

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

**FAO No.4136 of 2008 (O&M)
Date of decision : March 14, 2017**

Komal Sharma and others Appellants

Versus

Union of India Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Paul S. Saini, Advocate for the appellants.

Mr. Sandeep Vermani, Advocate for the respondent.

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

KULDIP SINGH J. (ORAL)

This is the first appeal filed by the applicants-appellants against the judgment dated 07.02.2008 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, vide which the claim application of the applicants-appellants was dismissed.

The facts of the case are that on 18.12.1997, Naresh Kumar Sharma (now deceased) had gone to see off his relative at Panipat Railway Station. There, he purchased a valid platform ticket at 10.45 p.m. It was winter's time and visibility was very poor due to heavy fog. His relative had to go to Vaishno Devi and they also purchased their tickets. At about 11.30 p.m., the relatives of Naresh Kumar Sharma (deceased) boarded the train and left for Vaishno Devi. However, somebody pushed Naresh Kumar Sharma from behind, as a result of which, he struck against the bogie of the

other running train and sustained injuries and died at the spot. According to the applicants-appellants, GRP, Panipat had delivered scooter's key, office's key, a platform ticket No.61685046, dated 18.12.1997 along with cash of ₹700/- to the widow of the deceased.

The respondents in the reply took the plea that the deceased was not a bonafide passenger. The injuries are self inflicted injuries. Hence, the railway is not liable to pay compensation.

From the pleadings, following issues were framed:

- 1. Whether the deceased was a bonafide passenger, as alleged?*
- 2. Whether the deceased died in an untoward incident, as alleged?*
- 3. Whether the incident in question falls within the ambit of S.123(C) read with S.124-A of the Rlys Act?*
- 4. Whether the applicants are the only dependants of the deceased?*
- 5. To what amount of compensation, if any, are the applicants entitled?*
- 6. Relief.”*

The Tribunal took issue Nos.1, 2 and 3 together and doubted the version given by Shashi Sharma, widow of the deceased. The version of Sanjay Kumar, a relative of the deceased, who was to go to Vaishno Devi, was also doubted. It was observed that the dead body was found on 19.12.1997 at about 9.30 a.m. by one Phool Singh, Clerk, Railway Station, Panipat. He informed the ASM on duty Shri Gupta. It was also observed that in the recovery memo nothing has been shown to be recovered. The dead body was lying near the guard box room and it is not possible that at a busy station like Panipat railway station, nobody noticed the dead body

from midnight till 9.30 of the next morning. It is stated that as per the recovery memo, nothing was recovered. Therefore, the origin of the platform ticket was also doubted. Accordingly, the claim application was dismissed by the Tribunal.

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

So far as the late detection of the dead body is concerned, it is to be noted that the date of the occurrence is middle of December when usually there is heavy fog and extreme cold weather condition in the northern region of the country. It is stated in the claim application itself that on the said date, there was heavy fog and visibility was very poor. Therefore, it happens that in the early morning hours, there is heavy fog and visibility in the early morning hours is very poor and some visibility is restored only around 9.10 a.m. Had it been the case that it was a clear weather, then there could have been some force in the observation of the Tribunal as to why somebody did not notice the dead body from midnight of 18.12.1997 till next morning at 9.00 a.m. Due to weather condition accompanied by the heavy fog, there could be some delay in detection of the dead body.

So far as, the statement of Sanjay Kumar, AW-2 is concerned, he has specifically stated that deceased Naresh Kumar Sharma had come to see him off. He had purchased tickets for Jammu Tawi as he and his family members had to go the Vaishno Devi and one platform ticket was also purchased for Naresh Kumar Sharma (deceased). He saw Naresh Kumar Sharma (deceased) waving them while standing at platform No.3. The

witness was not cross-examined to the effect that he did not go to Vaishno Devi by Jammu Tawi. Therefore, the statement of Sanjay Kumar has to be believed that deceased Naresh Kumar Sharma had come to see them off at Panipat Railway Station and a valid platform ticket was purchased. When Jammu Tawi left, the deceased was still at the railway platform.

Now, coming to the platform ticket (Ex.A-4), it comes out that the platform ticket bearing No.61685046 was purchased on 18.12.1997 at 22.54 hours i.e. 10:54 p.m., meaning thereby that the ticket was purchased a little before 11 p.m. midnight. Thereafter, the deceased must have gone to the platform. The platform ticket is a computerized ticket and it is impossible to fabricate the same. It is also to be noted that in the winter season at midnight, very few persons come to see off their relations at the railway platform and buy platform ticket. Therefore, it is difficult to assume that the applicant-appellants might have arranged the platform ticket from somebody, who had come to see off his relatives. It is to be noted that the deceased did not belong to Panipat itself. He belonged to Karnal and had come to Panipat on the request of witness Sanjay Kumar to stay in his house since they were going to Vaishno Devi. Therefore, it is impossible for a person, who lives in Karnal to procure a platform ticket of the same time to put up a false claim. If the GRP has not shown any article in the pocket of the deceased, it does not mean that the Court is to believe the said memo blindly. Sometimes, on account of death, the police became compassionate and handed over the belonging of the deceased to the family. Otherwise, when the deceased had come to see off his relatives at platform, it is also difficult to believe that he was not having anything in his pocket. Therefore,

the version given by Rajesh Kumar has to be believed that a platform ticket (Ex.A-4) was purchased for the deceased.

Now, the question would arise as to how the deceased had died? For this purpose, the inquest report will help in concluding the manner of death. The dead body was found between the platform and the track near the guard box room, which means that the deceased fell between the platform and the track. Since, the railway platform is at a height than the railway track, therefore, the object lying between the track and the platform is not visible unless someone comes near to the edge of the platform. The injuries show that the head was cut from the left side and one leg was also broken and there were bruises on the remaining part of the body. The fact that head was not completely cut but was partly cut from left side, goes to show that the deceased fell between the track and the platform and was ran over by the train.

Section 124-A of the Railways Act, 1989 explains that the passenger including a person, who has purchased a valid platform ticket and becomes the victim of the untoward incident.

The occurrence in the present case, is an untoward incident. It is not a case of suicide nor same is pleaded by the railway. The railway has not placed on file the DRM report. It being so, it is held that the deceased was having a valid platform ticket and died in an untoward incident involving railway. Hence, the findings of the Tribunal on issue Nos.1 to 3 are reversed. Consequently, the findings recorded on issue Nos.5 and 6 are also reversed.

In view of the forgoing discussion, the impugned judgment dated 07.02.2008 is set aside. The present appeal is allowed and the respondents are ordered to pay ₹4,00,000/- as compensation to the applicants-appellants along with interest @ 9% per annum from the date of filing of the claim application i.e. 19.11.2003 till actual payment. Out of the total amount of compensation, 50% shall go to the widow of the deceased Shashi Sharma, who is to run day to day affairs of the family and the remaining shall be equally shared by the minor children of the deceased i.e. applicant-appellant Nos.1 to 4. The share of the minor children shall be invested in FDRs in a nationalized bank of the choice of their mother, wherein their date of birth shall be recorded and on their becoming major, the amount shall be released to them without any further orders from the Court. However, their mother can withdraw the interest on FDRs and use the same for their upbringing.

(KULDIP SINGH)
JUDGE

March 14, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes