

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

**FAO No.413 of 2014 (O&M)
Date of Decision: 12.05.2016.**

Union of IndiaAppellant.

VERSUS

Devki DeviRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

SNEH PRASHAR, J.

CM-1222-CII-2014

There being delay of 77 days in filing the appeal, an application under Section 5 of the Limitation Act for condonation of delay was filed by the appellant.

Considering the averments made in the application, the delay in filing the appeal is condoned and the application is disposed of.

FAO-413-2014 (O&M)

Assailing the judgment dated 04.06.2013 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (for short, "the Tribunal") awarding compensation to the tune of Rs.4,00,000/- to the respondent-claimant in claim Case No.OA-II/261/2011 filed under the provisions of

Section 16 of the Railway Claims Tribunal Act, 1987 (for short, “the Act”), the appellant-Union of India, through General Manager, Northern Railway, New Delhi preferred this appeal.

The submissions made by Ms. Abha Rathore, learned counsel for appellant have been considered.

Learned counsel for the appellant argued that the deceased was an army personnel and as per averments of the claimant was travelling in the train on computerized ticket issued against military warrant Ex.Bangalore to Jammu Tawi and had accidentally fallen from the running train between Sarai Banjara and Sadhugarh railway stations. His dead body was found lying in the down-line at KM 304/12 by the key-man. However, during personal search of the dead body, no passenger ticket was recovered from his possession. Learned Tribunal wrongly relying upon the enquiry report of the military authorities had accepted that the deceased was a bonafide passenger and had died in an untoward incident and had proceeded to allow compensation to the tune of Rs.4 lacs to his mother Smt. Devki Devi (respondent). The Divisional Railway Manager enquiry report as well as the report of the enquiry conducted by the police authorities, according to which the deceased was not a bonafide passenger, were ignored by learned Tribunal.

There appears no merit in the argument of learned counsel for the appellant. The findings of learned Tribunal considering rival contentions of the parties are as under:-

“Admittedly no train ticket was recovered from the

person of deceased in fard jamatalashi and only a bill of grocery items was recovered from the person of deceased on which basis, the GRP contacted army authorities who reached the spot and identified the deceased as No.14618932H Hav Pushkar Chand of 15 Corps Zone, Wksp. As per DRM report and affidavits of RW1, RW2, the deceased's dead body was found lying between the down line at km 304/14-304/12 between Sadhugarh and Sarai Banjara and no train ticket or any travel authority was recovered from the person of deceased. The applicant has filed military enquiry report on which basis, it is established that the deceased was working as No.14618932H NK Pushkar Chand in 15 CORPS ZONE WKSP with posting at Srinagar and had gone to Bangalore on upg course class II to I Course from 28 Feb 2011 to 26 Mar 2011 at ASC Centre (South) Bangalore. It is also established from this enquiry report that another military personnel Hav Chef (Spl) Y.B. Thapa had also gone to Bangalore for the said course and was travelling with the deceased. It is seen that both the passengers were travelling in Bangalore-Nizamuddin Rajdhani Express and then boarded New Delhi-Jammu Tawi Rajdhani Express on 28.03.2011 at 19:30 hours from New Delhi railway station with berth No.27 and 29 in coach No.B-1. It is also seen from the report that both the passengers had their dinner together at around 2130 hours and then they had gone to sleep at their respective berths and when the train reached Jammu Tawi railway station at around 0540 hours in the early morning, the deceased was found missing and his colleague searched him but not found and he informed the matter to Adjutant of his unit of missing of late Hav Pushkar Chand. The unit of the deceased tried to locate the deceased and sent two persons to Ambala and from Ambala they reached Rajpura where they found the dead body of deceased

in the dead-house and identified. The unit people got postmortem of deceased done and then brought the dead body to the native place of deceased and cremated it according to Hindu rites on 31.03.2011. It is thus established from the military enquiry report that the deceased was travelling in Rajdhani Express train Ex. New Delhi to Jammu and fell down accidentally between Sarai Banjara and Sadhugarh. Admittedly, no train ticket was found by GRP from the person of deceased but as the body of the deceased was mutilated badly and it seems that no efforts were made by GRP or any railway officials to search the train ticket etc. nearby the dead-body, it could not be presumed that the deceased was ticket less traveller. From the enquiry report of military also, it is established that the deceased was travelling in Rajdhani Express train in B-1 coach with berth No.27/29 against military warrant, though no train ticket or warrant was produced by the applicant, but keeping in view the military enquiry report, it can safely be presumed that the deceased was travelling on valid train ticket at the time of incident. GRP in the inquest proceeding also support the case of the applicant that the deceased fell down from the running train.”

Learned counsel for the appellant failed to demonstrate any misreading or misappreciation of evidence, led by the parties before learned Tribunal. The onus was on the appellant-railways to prove that the deceased was a ticket less passenger but they adduced no substantive evidence to discharge the onus on them. The fact that the dead body was found between down-line i.e. between Sadhugarh and Sarai Banjara at KM 304/12 on his way back to his unit in Srinagar from Bangalore where he had gone to attend a course, leaves no doubt that the deceased was travelling in

Rajdhani Express train. It had come in the enquiry held by the military authorities that the deceased was in B1 coach on berth No.27/29 against military warrant and was travelling with Havaladar Pushkar Chand who too had gone to attend the coarse at Bangalore and after boarding the train from New Delhi they both had taken dinner together in the night before going to sleep and it was in the morning when the train reached Jammu Tawi that Havaladar Pushkar Chand found the deceased missing from his berth and gave information about the same to the unit of the deceased. The appellant-railways failed to rebut the evidence to the said effect. In the proved set of facts, learned Tribunal rightly held the deceased a bonafide passenger who became victim of an untoward incident which comes in the ambit of Section 123(c)(2) read with Section 124-A of the Railways Act, 1989.

In the above premise, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

12.05.2016.
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