

FAO-9484-2014 (O&M)

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

FAO-9484-2014 (O&M)
Date of Decision: 27.07.2016

MANDEEP KAUR AND OTHERS ***... Petitioners***
VS.
UNION OF INDIA ***..Respondent***

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

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

Mr. Kulwant Kaur Kahlon, Advocate,
for the respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment? **Yes***
2. *To be referred to the Reporter or not. **Yes***
3. *Whether the judgment should be reported in the digest? **Yes***

KULDIP SINGH (J.)

This is the first appeal filed against the judgement dated 15.09.2014 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh headed by Member (Technical) Suredra Kumar Jatav vide which the claim application by the applicants (appellants herein) was dismissed.

The facts of the case are that on 01.04.2012 Balkaran Singh @ Balkar, S/o Darshan Singh alongwith his wife-Mandeep Kaur and two children (appellants herein) were travelling in Kalka Mail Express train from Bathinda to Haridwar. They purchased computerized tickets for all of them, one for two adults and one for two children. On the night intervening 1/2.4.2012, when the train reached Nabha-Dabhlan railway station, Balkaran Singh @ Balkar went to the washroom. After attending the call of the nature, he stood near the gate of the coach. At that very point of time, the train took jerk, as a result of which Balkaran Singh @ Balkar lost his balance and fell from the running train and got seriously injured. His wife Mandeep Kaur raised hue and cry and requested

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the co-passengers to pull the chain but the train did not stop and stopped only at the Patiala Railway Station. Immediately, thereafter, Mandeep Kaur and her children alighted from the train and asked railway employees to enquire about her husband-Balkaran Singh @ Balkar. After some enquiry, they came to know that Balkaran Singh @ Balkar has been referred to Rajindra Hospital Patiala. Then Mandeep Kaur reached Rajindra Hospital, Patiala. She came to know that the gateman had informed the Nabha Station Master that one person is lying in between the Nabha-Dabhlan Railway station. As the condition of the injured Balkaran Singh @ Balkar was serious, so he was referred to the PGI, Chandigarh and remained under treatment in PGI, Chandigarh from 02.04.2012 to 07.04.2012. An ASI of General Railway Police reached PGI, Chandigarh for recording the statement but the injured Balkaran Singh @ Balkar was not in a position to make the statement. Thereafter, injured Balkaran Singh @ Balkar was shifted to Guru Gobind Singh Medical College and Hospital, Faridkot on 07.04.2012. However, on 09.04.2012 injured Balkaran Singh @ Balkar succumbed to the injuries. On receiving the information about his death, the officials from Genral Railway Police (GRP) reached the hospital at Faridkot and conducted the inquest proceedings. On 28.04.2012, GRP called Mandeep Kaur (Appellant No. 1) wife of the deceased and other relative to their Police Post at Nabha for recording their statement. Appellant No. 1 produced two tickets bearing No. S-61591643 and S-61591644 of the said Kalka Mail Express train from Bathinda to Haridwar

In the written statement the Railways has denied any untoward incident resulting in the death of deceased Balkaran Singh @ Balkar. Rather, it is stated that the whole story is concocted. The injuries, if any, must be due to

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the sole negligence or criminal act of the deceased. The deceased Balkaran Singh @ Balkar was not the bonafide passenger of the train as he was not having any railway ticket at the time of the incident. For the disposal of the claim application, the following issues were determined: -

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

After hearing the counsel for both the parties, the Railways Claims Tribunal was of the view that tickets of the deceased was produced by Mandeep Kaur wife of the deceased before GRP on 28.04.2012 through a memo. The tickets were not produced on the date of the death of the deceased. The tickets were also not produced when the officials of GRP visited PGIMER, Chandigarh and also on 09.04.2012, on the date of death when the inquest proceedings were conducted. The relevant extract from the order is reproduced as under: -

“It is not understood as to why the tickets have not been produced before and why the jamatalashi was not conducted by GRP on the date of death. Why the applicants did not produce the tickets when the GRP first visited in PGI/Chandigarh and again on 09.04.2012 on the date of death when GRP conducted the inquest proceedings. The deceased was travelling with his family i.e. wife and children why he purchased two separate tickets? Why a combined ticket was not purchased by them. Not only this, there are two tickets, one for two adults and another for 1 adult. As per pleadings deceased was travelling with his wife and two minor children, which means two adults and two children. Separate

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mention is made in every ticket for adults and children. As such, there was no need to purchase two tickets. Moreover, the alleged tickets have been produced only on 28.04.2012 i.e. 27 days after the occurrence of incident which create doubt about the genuineness of the tickets and even travelling of AW-1, the wife of deceased alongwith the deceased. There is no evidence to prove that she was travelling with the deceased. Tickets have been procured later and planted just to claim the compensation by filing a false case on the basis of a concocted story. Statement and affidavit of AW-1 give following information:-

- 1. Her husband went to toilet at 2.30 hours of 02.04.2012 when the train was moving from Nabha station.*
- 2. She applied ACP and also shouted. It is extremely unbelievable that a husband falls down from a coach and his wife could not get help from any co-passenger. Normally doors are closed in night hours. Why the deceased went to the doors at 02.30 hours? The whole story appears to be concocted.”*

The Railway Claims Tribunal, Chandigarh further went on to observe that there was no witness of the railway who had seen any passenger falling from the train. It is not understood that as to why any person will stand on the gate of the running train in late night at 2.30 a.m. and that too from the off side of the coach. The Tribunal also recorded inconsistency in the statement of the wife of the deceased as to whether he had gone to fetch some water or to the toilet. Accordingly, the claim application was dismissed by the Railway Claims Tribunal, Chandigarh.

I have heard learned counsel for the parties.

After going through file of the Railway Claims Tribunal, I find that the judgment of Railway Claims Tribunal, Chandigarh is perverse. This Court is yet to find such a perverse judgment wherein the claim case has been

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dealt with, as if it is a case of murder, requiring the standard of proofs for conviction in a criminal case.

The perusal of the tickets shows that these are the computerized tickets, issued for ordinary class; one ticket is for two adults and the other is for one adult. The Tribunal lost the sight of fact that Booking Clerk might have issued one full ticket for the two minors, for which half ticket each was required. However, in any case, for the deceased and his wife there was a valid ticket. Since, the ticket is computerized and bearing serial number, it is not possible to procure the same later on. In the computerized tickets, the time of the issuance of said tickets can be verified from the computer as on 01.04.2012. It is also to be appreciated that after receiving the injuries in the intervening night of 1/2.04.2012, the deceased was taken to one or the other hospital for treatment. He was first taken to Rajindra Hospital, Patiala, then shifted to PGI, Chandigarh and thereafter to Guru Gobind Singh Medical College and Hospital, Faridkot, where he succumbed to the injuries on 09.04.2012. Wife of the deceased was having two minor children, who are aged about 10 and 7 years, at the time of filing the claim application. She must be running from one hospital to another. Therefore, it will be unjust to expect that in the available time, she will come up with the procured tickets and produce the same before the GRP as a professional litigant.

After the appellant lost her husband on 09.04.2012, it will take some time for her to compose and only thereafter she was called by the GRP to their Police Post at Nabha to put forward her case, by making the statement and also produce the tickets. It is not the case of the Railways that the tickets

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are fake and not issued by the Railways. The Railways should have been decided such like case out of the Court.

Now, while coming to the question regarding discrepancies, it is to be noted that it is not a criminal case wherein facts are required to be proved beyond all reasonable doubts. Even in the criminal cases, the case requires corroboration on all the material particulars and minor discrepancies here and there are to be ignored. In this case, the fact remain that the deceased was travelling in the train and he was having a valid ticket. For one or the other reason, he went to the washroom side and stood near the gate. Generally, in the passenger class, the doors are not closed at night. The doors are closed in the Sleeper class and Air Conditioned class where there is an attendant. It can be at the most called a foolish act of the deceased which costed him his life.

In these circumstances, deceased is held to be the bonafide passenger of the train. It is not the case that the deceased himself jumped from the train and committed suicide. He fell down from the train, which is an untoward incident. The fact that the deceased was removed by the railways authority to the Rajindra Hospital, Patiala, has not been denied and moreover also recorded in the DRM report.

The Railways Claim Tribunal, Chandigarh has mentioned that there is no witness of the Railways, who has seen the fall of any passenger from the train. I failed to understand that as to how the Tribunal expect that any outside independent witness would be available in the midnight at 2.30 am near railway line in the secluded place between Nabha and Dabhlan to witness the accident. Here in this case, the passenger of the train could be the best witness. The wife of the deceased who was travelling in the train with him had

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made the statement of Oath. Merely, on account of some minor discrepancies, it could not be discarded.

In our present social set up, even the co-passenger will not come to the Court to make the statement as they do not want to get involved in any controversy or unnecessary harassment on account of appearance in the Court.

The claim could be denied only on the grounds mentioned in Section 124-A of the Railways Act, 1989. However, the present case is a case of fall from the running train when the deceased was travelling with his wife and two minor children and is not covered under any of the said grounds.

It being so, it is found that the judgement passed by Railway Claims Tribunal, Chandigarh is perverse, against all the cannons governing the grant of compensation and spirit of the Railways Claims Tribunal Act, 1987, which is social welfare legislation. Accordingly, the same is set aside. Consequently, the present appeal is allowed directing the respondent to pay ₹ 4.00 lakhs compensation to the appellants alongwith interest @ 9 % per annum from the date of the filing of the claim application i.e. 18.07.2012 till the payment is actually made.

The copy of the judgement be also conveyed to Member (Technical) Suredra Kumar Jatav for future guidance.

July 27, 2016

Suresh Kumar

[KULDIP SINGH]

JUDGE

✓

Whether speaking / reasoned

Yes / No

✓

Whether Reportable

Yes / No