

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

FAO No. 8856 of 2014 (O&M)
Date of Decision: 07.12.2016

NEELAM RANI AND OTHERS

.. Appellants

VS.

UNION OF INDIA

...Respondent

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH.**

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

 Mr. Sandeep Suri, Advocate,
 for the respondents.

KULDIP SINGH, J (ORAL)

This is the first appeal filed against the judgment dated 10.07.2014 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred as 'the Tribunal) vide which the claim application filed by the claimants (appellants herein) was dismissed.

The brief facts of this case are that Harish Kumar son of Chaman Lal alongwith with his elder daughter Poonam, had gone to visit his daughter at Amritsar on account of Rakhi festival. It comes out that while coming back to Jagadhri, Harish Kumar and Poonam, who was stated to be carrying a minor child in her lap, came from Amritsar to Jalandhar by Bus. As per the version of Poonam they purchased a computerized ticket for two persons at Jalandhar railway station and boarded the Chattisgarh Express for Jagadhri. When the train reached near Jagadhri workshop railway station, Harish Kumar went near the gate of the coach, the train took a jerk and Harish Kumar accidentally fell from the train. The train was immediately stopped. Her daughter Poonam immediately alighted and arranged for the

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ambulance and took her father to Railway Hospital, Jagadhari in ambulance where Harish Kumar was declared dead by the doctors. It is stated that the ticket was lost in the accident.

The respondents have stated that the deceased was not a bonafide passenger as no ticket was produced by the applicant. No such alleged accident resulting in death of Harish Kumar took place within the meaning of section 123 of the Railways act, 1989 (for short “the Act”)

From the pleadings the following issues were framed:-

- 1) Whether the deceased was a bonafide passenger of train at the time of incident ?
- 2) Whether the incident is covered within the ambit of 123 (c) (2) read with Section 124-A of the Railways Act?
- 3) Whether the applicant(s) is / are only dependent(s) of the deceased?
- 4) Relief.

The Tribunal has recorded the finding that no ticket was found on the person of the deceased nor produced by the appellants, therefore, the deceased was not the bonafide passenger of the train at the time of alleged incident. The Tribunal also relied upon the statement of a Railway Guard namely Vinod Kumar, to hold that in fact the deceased-Harish Kumar had jumped from the running train when the train was at the speed of 20 -25 kilometres. Therefore, it is a self inflicted injury within the meaning of 124 (A) of the Act. Hence, the claim petition of the applicant was dismissed by the Tribunal

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

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First of all, this Court is to determine as to whether it was an untoward incident involving Railways. The evidence of the both the parties show that the fall of Harish Kumar from train and consequent receipt of injuries are not disputed. However, there is a small variation in the version. According to the appellants, Harish Kumar (deceased) was standing near the door of the coach and due to sudden jerk, he fell down from the train near Jagadhari workshop railway station. However, the Railway Guard-Vinod Kumar has maintained that the deceased had jump from the train when it was at a speed of 20-25 kilometer per hour. The report of the Railway Guard makes it clear that according to him the deceased had jumped from the train and was run over by the train. He himself had stopped the train by applying the pressure brakes. The deceased was removed to the Railway Hospital, Jagadhri where he was declared as dead on arrival

Admittedly, the petitioner was travelling in Coach No. 22 and the Railway Guard was in Coach No. 24. Poonam (AW-8), the daughter of Harish Kumar (deceased) while appearing in witness box has also affirmed the said fact. She herself did not see the accident and stated that she was informed by the co-passengers.

I am of the view that the statement of Railway Guard-Vinod Kumar that the deceased jumped from the train and that he saw him jumping from the train, appears to be little exaggeration and cannot be believed in toto. All the coaches are parallel and from the parallel coach one can only see someone falling from the train and it is very difficult to make out whether that is the jump from the train or Harish Kumar was pushed outside as a result of the jerk, as the train was approaching Jagadhri workshop railway

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station. The fact remains that the deceased-Harish Kumar fell from the train and was run over by it. Therefore, it is an untoward incident involving the Railways. The possibility of deceased-Harish Kumar jumping from the running train is ruled out from the fact that he was accompanied by his daughter Poonam, who was carrying a minor child in her lap, which is not impeached during her cross examination.

The presence of his daughter is also indicated from the memo of the doctor (*Annexure A-6*). The doctor of the Railway Hospital has intimated the SHO that one unknown patient was brought dead and was received from railway station, Jagadhari. The patient was brought by one lady attendant. It was further informed that the said lady had taken back the body by hiring a truck bearing registration No. HR-58-9628. Her contact No. was also mentioned in the said memo. Therefore, this makes it evident that Poonam (AW-2) is telling the truth that she was accompanying her father at the time of accident and had taken him to the hospital, who was badly crushed and ultimately died. Therefore, probably in a hurry, for one reason or the other, the names and particulars of the deceased and the female attendant were not recorded. However, in the present case, the identity of the deceased is not disputed.

Therefore, it is established that at the time of incident Poonam was accompanying her father. Therefore, her version cannot be discarded when it is read with the version of the Railway Guard who has further affirms that the after the incident the train was stopped immediately.

Admittedly, in this case no ticket was found from the person of the deceased. As per version of the Poonam, AW-2, two computerized ticket

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for two persons was purchased from the railway station Jalandhar. She was thoroughly questioned as to from which platform the train starts to which she stated that the train starts from platform No. 2, which is in my view is correct. The fact that Poonam had given the details of boarding the train strengthen her statement that she had accompanied her father and that ticket was purchased by the deceased in her presence.

Now the question would arise whether in the given circumstances the tickets could be lost? For this purpose, the nature of injury will help this Court in arriving at the correct conclusion.

The injury reports shows that the deceased was wearing red check shirt, white baniyan, grey pant and grey underwear. From the post mortem, the following injuries were found:-

1. Crushed and amputated right lower limb at the level of below knee.
2. Crushed injury with lacerated wound of size 7" X 5" of the right thigh exposed muscle and broken bones.
3. Crushed injury with lacerated wound of size 7" X 5" of the left thigh exposed muscle and broken bones.
4. Crushed injury of the left lower limb below the knee. Skin of the injured part was evused out exposing muscles and bones.
5. Lacerated wound of size 2" X 0.5" above left eye on the forehead. On exploration underlying frontal bone fractured with SDH and EDH present.
6. Lacerated wound of size 2" X 1" above left ear. On exploration underlying temoral bone fractured with SDH and EDH present.
7. Lacerated wound with bruise of sice 4"X 3" on right shoulder.

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The nature of injuries shows that the right and left thighs were badly crushed. The muscles were exposed and the bones were broken. The thigh is a part where the pockets of the pants are found. When the part of the body, upon which pockets were there, was badly crushed, the computerized ticket in the shape of small piece of paper is likely to be either lost or destroyed. In the circumstances, the statement of Poonam is to be believed that the ticket was lost in the said accident.

It being so, the findings of the Tribunal on issues No. 1 and 2 are hereby reversed and the same are decided in favour of the claimants (appellants herein).

In view of the foregoing discussion, the impugned judgement dated 10.07.2014 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh is set aside. The application is allowed. The respondent is directed to pay ₹ 4.00 Lakh compensation to the appellants in equal shares with interest @ 9% per annum from the date of filing of claim application i.e. 13.09.2013 till its payment.

In view of the above, the present appeal stands allowed.

December 7, 2016
Suresh Kumar

(KULDIP SINGH)
JUDGE

	✓	
<i>Whether speaking / reasoned</i>	<i>Yes</i>	<i>/ No</i>
	✓	
<i>Whether Reportable</i>	<i>Yes</i>	<i>/ No</i>