

The brief facts of the case are that on 7.4.2012 at about 9:30 pm, Sharm Singh son of Partap Singh, who belonged to Saharanpur, alongwith his two friends boarded HW-Barmer Link Express from Saharanpur to Ambala Cantt. for his onward journey to Amritsar. It is stated that the said train was over-crowded. When the said train reached Dukheri Railway Station at Km 257/7-9 on the bridge of Tangri river near Ambala, the train took a sudden jerk and the deceased fell down from the said train and got seriously injured. He was taken to Government Hospital, Ambala Cantt. where he was declared brought dead. The railway police reached the spot and conducted the inquest proceedings and prepared the inquest report.

FAO No. 1839 of 2014 (O/M)

From the search of the body, ordinary railway ticket was also recovered.

The stand of the railway in the written statement is that deceased was not the passenger of the said train. He was not a bonafide passenger and, therefore, the applicants are not entitled to compensation. It was denied that the deceased Sharm Singh was travelling from Saharanpur to Ambala Cantt. It was further stated that as per the inquest proceedings, the head of the deceased was severed from the neck and upper portion of body was found lying in the middle of the track and lower part of body was found lying outside the railway track, which is not possible in the accident as a result of fall from a moving train.

From the pleadings, following issues were framed by the Tribunal :-

1. Whether the deceased was a bonafide passenger at the time of incident ?
2. Whether the incident is covered within ambit of section 123 (C) read with section 124-A of the Railways Act ?
3. Whether the applicant(s) is/are the sole dependents of the deceased in this case ?
4. Relief.

The Tribunal recorded the finding that when the GRP reached the spot, two railway gang-men and two persons, namely, Sunil and another were present. The injuries show that these are not possible due to fall from a moving train. In the same breath, it was also held that it is clearly a criminal negligence on the part of the deceased as he was hanging outside of the train compartment and leaning out and struck with a railway bridge, which is clearly a self inflicted injury due to criminal negligence on the part of the

FAO No. 1839 of 2014 (O/M)

-3-

deceased. It was further held that the poles of the bridge near the railway track are fixed at such a distance that no passenger can be struck even if he is standing on the gate. It is only possible if any person is hanging outside the door of the compartment. The evidence of the co-passenger was not believed.

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

First of all, it is to be seen whether the deceased was a bonafide passenger ? The perusal of the railway ticket (Annexure-A-3) shows that when the dead body was found on the next day i.e. 8.4.2012 at about 8:15 AM and it was reported by the gang-men, the GRP reached the spot and conducted the inquest proceedings and in the inquest report, the said railway ticket (Annexure-A-3) was found, which was meant for three adults from Saharanpur to Ambala Cantt. and the railway ticket was purchased on the previous day. The deceased belonged to Saharanpur. The said railway station Dukheri is nearer to Ambala. Therefore, it has to be held that the deceased came from Saharanpur towards Ambala in the train.

Now, when it is found that the deceased was travelling in the said train, the next question would arise whether the deceased committed suicide or he accidentally fell from the train as a result of which he received injuries ?

However, the possibility of suicide is ruled out from several facts. Firstly, the deceased belonged to Saharanpur and he will not come to such a far away place and commit suicide by lying on the railway track somewhere at night time. Secondly, the Tribunal has laid emphasis only on the fact that the head of the deceased was severed and lying in the middle of

FAO No. 1839 of 2014 (O/M)

railway track and the lower part of the body (Torso) was lying outside the railway track. The Tribunal is of the view that such injury is not possible as a result of fall from the train.

The post mortem report shows that there were multiple bruises all over the body. The skull was badly crushed, left almost missing, separated from the lower level of C1 to C7. Multiple fracture of ribs on both sides. Upper part of the chest was also found crushed with the internal organs lying outside. The right arm was found amputated from the level of elbow level. The left arm was found amputated at the level of mid arm. The deformity and fracture of underlying bones of the left leg with multiple bruises all over outer wall.

Had the deceased committed the suicide by lying on the track, though the head could be severed, but such other injuries, as described above on the chest, both the arms and legs, are not possible. The presence of such injuries shows that the deceased probably struck against any pole of the bridge as he was violently thrown out of the train and then his body might have struck against the train and probably his head sucked under the moving train with the result that it was severed and the severance of both the arms and fracture in the left leg and injuries on the chest took place with the other organs coming out. The injuries only show that the deceased was violently thrown out and probably struck against the pole and then got sucked under the moving train and was run over. The injuries itself, in my view, ruled out the possibility of suicide coupled with the other facts that the deceased belonged to Saharanpur and will not come to such a far away place just to commit suicide by lying on the railway track. It is also observed that the deceased was carrying a valid ticket and he was a bonafide

FAO No. 1839 of 2014 (O/M)

passenger. There is a rule of strict liability in case of fall of a passenger from the train. Even if the passenger is negligent, the compensation could not be denied unless his case falls under any of clauses of Section 124-A of the Railways Act. The self inflicted injuries appear to have been misinterpreted by the Tribunal. It is an injury, which is voluntarily suffered by victim. It does not include the accidental injury, which may be due to negligence of the victim. Lying before the train or jumping in front of the train could be a few instances of self inflicted injuries. Here, it is found that the deceased was probably violently thrown out of the train and was run over by the running train, in which he was travelling. Therefore, even though the co-passenger witness did not pull the chain of the train and did not inform the railway police, the railway is still liable to pay the compensation since its liability is proved in accordance with law. Accordingly, the impugned judgment is set aside. The appeal is allowed. The respondents are ordered to pay Rs. 4 lacs compensation to the appellants in equal share with interest at the rate of 9% per annum from 19.4.2012 i.e. when the claim petition was filed till payment.

(KULDIP SINGH)
JUDGE

21.9.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes