

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

**FAO No.4815 of 2008 (O&M)
Date of decision : February 17, 2017**

Veer Singh and another

..... Appellants

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

Mr. Karminder Singh, 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 against the judgment dated 13.03.2008 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal'), vide which the claim application of the applicants-appellants was dismissed.

As per the story put forward by the applicants-appellants, on 07.02.2005 their father Jile Singh (deceased) was travelling from Sonapat to Budha Khera by train No.5 JPR and was sitting on the lower seat of the coach. He was carrying valid second class ticket bearing No.81385882 from Sonapat to Budha Khera. Two boys were sitting on the upper birth of the coach along with some luggage. Unfortunately, the upper birth broke down and luggage fell on Jile Singh, who got injured. He was ultimately admitted to PGI, Rohtak, where he succumbed to injuries on 11.02.2005.

In the reply, the railway took the plea that the alleged incident

mentioned by the applicants-appellants is not a case of untoward incident involving railway as the upper berth was broken and had fallen on Jile Singh due to which he sustained injuries and ultimately died. The deceased had made statement before the police that no one is at fault for the injuries sustained by him. The applicants-appellants are the major sons and are self dependent. Therefore, they are not covered under Section 123(c) of the Railways Act. There is no evidence regarding purchasing of the railway ticket by the deceased. There is no mention as to how and from where the said ticket was found. The possibility of procurement of the same from other passenger is there.

In support of its case, one of the applicants-appellants, Veer Singh, son of the deceased, examined himself as a witness.

It also comes out that to rebut the evidence of the applicants-appellants, no evidence was led by the respondent. The Tribunal after examining the statement of Veer Singh, found many discrepancies. The Tribunal noted that there is an over-writing on the statement so as to read the date 08.02.2005 as 07.02.2005, which is visible and appears to deliberately done to match the date of the ticket. The statement of the deceased was recorded on 10.02.2005, whereas the police had received intimation from PGI, Rohtak on 11.02.2005 and accordingly, Gugan Ram, ASI, Jind was deputed to go to PGI, Rohtak. According to the Tribunal, it is paradoxical as to how the statement could be recorded one day in advance (on 10.02.2005). The Tribunal also doubted the statement of Veer Singh and his daily pass from Sonapat to Gaziabad. It also doubted that 8-9 years old son of Veer Singh accompanied him (Jile Singh) to the railway station as it

is difficult to assume that child of 8-9 years would go to drop someone much senior in age. The Tribunal observed that as per postmortem report, the deceased died due to spinal injuries, which has been given as natural cause by the doctor as well as the SHO, who signed the verification on 19.02.2005. The Tribunal also doubted the final report of SHO dated 11.03.2006, which was recorded after one year, wherein there is mention of falling of the seat/birth in the train being the cause of injuries. The Tribunal while disbelieving the statement of Veer Singh, had a word of praise for himself, stating that perhaps the claimants-appellants do not know that the Member/Technical on the Bench is an Ex. Railway Officer, who knows the rules. Consequently, the findings on issue Nos.1 and 2 were recorded against the claimants-appellants. In issue No.3, it was stated that nothing was stated about the mother. Therefore, it cannot be stated that the applicants-appellants are the only dependents.

While dismissing the claim application, it was observed that the investigations in the manipulations of GRP papers appear imminent by appropriate authority so as to determine at what level and by whom this is done, the Registry may send a copy of this judgment with appropriate self-contained communication to DGP, Haryana for necessary action.

The matter was decided by the Member (Technical) of the Tribunal.

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

First of all it is to be noticed that the ticket in question is a computerized ticket from Sonapat to Budha Khera (Annexure A-3), which

was issued on 07.02.2005 at 09:57 i.e. 9.57 a.m. The applicants-appellants have given the train number in the claim application i.e. Train No.5JPR. Not so many people were travelling from Sonapat to Budha Khera. Therefore, the doubt of the Tribunal that the ticket was procured later on is unfounded and based on supposition and cannot be accepted.

Now, coming to the injuries mentioned in the postmortem report, it comes out that Member Technical was factually incorrect in recording the injuries and the cause of death. The injury as recorded in the postmortem report (Annexure A-5), is reproduced as under:

“ A swelling around the neck posteriorly. On dissection of the neck at posterior aspect. There was clotting of blood at the region and fracture of 3rd and 4th cervical vertebrae.”

The abovenoted injury is not an injury on the spine rather the injury is on the neck, which normally prove to be fatal. What the doctor had reported while giving the opinion regarding death is that the death is due to spinal cord injury and its complications, which can cause death in the natural course of events. The word 'spinal cord' has been added later on by way of correction. However, the injury on the neck and the injury to the 3rd and 4th cervical vertebrae were the cause of death. Therefore, there is an apparent misreading of the evidence. It appears that though, the Member Technical was aware about the rules of railway but he did not know the law and rules about the appreciation of the medical evidence. Such an injury on the neck is likely when a heavy thing falls on the head, resulting in fracture of cervical vertebrae. Such injury is normally fatal to the injured.

The Tribunal also lost the sight of fact that the applicants-

appellants are unlikely to fabricate such injuries so as to get the compensation of ₹4,00,000/-. The Tribunal has also relied upon the discrepancies in disbelieving that Veer Singh, son of deceased Jile Singh might have seen his father at railway station.

I am of the view that it is immaterial. The incident with the deceased took place in the railway compartment and the applicant-appellant Veer Singh did not claim that he or his minor son was present when the incident took place. The Tribunal also failed to appreciate that according to the cross-examination of Veer Singh, he had seen the broken seat after 5-6 days of the incident when the train was parked in the yard and welding work was going on. No suggestion was put to the witness that he never visited the said train and witnessed the damaged seat/birth. The Tribunal heavily relied upon some correction of date in the statement.

I am of the view that some time due to clerical error, wrong date is recorded and then the same is corrected. From the said correction, it cannot be assumed that the correction was made to corroborate the same with the ticket, which is unlikely to be procured. The Tribunal also added as to how the statement could be recorded on 10.02.2005 whereas the police was informed on 11.02.2005. Here also, the Tribunal had erred gravely. The Tribunal is not aware of the procedure that when an injured is brought to the hospital with unnatural injuries, the hospital authorities has to immediately inform the concerned police. Later on, if the injured dies, the second intimation is sent to the concerned police. Therefore, when Jile Singh (now deceased) was brought to PGI, Rohtak, first information was sent to the concerned General Railway Police Station, which is GRP in this case. The

intimation was sent to the GRP as the attendants of deceased might have claim that the injuries are received as a result of untoward incident involving the railway. Otherwise, normally in case of other injuries, the concerned police station is intimated. The Tribunal also failed to appreciate that whenever an incident is recorded, the police take their own time in submitting the final report. Therefore, if the police submitted the final report after one year, then it cannot be concluded that the same is manipulated. The investigation was carried out by the GRP and it was mentioned that it was an untoward incident involving railway. The version of the applicants-appellants was never disbelieved by the GRP. Here the railway did not carry out the internal investigation. Neither DRM report was produced nor any body from the railway including guard, driver, ticket collector etc. was examined to state that the upper berth of the compartment of the railway had not broken down and the luggage did not fall on Jile Singh (now deceased).

In this way, the evidence of the applicants-appellants remained unrebutted. Consequently, the impugned judgment dated 13.03.2008 passed by the Tribunal is found to be perverted and is accordingly set aside and the findings on the issue Nos.1 and 2 are reversed and decided in favour of the applicants-appellants. If the mother's name of the applicants-appellants is disclosed by them, that does not mean that the wife of the deceased (mother of the applicants) is alive. Assuming that the mother of the applicants-appellants is alive and if she does not come forward to make any claim, the claim is disbursed to the applicants-appellants who come forward on behalf of all the applicants-appellants. Therefore, the findings on issue No.3 are also reversed.

As a result of the foregoing discussion, the impugned judgment dated 13.03.2008 is hereby set aside including the part sending a copy of this judgment to the DGP, Haryana for necessary action. The Railway is ordered to pay Rs.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. 08.11.2005 till the date of payment. The railway may consider sending this judgment to the said officer, Member Technical, who had passed the impugned judgment for future guidance.

(KULDIP SINGH)
JUDGE

February 17, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes