

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

**FAO No.2442 of 2016 (O&M)
Date of Decision: 02.05.2016.**

Union of India

....Appellant.

VERSUS

Joginder Pal

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sanjiv Ghai, Advocate for the appellant.

SNEH PRASHAR, J.

CM-9015-16-2016

There being delay of 10 days in filing and 45 days in refiling the appeal, separate applications under Section 5 of the Limitation Act and under Section 151 of the Code of Civil Procedure for condonation of delay were filed by the appellant.

Considering the averments made in the applications, the delay in filing as well as in refiling the appeal is condoned subject to all just exceptions and the applications are disposed of.

FAO-2442-2016

Assailing the award dated 09.10.2015 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (for short, "the Tribunal")

awarding compensation to the tune of Rs.2,40,000/- to the respondent-claimant in claim Case No.OA-IIU/2013/0081 filed under the provisions of the Railways Act, 1989 (for short, "the Act"), the appellant-Union of India, through General Manager, Northern Railway, New Delhi preferred this appeal.

Precisely, the relevant facts are that on 29.10.2011 in the evening at about 8:00 p.m., Joginder Pal (claimant-respondent) boarded DMU train from Kandrori railway station for going to Pathankot. While boarding the train, he slipped, fell down and suffered injuries. He was immediately taken to Civil Hospital, Pathankot by means of an emergency van by the G.R.P. from where he was referred to General Hospital, Amritsar. His left leg was amputated. Submitting that he was travelling against passenger ticket No.51191777, the claimant filed a petition claiming compensation to the tune of Rs.10 lacs.

The respondent contested the petition raising objection that the incident was not covered under Section 123-C read with Section 124-A of the Act. The version of the claimant was fictitious and the injury suffered by him was 'self inflicted'. It was also denied that the claimant was a bonafide passenger. On the basis of the pleadings of the parties, issues were settled. 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 accepted the application and awarded compensation to the tune of Rs.2,40,000/- to the claimant with interest at the rate of 6% per annum from the date of

application till the date of decision. The Railway administration was allowed 60 days time to make payment failing which the claimant was held entitled to recover the said amount with interest at the rate of 9% per annum from the date of order till realization.

Feeling aggrieved with the award dated 09.10.2015, the appellant-Union of India preferred the instant appeal.

The submissions made by Mr. Sanjiv Ghai, learned counsel for appellant have been considered.

The main argument of learned counsel for the appellant is that the claimant suffered injuries as a result of his own negligence as he was trying to board a moving train. In his statement during the enquiry he admitted that he fell down when he was trying to board a moving train. He was also not a bonafide passenger as he was travelling without ticket. The timing of the train mentioned in the ticket produced by the claimant was 20:56 hours whereas the train which he was trying to board had left Kandrori railway station at 20:26 hours. As such, the ticket did not relate to the train the claimant was trying to board. Thus, the material available on record proved that the claim petition was not maintainable under the provisions of Section 124-A of the Act.

There appears no merit in the argument of learned counsel for the appellant. Admittedly, the claimant was trying to board DMU passenger train from Kandrori railway station when he fell down and suffered injuries. The D.R.M. report corroborated his version as it was mentioned in the same that a person fell down from the train and got injured while trying to board

running train No.54621. The number of the passenger ticket held by the claimant was also mentioned in the DRM report which on verification was found to be genuine. For the reason that the time of the train on the ticket was mentioned as 20:56 hours whereas the train the claimant was trying to board had left Kandrori railway station at 20:26 hours is immaterial when it is not the version of the appellant-railways that the passenger ticket of the claimant was genuine and he had purchased the same before boarding the train.

As regards the factum of occurrence, it was observed by learned Tribunal that the railway points-man Rajender Kumar admitted in his statement that he had seen the injured-claimant falling from train No.54621. In his statement recorded during enquiry, the claimant also stated that when he was trying to board the train, it started moving and he fell down.

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 case in hand, admittedly the claimant fell when he was trying to board the train which had started moving. It was an untoward incident within the meaning of Section 123(c) of the Act and the claimant was rightly awarded compensation by learned Tribunal.

There being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

02.05.2016.
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