Union of India and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Rakesh Kumar Sharma, Advocate for the petitioner
Mr.Parveen Chander Goyal, 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 1.4.2011 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') vide which claim application filed by the appellants was dismissed.

Brief facts of the case are that on 6.9.2008 Surender Kumar @ Sonu boarded train No.4086 from Sanmpla railway station for going to Rohtak at about 8 p.m.. As the train suddenly moved with heavy jerk, deceased lost his balance due to heavy rush and fell down on the track. He was removed to PGI Rohtak, where he died on 11.9.2008 at about 11.30 p.m. It was stated that the deceased was having a ticket for ex-Sanmpla to Rohtak but it was lost in the incident. The luggage was also lost.

On the other hand, railway has denied the accident to be

untoward incident and stated that the deceased himself was negligent. No ticket was found. Therefore, he was not a bonafide passenger. From the pleadings, following issues were framed:-

- 1. Whether the deceased was a bonafide passenger of the train at the time of accident?*
- 2. Whether the death of the deceased is coming under the definition of 123(c)(2) of Railway Act?*
- 3. Whether the claimant is only legal dependent of the deceased?*
- 4. Relief.*

The Tribunal dismissed the claim petition on the ground that the testimony of Rakesh Kumar an eye witness is not trust worthy on account of contradictions in examination-in-chief and cross-examination. The only ground on which claim petition was dismissed is that no ticket was found from the person of the deceased. Therefore, he was a ticketless traveller and consequently, not a bonafide passenger. I am of the view that the post-mortem report as well as inquiry by the DRM shows that the deceased fell from the train, his left hand was amputated from shoulder. He also had injuries on the face and back of the head. Apparently, these turned to be fatal. Now, question would arise that when once it is proved that the deceased fell from the train, whether the non-recovery of the ticket from the person of the deceased, could be a ground to dismiss the claim when it was claimed that the deceased has purchased the ticket and it was lost? I am of the view that in case of untoward incident, involving the railway, rule of strict liability has to be applied. When a person falls from the train and his left hand is amputated and sustain injuries on the face and head and clothes are also torn, it is hard to find a small piece of paper from him on which the ticket is printed. Therefore, mere non-recovery of ticket from the person of

the deceased is no ground to hold that no ticket was purchased by the deceased. As such, the finding of the Tribunal are reversed. The appeal is allowed. The claim application is allowed. The railway is directed to pay Rs.four lacs as compensation to the widow of the deceased, namely, Sonia, who is only 25 years of age along with interest @ 9% per annum from the date of filing of claim petition till its payment.

The appeal is allowed accordingly.

27.07.2016

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes/ No

Whether Reportable:

Yes/No