

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

FAO No.2939 of 2013.

Date of Decision: 04.05.2016.

Dinesh Chand

....Appellant.

VERSUS

Union of India

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Somesh Gupta, Advocate for the appellants.

Mr. Sandeep Vermani, Advocate for the respondent.

SNEH PRASHAR, J.

Assailing the judgment dated 23.04.2013 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, “the Tribunal”) in Case No.OA-II/259/2011, vide which the claim application of the appellant was dismissed, the appellant preferred the instant appeal.

The facts of the case are that Dinesh Chand-appellant, a student of M.C.A. and resident of Dehradun, had to go to Anandpur Sahib alongwith his three friends to attend marriage of a friend. From Dehradun they had reached Saharanpur by a private vehicle and from Saharanpur railway station after purchasing their tickets for Anandpur Sahib had boarded the train. At Ambala Cantt. railway station, they alighted from the train and boarded train No.74991-Up. When the said train reached at Kurali railway station, the appellant got down to attend the call of nature as no

facility for the same was available in the train. When he was trying to reboard the train, he fell down in between the loop line and the platform and got seriously injured. Passengers shouted and pulled the chain to stop the train. The guard also saw the incident and applied his vacuum brake on which the train immediately stopped. The guard and friends of the appellant pulled him out from the track.

The guard gave information about the incident to the Station Superintendent Railway Station Kurali who issued a memo to the G.R.P., Ropar. The appellant was got admitted in Civil Hospital, Kurali by his friends where he was given first aid and was then referred to P.G.I., Chandigarh. The G.R.P. personnel approached the appellant at P.G.I., Chandigarh who besides making a statement regarding the incident also produced photocopy of his journey ticket issued from Dehradun for Anandpur Sahib for four persons. The ticket numbers were mentioned as P-34451142 and P-34451140.

The appellant filed an application claiming compensation to the tune of Rs.6,00,000/- against respondent-railways on account of the injuries suffered by him during the railway accident.

The application was contested by the respondent. In the written statement, the respondent denied occurrence of any untoward incident or railway accident as narrated in the claim application. They also denied that the appellant was a bonafide passenger or that there was any liability of the railways in terms of Section 123(C) read with Section 124-A of the Railways Act, 1989 (for short, “the Act”).

On the basis of the pleadings of the parties, following issues were settled:-

1. Whether the applicant-injured was a bonafide passenger of train at the time of accident?
2. Whether the incident is covered within the ambit of Section 123(c) read with Section 124-A of the Railways Act?
3. What are the scheduled and non-scheduled injuries sustained by the applicant-injured?
4. Relief.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal dismissed the claim application.

Feeling dissatisfied with the judgment dated 23.04.2013, the appellant preferred the instant appeal.

The submissions made by Mr. Somesh Gupta, learned counsel for appellant and Mr. Sandeep Vermani, learned counsel for respondent-Union of India have been heard and record perused.

At the very outset, learned counsel for the appellant argued that the version of the appellant with regard to the accident was corroborated by Manvinder Singh, Deputy Station Superintendent, Railway Station Kurali who in his statement admitted that the appellant had fallen from the train and he was informed about the incident by the guard. In the memo Ex.A9

also, it was mentioned that a passenger had an accidental fall from the train. As regards the passenger ticket possessed by the appellant, learned counsel submitted that the photocopy of the ticket possessed by the appellant was produced before the Investigation Officer, G.R.P. and its number was mentioned in the claim application. On verification, the ticket was found to be genuine.

To support his argument that the present case is covered by the main body of Section 124-A of the Act which lays down strict liability or no fault liability in case of railway accident, learned counsel relied upon **Union of India vs. Prabhakaran Vijaya Kumar & Ors., 2008(3) R.C.R. (Civil) 577** and **Union of India vs. Smt. Sarla and others, 2011 ACJ 1841.**

Controverting the above arguments, learned counsel for the respondent submitted that the claim application of the appellant was dismissed because the evidence led by him was inconsistent to his own pleadings. In his statement made before the Investigation Officer, G.R.P. on 13.02.2011, he had stated that he and his friends, who were four in number, had purchased a common computerized ticket from Saharanpur for Anandpur Sahib. However, two different passenger tickets were produced by him. The ticket, photocopy of which was produced before the Investigation Officer, G.R.P. bearing No.34451140 was valid for travelling of two persons whereas the ticket subsequently produced by him bearing No.34451142 was valid for four passengers. Secondly, in his statement before the Investigation Officer, G.R.P., he stated that he and his friends had come from Dehradun to Saharanpur by a private vehicle whereas during his

deposition before the Tribunal he stated that they had boarded the train from Dehradun at 6:00 a.m. in the morning. The fluctuating version of the appellant proved that he had cooked up a story. The injury suffered by him was also non-scheduled injury and therefore learned Tribunal rightly dismissed his application.

Having considered the rival contentions of the parties, I find that learned Tribunal proceeded to reject the claim on mere conjectures and technicalities whereas there was sufficient ocular and documentary evidence to prove that the appellant, who was travelling in the train on a valid railway ticket and was a bonafide passenger had unfortunately become victim of an untoward incident and therefore, was entitled to compensation as provided under Section 124-A of the Act. The testimony of Manvinder Singh, Deputy Station Superintendent, Railway Station Kurali was to the effect that when at 6:27 hours, train No.74991-Up had started moving after halt of two minutes, the guard of the train came to his office and told him that a boy had fallen in between the loop line and platform when he was trying to board the train. He stated that the boy was pulled out from the track and a memo with regard to the incident was given to him. Ram Narain Meena, driver of train No.74991-Up admitted that when the train at Kurali railway station started moving at 6:27 hours for going to Churu, the guard of the train used emergency vacuum brake for stopping the train. He added that the guard only knows about the incident.

The statement of Arun Kumar, guard of the train unequivocally supports the version of the appellant. He stated that after he gave whistle

and the train started moving at 6:27 hours for going to Churu, he saw that some boys were trying to board the train from the platform. He then saw that one of the boys fell down from the train. The people shouted and he used emergency vacuum brake for stopping the train. The train immediately stopped, he alighted from the train, reached at the spot alongwith other passengers and pulled out the boy who was lying in between the loop line and the platform. The feet of the boy were badly injured as the skin had come out. He gave memo with regard to the incident to Deputy Station Superintendent, Kurali and the train then left the station at 16:40 hours.

By way of memo Ex.A9, the G.R.P. Incharge and R.P.F. Incharge, Ropar were given information about the incident on the day of accident and it was mentioned therein that one passenger had accidentally fallen from the train and had got entangled in the gap of platform and train and had suffered serious injuries.

There may have been some variation in the statement made by the appellant at different intervals but that is no reason to disbelieve him or reject his claim when from the other documentary and ocular evidence available on record it stands proved that the appellant in the process of boarding a train had fallen down and suffered injuries. It may be true that the appellant was trying to board a moving train when he fell down and suffered injuries and there was no fault on part of the railways, yet the respondent-railways is liable to pay compensation as provided under Section 124-A of the Act.

In Prabhakaran Vijaya Kumar & Ors. case (supra) the Hon'ble

Supreme Court laid down as under:-

“In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in [Section 123\(c\)](#) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the [Railways Act](#). Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.”

[Section 124A](#) lays down strict liability or no fault liability in case of railway accidents. If a case comes within the purview of [Section 124A](#) it is wholly irrelevant as to who was at fault. It is not disputed that the ticket produced by the appellant before the Investigation Officer, G.R.P. on 13.02.2011 when his statement was recorded was a valid ticket. The ticket

produced by him during the trial which was valid for four persons was also a valid ticket. The appellant stated that they were four friends travelling together. It means that the ticket produced by him was genuine. On verification, both the tickets were found to be genuinely issued.

As regards the quantum of compensation to which the appellant can be held entitled to, Rule 3(3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (for short, "the Rules of 1990") reads hereunder:-

"The amount of compensation payable in respect of any injury (other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering, shall be such as the Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable: Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury:

Provided further that the total compensation in respect of all such injuries shall not exceed [rupees eighty thousand]."

The appellant sustained bilateral heel pad avulsion and operation of Debridement and Split Skin Grafting was done. The medical evidence produced by the appellant was not rebutted. The injury suffered by the appellant-claimant is a non-scheduled injury and it does not fall in Part-II or Part-III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1997. However, considering Rule-3(3), the appellant is held entitled to compensation to the tune of

Rs.80,000/- on account of the injuries suffered by him in the untoward incident.

In the above premise, the appeal filed by the appellant is allowed. The respondent-railways is allowed 60 days time to make payment, failing which the appellant shall be entitled to interest at the rate of 12% per annum from the date of this order till realization.

(SNEH PRASHAR)
JUDGE

04.05.2016.
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