

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

FAO No. 1893 of 2009 (O&M)
Date of Decision: 06.02.2017

DIYA SAINI AND OTHERS

... Applicants/Appellants

VS.

UNION OF INDIA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

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

Mr. Rahul Garg, Adovcate,
for the respondent-UOI.

KULDIP SINGH, J (ORAL)

CM-9631-CII-2013

Prayer in this application filed under Section 151 of the Civil Procedure Code is for exemption from filing certified copy of Annexure A-1 and placing on record the same.

Heard. Application is allowed and the applicants-apellants are exempted from filing certified copy of Annexure A-1.

Application stands disposed of.

CM-9632-CII-2013

Prayer in this application filed under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code is for amending the memo of parties as the appellant No. 2 Ramesh Kumar S/o Raj Kumar has expired.

Heard. In view of the averments made in the application, the same is allowed and the memo of parties amended and the same is taken on record.

Application stands disposed of.

FAO No. 1893 of 2009 (O&M)**CM-9633-CII-2013**

Prayer in this application filed under Section 151 of the Civil Procedure Code is for hearing the main case/appeal on some early and actual date.

Heard. In view of the averments made in the application, the same is allowed and since the learned counsel for both the parties are ready with arguments, the main case/appeal is taken on Board for hearing today.

Application stands disposed of.

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This is the first appeal filed against the judgment dated 31.12.2008 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short “the Tribunal”) vide which the claim application filed by the applicants-appellants was dismissed.

Brief facts of the present case as stated by the learned counsel for the applicants-appellants are that Raj Kumar deceased, who was working as Driver in Punjab P.W.D., B&R, Mohali/Chandigarh, had gone to his sister’s house at Village Kakru. While returning from there on 16.05.2004 at about 7 a.m., he boarded the train to Chandigarh from Dhulkot Railway Station after purchasing a valid journey ticket. Due to heavy rush in the train, the deceased slipped from the train near village Kakru and died at the spot.

In the reply the railways has denied that the deceased was travelling in the said train. The ticket of the deceased was also denied. It is also denied that the deceased fell from the train.

From the pleadings the following issues were framed: -

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1. *Whether the deceased was a bona fide passenger as alleged?*
2. *Whether the incident in question is covered within ambit of Section 123 (c) read with Section 124-A of the Railways Act?*
3. *Whether the applicants are the only dependents of the deceased?*
4. *Relief.*

After hearing both the parties and examining the evidence, the Tribunal has dismissed the claim application of the claimants. The statement of Ramesh Kumar (AW-2), son of the deceased that he had accompany his father and saw him purchasing the journey ticket, was disbelieved on the ground that in the cross examination, Ramesh Kumar (AW-2) had stated that he did not see his father purchasing the ticket. In the claim application, it is claimed that deceased was a Government employee who was working as Driver in Punjab P.W.D. B&R, Mohali/Chandigarh and was supposed to attend his duties.

Now, a question would arise whether the deceased was a ticketless traveler and consequently not a *bona fide* passenger of the train? The claim made in the application is that train ticket was lost. Unfortunately, in this case, the DRM report and personal search memo were not produced on file. It is the claim of the Railways that nothing was found from the personal search of the deceased-Raj Kumar. In order to examine whether there is possibility of loss of ticket and also to examine as to in which manner deceased-Raj Kumar had died i.e. whether, he died while crossing the railway line or it was a result of fall from the train. The postmortem report shows

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injury in the brain. Little matter of brain was found present. There were multiple lacerated wounds on the left hand. Right foot was badly crushed. Lacerated wounds were found on the right elbow, left knee joint alongwith multiple laceration and abrasions on the entire body. If the injuries are examined, it makes it clear that it is not a case where the deceased was run-over by the train. As per the police report, the dead body was found near the track and not in the middle of the track. If a person who is crossing the railway line is hit by the running train, the nature of the injuries will be entirely different. Here, the nature of the injuries shows that the deceased most likely fell from the running train. His head hit the ground hard with the result that there was damage to the brain. Other injuries on the left hand, right elbow, foot, knee joint and on entire body indicate that the deceased after falling from the train might have rolled over. Since, the petitioner was a Government employee he is supposed to carry some documents, i.e. his official Identity Card or some money. In this case, nothing was found on the personal search of the deceased which is very unusual. Therefore, the possibility of loss of ticket cannot be denied alongwith the other documents/wallet. Therefore, it cannot be said that the deceased was a ticketless traveler. From the injuries, it comes out that the deceased had fallen from the running train. Therefore, there is a liability of the Railways to pay the compensation to the applicants-appellants under Section 124 (A) of the Railway Act.

In view of foregoing discussion, the present appeal is allowed, impugned judgement dated 31.12.2008 is set aside consequently the findings of the Tribunal are hereby reversed. The Railways is ordered to pay

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compensation of ₹4,00,000/- to the applicants-appellants in equal shares
alongwith interest @ 9% per annum from the date of filing of the claim
petition i.e. 30.03.2005 till its payment.

February 6, 2017

Suresh Kumar

**(KULDIP SINGH)
JUDGE**

		✓	
<i>Whether speaking / reasoned</i>	:	Yes	/ No
			✓
<i>Whether Reportable</i>	:	Yes	/ No