

The railways (respondent) in the reply has taken the stand that no untoward incident took place and that the deceased was not a bonafide passenger.

FAO No. 4385 of 2005 (O/M)

From the pleadings, following issues were framed :-

- (1) Whether any untoward incident as defined u/s 123 (C) took place, as alleged ?
- (2) Whether deceased was a bonafide passenger on 3.10.2002 in train No. 3 NKM ?
- (3) Whether applicant is the sole dependent of the deceased ?
- (4) Whether applicants are covered within definition of dependent ?
- (5) What was the financial dependency of the applicants upon the deceased ?
- (6) To what amount of compensation applicants are entitled ?
- (7) Relief.

The Tribunal decided issue No. 1 in favour of applicants. However, while deciding issue No. 2, it took the view on the version of co-passenger Bachchu Singh that after the accident, the train halted at Kurukshetra station only is not trustworthy and the same was decided against the applicants. Therefore, the story of fall from the train was disbelieved and consequently, issues No. 3 to 7 were also decided against the applicants and the claim petition was dismissed.

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

In this case, admittedly, Bachchu Singh was travelling with Raj Kumar (since deceased). It is Bachchu Singh, who had taken Raj Kumar to Civil Hospital, Kurukshetra where he expired. It is stated so in the inquest report of the Government Railway Police. Therefore, the presence of Bachchu Singh (co-passenger) is proved from the investigation of the GRP. The Tribunal relied upon the minor discrepancies and drew its

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own conclusion to disbelieve the statement of Bachchu Singh. The Tribunal took the view that the statement of Bachchu Singh cannot be accepted, as the deceased, in place of going to the gate of the compartment could see the coming station from the window. There is no evidence that there was rush in the train. There was no reason for the driver to apply sudden brakes when the station was only two kilometers away. The Tribunal disbelieved that the train did not stop when the chain was pulled and only stopped at Kurukshetra station. There is no explanation as to why the co-passenger Bachchu Singh did not inform the Assistant Station Master and other staff before going to the spot to bring the injured.

I am of the view that the said discrepancies are not sufficient to disbelieve the statement of Bachchu Singh. It depends upon the mentality of a person whether he wants to see the coming station from the door or from the window. Even if there is no rush and no sudden brakes are applied even then when the train changes the line while approaching the station, the possibility of jerk is there and consequently, due to the jerk, a man standing on the door may fall down. So far as the alarm chain is concerned, there is no evidence that the alarm chain was in working order and did work when it was pulled. Moreover, the first priority of Bachchu Singh was to remove the injured to the hospital rather than informing the GRP or the railway authorities. Therefore, the said expectation is unwanted. The fact remains that Raj Kumar had fallen down while travelling in the train between Amin and Kurukshetra Jn. and that he was removed to Civil Hospital, Kurukshetra where he died. The post mortem report shows that the injuries are due to result of fall from the train. The discrepancies pointed out by the Tribunal have been discussed and

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discarded above. In view of the matter, the findings of the Tribunal on issues No. 2 to 7 are reversed and these stand decided in favour of the appellants-appellants.

As a result of the foregoing discussion, the impugned judgment dated 27.7.2005 is set aside and the claim application is allowed. Respondents are ordered to pay Rs. 4,00,000/- compensation to the applicants/appellants with interest at the rate of 9% per annum from the date of filing the claim application i.e. 8.6.2001 till the date of actual payment.

(KULDIP SINGH)
JUDGE

14.3.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes