

217 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1649 of 2013 (O&M)
Date of decision : July 11, 2016

Suresh and another

..... Appellants

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Somesh Gupta, Advocate for the appellant.

Mr. Nitin Kumar, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Suresh and Dukhani, parents of deceased Parmod Kumar filed a claim application before the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal') seeking compensation of ₹6,00,000/- along with interest on account of death of their son Parmod Kumar in an untoward incident, which occurred on 17.08.2010 while he was travelling by a train.

The brief facts of the case are that according to the applicants, deceased Parmod Kumar was working as a labourer at Oil Refinery, Rama Mandi. He was otherwise resident of Devaria (Uttar Pradesh). On 17.08.2010, he went from Rama Mandi to Bathinda for depositing the money in the bank and for purchasing some articles. On his way back, he

purchased a ticket from Bathinda to Rama Mandi and boarded the train. When the train had hardly covered a distance of 1 Km. from platform, said Parmod Kumar fell down from the train and got seriously injured. One person, who was patrolling that area, sent a message to the Station Master regarding the said injured. The Station Master then informed the GRP, Bathinda, who got the injured admitted in the Civil Hospital, Bathinda, where he succumbed to the injuries on the intervening night of 17/18.08.2010. The GRP was informed by the hospital authorities, which prepared the report and recovered one railway ticket from Bathinda to Rama Mandi, some money and one mobile phone from the person of deceased Parmod Kumar. From the saved numbers in his mobile phone, the applicants were informed about the accident..

In the reply, the respondent-railway took the plea that the claim petition is not maintainable being devoid of any proof that deceased Parmod Kumar was a bonafide passenger and no such ticket was available on the record. In the alternative, it was also pleaded that deceased did not receive injuries due to the negligence on the part of respondent-railway. No untoward incident under Section 123(c) read with Section 124-A of the Railways Act, 1989 had taken place. As per report of DRM, it is a case of unauthorized crossing of railway track by the deceased and the respondent-railway cannot be held liable for the same.

It is further pleaded that no train number, name and time of the train was given by the applicants. The deceased was found lying injured near the Shiv Mandir in the railway yard, Bathinda. Hence the liability to pay compensation was denied.

The Tribunal after framing the issues, recorded the evidence of both the parties and came to the conclusion that deceased was not a bonafide passenger. The train left from Bathinda to Sirsa from platform No.1 at 17.40 hours and that deceased was not a passenger of he said train. It is stated that the number of the ticket is not mentioned in the recovery memo prepared by the police. Therefore, adverse inference is drawn against the applicants (appellants herein).

It was further observed that no receipt of the deposit of the money in the bank or no article, which might have been purchased from Bathinda were found nor any pass-book was found from the possession of deceased. The deceased was found lying injured at the spot with no cash, article, pass-book or bank receipt. He was found lying between line Nos.6 and 5, which falsify the case of the applicants. Accordingly, the claim application was dismissed.

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

Undisputedly, the deceased was working in Oil Refinery, Rama Mandi. Therefore, he was supposed to go from Bathinda to Rama Mandi. A perusal of the record of the Tribunal shows that somebody informed Sahara Jan Sewa volunteers, which is an N.G.O., working at Bathinda that one injured is lying at the spot. Therefore, they reached the spot and removed the injured to the hospital. As per the statement of Munish Kumar, a worker of Sahara Jan Sewa, Bathinda, he has got a message from Sahara Jan Sewa Pardhan on 17.08.2010 that an injured was lying near Shiv Mandir in the railway station, Bathinda and he reached at the spot near Shiv Mandir which

is between line Nos.6 and 5 with Sahara Jan Sewa Van at about 5-6 p.m. in the evening. The train left Bathinda at 5.40 p.m. and the deceased was found lying injured between 5-6 p.m. As per inquest report (Ex.A-1) prepared by GRP and report Ex.A-2 prepared by the police, the cause of death is railway accident. As per the death report, left leg below knee of the deceased was crushed due to coming under the train and there was a scar of wound on the right side of the head. The blood was oozing out from his leg. The recovery memo (Ex.A-3) on file show that Head Constable Sodagar Singh No.372 prepared the personal search memo on 18.08.2010 in the presence of workers of Sahara Club, namely Manish Kumar, Dinesh Parjapati and Sanjash Parjapati and recovered one railway ticket from Bathinda to Rama Mandi, which was taken into police possession.

The respondent-railway has heavily relied upon the report of DRM, which shows that no ticket was found with the inquest report.

I am of the view that the inquiry conducted by DRM is not proper and fair. The DRM should have examined said Head Constable Sodagar Singh and questioned him about the ticket, which was taken into possession through recovery memo and is not required to be attached with the inquest report. It was separately taken into possession. The examination of Head Constable Sodagar Singh and other workers of Sahara Jan Sewa, N.G.O., mentioned in the recovery memo would have revealed that whether a ticket was actually recovered from the possession of the deceased or not. It is for the police to mention the ticket number. The applicants-appellants cannot be made suffer for the same. The DRM should have examined the said witnesses and recorded that the mention of the railway tickets in the

recovery memo (Ex.A-3) is false. No such findings were recorded. Therefore, it is to be believed that one ticket from Bathinda to Rama Mandi was recovered from the possession of deceased. A man of ordinary prudence would not go on foot to a distance of one kilometer from the platform. In the normal course, he would board the train from the platform itself. Since, the deceased was injured, with some efforts, he might have dragged himself to some distance and reached one or the other line. The DRM report as well as the judgment of the Tribunal assumed that after the fall from the train, the deceased could not move and remained at the same place and therefore, must have near the railway line on which the train passed.

Moreover, though the Station Master had made the statement that the train left from platform No.1 but he has stated that sometimes, it leaves from other railway line as well. No record was produced that on the day of occurrence, the train left from platform No.1. Therefore, at the first instance, it cannot be assumed that on the said day the train left from platform No.1. Secondly, even if it is assumed that the train left from platform No.1, the deceased after falling from the train could have dragged himself for help to some distance so as to reach the railway line Nos.6 and 5. The deceased was found there when the train passed. No eye witness should be expected in these circumstances, as even the man patrolling the railway lines did not remove the injured to the hospital and rather informed the President of Sahara Jan Sewa, who further informed the volunteers, who reached the spot along with Sahara Jan Sewa Van.

The facts and circumstances in totality would show that the deceased, in fact, was travelling from Bathinda to Rama Mandi and apparently fell from the moving train. His left leg was crushed and he had also received injuries on the head as a result of untoward incident. Therefore, the findings of the Tribunal on all the issues are reversed. The application filed by the applicants-appellants is allowed.

As a result of the foregoing discussion, the respondent is ordered to pay ₹4,00,000/- as compensation to the applicants-appellants with interest @ 9% per annum from the date of filing of the claim application till its realization.

Accordingly, the present appeal is allowed.

(KULDIP SINGH)
JUDGE

July 11, 2016
sarita