

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

**FAO No.1636-2014 (O&M)
Date of Decision: 23.04.2016.**

Union of IndiaAppellant.

VERSUS

Rajendra SinghRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mrs. Abha Rathore, Advocate for the appellant.

Mr. Somesh Gupta, Advocate for the respondent.

SNEH PRASHAR, J.

Assailing the judgment dated 03.12.2013 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (for short, “the Tribunal”) awarding compensation to the tune of Rs.2,50,000/- to the respondent-claimant in claim Case No.OA-II/17 of 2012 filed under Section 16 of the Railway Claims Tribunal Act, 1987 (for short, “the Act of 1987”), the appellant-Union of India, through Deputy Chief Commercial Manager, Northern Railways, Baroda House, New Delhi preferred this appeal.

The facts extracted from the impugned judgment are that on 09.09.2011 claimant-Rajendra Singh alongwith his wife Jaspreet Kaur and sister-in-law Harjinder Kaur was travelling by train No.13308 on valid

passenger ticket from Lohian Khas to Bareilly and that when the train halted at Phillaur railway station, he alighted to take drinking water but due to rush at the shop he got delayed and tried to board the moving train but his foot slipped as a result of which he fell down and sustained serious injuries. He filed an application claiming Rs.6 lacs as compensation against Union of India-appellant.

The petition was contested by the appellant-railways. According to it, no occurrence of the untoward incident as alleged by the claimant had taken place. The preliminary objections raised were that the accident was not covered within the meaning of Section 123(c) read with Section 124-A of the Railways Act, 1989 (for short, "the Act of 1989") and also that the deceased was not a bonafide passenger.

On the basis of pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, learned Tribunal partly allowed the application and awarded compensation to tune of Rs.2,50,000/- alongwith interest at the rate of 6% per annum from 11.01.2012 till the date of order. The appellant-railway was granted 60 days time to make payment failing which the claimant was held entitled simple interest at the rate of 9% per annum from the date of order till the date of payment.

Feeling aggrieved with the judgment dated 03.12.2013, the appellant-Union of India preferred the instant appeal.

The submissions made by Mrs. Abha Rathore, learned counsel for the appellant and Mr. Somesh Gupta, learned counsel for the respondent have been considered.

At the very outset, learned counsel for the appellant argued that in his application given before learned Tribunal Rajendra Singh (respondent-claimant) had admitted that he was trying to board a moving train when his foot slipped and as a result of the same he fell down and sustained serious injuries. The pleadings clearly indicate that there was intentional negligence on part of the claimant as he was trying to board a moving train. The proviso to Section 124-A of the Act of 1989 dis-entitles a passenger from claiming compensation if it is found that he suffered injury due to his own 'criminal act'. The negligence displayed by the claimant amounted to a 'criminal act' and therefore the Railway Administration was not responsible for the injuries suffered by him.

Learned counsel further argued with vehemence that the claimant had failed to produce required evidence to prove occurrence of any untoward incident on the platform of railway station Phillaur. The enquiry held by the railway authorities into the incident proved that occurrence of no untoward incident was mentioned in the daily diary of station master of Phillaur or in the station diary dated 09.09.2011 relating to the period the train in question stopped and left the station. The enquiry also revealed that there was no shop or stall selling water on the platform as referred to in the statement by the claimant at the relevant time. The RPF escort travelling in the train was also not aware of the accident as they received no information

that any person had fallen from the train at Phillaur station. The GRP received information from C.M.C., Medical College, Ludhiana that too on the next day of the alleged incident. The said circumstances collectively prove that no accident or untoward incident as alleged by the claimant had taken place at railway station Phillaur and the story presented by him is false.

There appears no merit in the arguments of learned counsel for the appellant. Admittedly, on receipt of information from C.M.C., Ludhiana, the G.R.P. Phillaur official reached the hospital and recorded the statement of injured Rajendra Singh, who produced copy of train ticket Ex.Lohian Khas to Bareilly. During investigation, the train ticket was got verified and found to be correct and valid. The original train ticket Ex.A4 for three adults for second class male/express train was tendered in evidence before learned Tribunal. No evidence was led by the appellant to disown the ticket and rebut the said evidence. As such, the finding of learned Tribunal that the applicant was a bonafide passenger and possessed a valid train ticket at the time of accident calls for no intervention.

As regards occurrence of the untoward incident at railway station Phillaur, during which the claimant sustained injuries, RW1 Subodh Chaudhary, Station Master, Phillaur may have testified that no accident as alleged by the claimant had taken place during his duty hours from 12:00 to 24:00 hours on 09.09.2011 at railway station Phillaur when train No.13308 arrived at platform No.3, Phillaur at 21.41 hours and departed at 21:43 hours, but the enquiry held by the G.R.P. and the documents of the hospital

produced by claimant-Rajendra Singh proved that the claimant had an accidental fall from train No.13308 Dn Dhanbad Express at Phillaur railway station. He was first admitted in Civil Hospital, Phillaur and then in C.M.C., Ludhiana by the G.R.P. officials. Ex.A7 is the casualty FIR form to SHO/Divn. No.3, Ludhiana wherein it is stated that claimant-Rajendra Singh of village Pehanion of Utarakhand had been admitted in the hospital after injury at Phillaur railway station. Thus, there is enough ocular and documentary evidence to prove the occurrence of untoward incident that took place at Phillaur railway station and during which the claimant suffered injuries.

Indeed, the claimant stated that he alighted from the train at Phillaur railway station to take water but in the meantime the train started moving and when he was trying to board the train his foot slipped and he accidentally fell down and got seriously injured, which shows that he was trying to board a moving train. Such an attempt to board a moving train may be a negligent act, but, without anything else, it is certainly not a 'criminal act'. In **Union of India vs. Prabhakaran Vijaya Kumar & Ors., 2008(3) R.C.R. (Civil) 577** it was found that the deceased fell down from the compartment of the train when the train was moving. It was held by Hon'ble Supreme Court that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in

Section 123(c) of the Railways Act.

In **Jameela & Ors. vs. Union of India, 2010(4) R.C.R. (Civil)**

362 the deceased was standing at the open door of running train compartment from where he fell down. It was held that the act of the deceased may be a negligent act, even a rash act, but the railway is liable to pay compensation. It was also laid down that the negligence of this kind which is not very uncommon on Indian trains is not the same thing as a 'criminal act' mentioned in clause-C to the proviso to Section 124-A.

In the above premise, the finding of learned Tribunal that it was a simple case of accident to fall from the train and the claimant was entitled to compensation is affirmed. There being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

23.04.2016.
jitender