

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

FAO No. 5146 of 2008 (O&M)
Date of decision : 20th January, 2017

Gian Kaur and another Appellants

Versus

Union of India Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

Ms. Avin Sandhu, Advocate for
Mr. Amit Aggarwal, Advocate for the respondent.

KULDIP SINGH J. (ORAL)

The present appeal is filed against the judgment dated 20.03.2008 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh vide which the appeal filed by the applicant was dismissed.

Gurbaksh Singh, husband of appellant No.1 and father of appellant No.2 was traveling in train No.3049 (Duplicate Howrah) from Rampura (UP) to Jalandhar (Punjab) on 11.01.2003. Near Chawa Railway Station, falling near Patiala, Gurbaksh Singh fell down from the running train and sustained serious injuries. It also comes out from the record that one Gangman, namely, Nachattar Singh noticed the injured lying near the railway track and accordingly, he informed Gangman Soni. Thereafter, they arranged for the first aid and the ambulance and removed the injured to Rajinder Hospital, Patiala, where the injured remained admitted till 16.01.2003 as unknown person and ultimately, succumbed to the injuries. In the meanwhile, his legal heir Rajinder Singh was searching for him and he could search for the deceased only on 23.01.2003 and identified the

deceased from clothes kept in the general railway police. It is stated in the application, that the deceased was traveling valid 2nd Class ticket No. 31979677, PNR No. 6227287421, Seat No. 25, S-5 compartment.

In the reply, the railway took the usual plea that the deceased was not a bonafide passenger and that there was no untoward incident involving in the railway.

From the pleadings, following issues were framed.

- 1. Whether the incident falls within the ambit of Section 123(C) read with Section 124-A of the Railway Act?*
- 2. Whether the deceased died as a result of untoward incident?*
- 3. Whether applicants are the only dependents of the deceased?*
- 4. To what amount of compensation, if any, are the applicants entitled?*
- 5. Relief.*

After recording the evidence of both the parties, the Tribunal minutely examined the facts and found that the ticket was not produced and the claim application was filed after one year and that the record of the chart is kept for one year, therefore it is not proved that the deceased was traveling on a valid ticket. It was also found that clothes of the deceased were not torn out, as inferred from GRP papers and post mortem report. It also talked about the statement of Rajinder Singh, son of the deceased, regarding the late arrival of the train. The statement of Gangman Soni was also disbelieved as he allegedly stated that he was informed by Gang Jamadar at about 3.15 AM that near Chawa at Kms. 343/9-11, one person is lying and that he should go and take care and then he informed ASM Chawa, on duty about this, who in turn, informed HC Devi Chand. On account of this fact, it cannot be assumed that Gang Jamadar was on morning walk or night patrolling at such odd hours in the winter season in

January. The dead body was detected at 3.00 AM. It was further observed that alleged incident took place on 12.01.2003 at around 3.00 AM which means that the train was late by 21 hours. Head Constable Tarsem Lal got admitted the injured to Khanna Hospital. However, as per the Gang-man Soni's alleged statement, Head Constable Devi Chand had put the injured in the ambulance and took him to Khanna Hospital, after being informed by Gangman Soni. There are no papers to suggest that the deceased died in the Patiala Hospital or having been admitted in Khanna Hospital. Therefore the manipulations in the GRP papers cannot be ruled out.

I have heard learned counsel for the parties and perused the record carefully.

I am of the view that the compensation cases are in nature of inquiry and the evidence is not to be scrutinized as if it is a serious criminal case of murder. The Tribunal failed to take notice of the fact that deceased belonged to a village in Kapurthala District and had left Rampura in UP. For such a long distance, it is unlikely that the deceased will travel ticket less, since on a long route there is a possibility of checking of tickets by the ticket staff. The deceased had nothing to do with the place where he was found lying injured. The Tribunal also failed to take notice of the fact that injury on the head and face of the deceased along with a bruises on the body indicate that it is a case of fall from the running train. The GRP has also taken the same opinion in the inquest report. There is nothing to disbelieve the same. The fact remain that deceased was found injured at 3.00 AM on 12.01.2003. It does not mean that the incident had taken place immediately before that. The exact time of the fall from the train is not known.

Therefore, it cannot be said for how much time, the deceased was lying at

the spot. The statement of the Gangman was also wrongly disbelieved. The Gangmen are supposed to keep vigil on the railway track. If one of the Gangmen, happened to detect the injured at 3.00 AM, then it cannot be said that he was not supposed to do so. The fact remain that the Gangman had intimated the railway police and the ambulance was called at the spot to remove the injured. The fact that the deceased died in Patiala Hospital goes to show that he was removed to Patiala Hospital. There is a possibility that first of all, he might have been removed to nearby hospital and thereafter he was removed to Patiala Hospital. Since the deceased was apparently unconscious and his identity was also not known, so the same was recorded as unknown in the post mortem report which goes to show that he was found lying near railway track and that till the time of his death, the deceased remained unconscious and was unable to give his particulars to the hospital authorities or railway police. It is not the case of the GRP that immediately, on finding the injured, either the gangman or the GRP searched the clothes of injured to find out his ticket. In such a case, when the injured was lying at the spot unconscious and remained unconscious and unattended for 4 days even in the hospital, the possibility of loss of ticket is there.

The petitioner, in the application has given the ticket no., PNR No. as well as seat number of the deceased and this could have been easily verified. The Tribunal has observed that chart is maintained for six months only and claim application was filed after one year.

I am of the view that even if it is so, the railway could have easily verified whether any such ticket for such train, was issued. The fact that railway was unable to verify because of lapse of time, is no ground to

presume that no such ticket was issued to the deceased. Therefore, the possibility of loss of ticket in such circumstances is not ruled out. The facts further reveal that even after his death, he was not identified and legal heirs of the deceased, who was searching for him, were able to trace him and identified him from his clothes and photographs only on 23.01.2003 i.e after 11 days of the accident and therefore, in such circumstances, no reasonable man would expect that the ticket will be found from the clothes of the deceased. Since the deceased has left Rampura (U.P.), therefore, the person known to the petitioners might be aware of the ticket No., PNR No. along with seat no. or the one of the petitioners might have noted down the same from the record and mentioned the same in application as the applicants (appellants herein) could trace out the deceased after 11 days of the accident, and apparently, he was cremated as unknown. Therefore, no one should expect that they will be able to lay hand on the railway ticket and place the same on file.

In these circumstances, I am of the view that the findings recorded by the Railway Claims Tribunal are not only incorrect but perverse and against the established law applicable to railway claim cases. As such the impugned judgment is set aside, the application filed by the applicants (appellants herein) is allowed. Railway is held liable to pay the compensation.

Now the question would arise as to what would be the amount of compensation, in view of the facts that vide notification dated 22.12.2016 an amendment was carried out in the Railway Accidents or Untoward Incident (Compensation) Rules 1990, wherein, for Rs. 4 lac, Rs.8 lac have been mentioned. In this case, the occurrence/incident took place on

the appellants filed the claim application before the Tribunal on 12.01.2004, that is after one year and the Tribunal, decided the claim on 20.3.2008, and the appeal is being decided on today in January, 2017. Learned counsel for the appellant has relied upon the judgment of Supreme Court in *Appeal (Civil) No. 1778-79 of 2001, Rathi Menon Vs. Union of India*, decided on 13.03.2001 to claim that the compensation as applicable on the date of final adjudication is to be paid. It was held in the said judgment that the time of ordering payment is more important to determine as to what extent of compensation, which is prescribed by the rules, is to be disbursed to the claimant. It was concluded that the Apex Court is of the definite opinion that the claims Tribunal must consider what the rules were prescribed at the time of making the order for payment of compensation. Therefore, the judgment indicate that the rules as applicable at the time of the adjudication by the Claims Tribunal are to be applied. In the present case, the Claims Tribunal adjudicated the matter on 20.03.2008. Therefore, the rules as applicable on the said date are to be applied. The amendment was made during the pendency of the appeal on December 22, 2016 effective from 1th January, 2017. It being so, I am of the view that the compensation as applicable at the time of adjudication by Railway Claims Tribunal is to be disbursed, which at that time was Rs.4 lac. Consequently, respondents are ordered to pay Rs. 4 lacs compensation with 9% per annum interest from the date of filing of this application i.e. 12.04.2003, till payment.

Disposed of.

20th January, 2017
hemlata

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned

Yes

Whether Reportable

Yes