

FAO No. 1105 of 2014 (O&M)

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

FAO No. 1105 of 2014 (O&M)

Date of Decision: 03.08.2016

DAYAWATI AND ANOTHER

... Petitioners

VS.

UNION OF INDIA

..Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Balkar Singh, Advocate,
for the appellants.

Mr. Neeraj Madaan, Advocate,
for the respondent-Union of India.

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

KULDIP SINGH (J.)

The appellant preferred the first appeal against the judgement dated 29.11.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (herein after referred to as "the Tribunal") vide which the application of the appellants for the grant of compensation on account of the death of their son, Devraj, in an untoward incident on 16.11.2011, was dismissed.

The case of the appellants is that their son, Devraj, who was living in Ferozepur City had gone to see his sister at Mathura on 13.11.2011 and stayed there for two days. Thereafter, he bought a ticket from Mathura Railway Station to Ferozepur, Punjab on 16.11.2011 and boarded an ordinary bogey in which there was huge crowd. The deceased stood on the back side of the train door. When the train reached at KM No. 1499/11-12 between Aswati and

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Ballabgarh Railway Station, the train took a heavy jerk due to which the deceased fell down from the running train and died on the spot.

The Railways in the written statement has taken the stand that the deceased was not the bonafide passenger of the train as no ticket was found from him. Only ₹ 450/- were recovered from the personal search of the deceased. Even if the accident had taken place, it was due to the negligence of the deceased.

In view of the above stand, the Tribunal held that the deceased had died due to walking along the railway track and while crossing the railway line he was hit and that the death is due to his own negligence. It is also held that the deceased was not the bonafide passenger of the train as no ticket was found from his person.

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

Regarding the railways ticket, it is to be seen that when a person falls from the running train, his clothes are likely to be torn and the body may have rolled several times and in this process, the printed computerized ticket, which is a small piece of paper, can be lost. Therefore, the same cannot be given any importance in such cases. Moreover, the deceased boarded the train from Mathura to Ferozpur and the approximate distance between these two stations is a of run of 8-10 hours. Meaning thereby, it is not possible to travel ticketless in such a long distance journey.

The report of Ramdev, Petrolman (*Ex. A-4*) shows that on 16.11.2011, a dead body of a man was found lying between IIIrd line and

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down main line after the rail accident at about 5.00 A.M. near the railway track at KM 1499/11-12. Since, the deceased belong to Ferozepur City and his sister is living in Mathura, it is not acceptable to the reasoning that the deceased was walking along the railway track at Balabhgarh, which is far away from Mathura as well as from Ferozepur. It is also to be noticed that the left leg of the deceased was amputated and he was having artificial leg which was found during the inquest proceeding of the General Railway Police (GRP). The inquest proceeding of the GRP shows that there was injury on the backside of the head of the deceased and there were also some bruises on the other part of the body. The GRP as well as the post mortem report shows that the deceased died due to railway accident. Therefore, the involvement of railways is there. Now, the only question left for consideration is as to whether the deceased fell from the train or not.

The report prepared by the GRP, Ballabhgarh (*Ex. A-10*) shows that the dead body of unknown person was found and all the SHOs of the nearby Police Stations were informed about the recovery of the dead body near the railway track. The proceeding of the GRP also shows that on the post mortem, it was found that the possibility of railway accident is not ruled out.

Now, the interim report of the SHO, GRP, Faridabad (*Ex. A-17*) shows that the cause of death is the railway accident. The post mortem report (*Ex. A-18*) shows the following injuries: -

1. *CLW OF SIZE 2X2XBONE DEEP PRESENT ON OCCIPITAL REGION*
2. *FRACTURE OF OCCIPITAL BONE SEEN WITH UNDERLYING SDH AND EDH*

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3. *FRACTURE OF CERVICAL VERTEBRAE, ATLANTO-AXIAL SUBLUXATION PRESENT*
4. *FRACTURE ON MULTIPLE RIBS ON BOTH SIDES WITH LACERATIONS OF UNDERLYING PLEURE AND LUNG TISSUE. COLLECTION OF AROUND 100 ML OF LIQUID BLOOD SEEN IN BILATRAL PLEURAL CAVITY. SEMI DIGESTED FOOD AND GASES*
5. *A LARGE CONTUSION MARK OF SIZE 8x4 INCHES PRESENT ON UPPER BACK EXTENDING FROM LEFT SHOLDER TILL MID LINE. FRACTURE OF UNDERLYING LEFT SCAPULA SEEN.*
6. *BLAKISH GREASE MARKS PRESENT OVER ENTIRE BACK AND RIGHT LOWER LIMB.*

According to the opinion of the doctor, by looking into nature of the injuries, the possibility of railway accident cannot be ruled out. The time between the injuries and death was within few minutes or few hours. The nature of the injuries described above clearly shows that it is not a case of running over by a train and rather it is a case of fall from the train. Even if, no eye witness is available, claim case is an enquiry by the Tribunal. The Tribunal from the documents available on file can draw its own conclusion. The deceased was having one artificial leg and it is not possible that he was walking around the track at Ballabgarh which is a far-away place from Mathura and Ferozepur as sought to be made out by the Railways during the enquiry. The nature of the injuries shows that it is a case of fall from the train.

In these circumstances, the findings recorded by the Tribunal are hereby reversed and it is held that the appellants are entitled to compensation as the deceased-Deveraj, was the bonafide passenger of the train and died in an untoward railway incident on 16.11.2011. Accordingly, the Railways are

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ordered to pay compensation of ₹4.00 Lakhs to the appellants, alongwith interest @ 9% per annum from the date of filing of the claim application i.e. 10.02.2012 till the date of making the payment.

August 3, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

Whether speaking / reasoned

✓
Yes / No

Whether Reportable

✓
Yes / No