

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

**FAO No. 2209 of 2012 (O&M)
Date of decision: 20th February, 2017**

Satya Devi

..... Appellant

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

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

KULDIP SINGH J. (ORAL)

This is first appeal filed against the judgment dated 19.01.2012 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh vide which the claim application of the claimant /appellant was dismissed.

The facts of the case are that Shyam Lal, now deceased, resident of Dhuri had gone to Hissar in search of some work. On 18.05.2010, he informed his elder brother that he is going to Malerkotla from Hissar in search of some work. He reached the railway station and purchased a railway ticket of a passenger train 2nd Class Ticket No. K-61825078 ex. Hissar to Malerkotla and boarded the train. When the train reached Dhuri Railway Station, the deceased alighted from the train for taking some water and eatables. According to the claimants, it appears that when Shyam Lal tried to board a running Dadar Express train at Dhuri railway station, which was also going to Malerkotla, he slipped between platform and the train and got serious injuries. The Guard of Train No.1057,

Lajpat Singh informed the Station Master, Dhuri about the incident. The injured was removed to Civil Hospital, Dhuri where he was declared dead. The General Railway Police carried out the search of the deceased from which the said railway ticket was recovered.

In the reply, the railway took the stand that no untoward incident took place. It was also denied that the deceased was traveling from Hissar to Malerkotla and that he again tried to board the train from Dhuri railway station, the accident was also denied.

From the pleadings following issues were framed:

1. *Whether the deceased was a bonafide passenger at the time of incident?*
2. *Whether the incident is covered within ambit of section 123 (c) (2) read with Section 124-A of the Railways Act?*
3. *Whether the applicant(s) is/are the sole dependents of the deceased?*
4. *Relief.*

The Tribunal after scanning the evidence of both the parties doubted that ticket might have been planted. It was also observed that the deceased was having a 2nd Class ordinary ticket and he tried to board the Dadar Express train and, therefore, the claim application was dismissed.

The extract from the relevant findings recorded by the tribunal are as under:-

“ It appears entirely to be a concocted story and the ticket alleged to have been recovered also seems to be a planted one specially keeping in view of the over all circumstances of the case particularly because the deceased was a resident of Dhuri itself. The alleged ticket was also of a passenger train and under para 258 of Commercial Manual Vol.1 tickets issued for an ordinary passenger train are not made available for a mail / express train as the fare is higher

than that of a mail / express train. Section 55 (s) of the Railways Act assigns “proper pass or ticket” the same meaning as the word 'a proper pass or ticket' used in Section 68 to mean as a pass or ticket by which the person would be authorized to enter the carriage for the purpose of traveling therein as a passenger. Keeping in view all facts and overall circumstances of the case, it cannot be stated that the deceased was a bonafide passenger of the train i.e. the Dadar Express at the time of incident and he was not traveling in any train at that time and instead was trying to board a moving train which is a criminal negligence and he became victim of a self-inflicted injury as was held in FAO No.72 of 2011 by Hon'ble High court of Delhi at New Delhi vide which the Hon'ble High Court observed that whether the negligence in boarding of a running train is normal negligence or criminal negligence depends on the facts of each case and in this case the very fact that 8/9 coaches had passed, that too in a local train which normally gathers great speed immediately after it starts, the negligence in trying to board such a train amounts to criminal negligence so as to hold that the railway /respondent ought not to be held liable for the incident in question and that it should be held that the deceased died on account of self-inflicted injury which is the subject matter of the proviso to Section 124-A of the Railways Act. “

I am of the view that as per the statement of Lajpat Singh, Guard of Train No. 1057 when the train left at 12.10 i.e. on its scheduled time, it stopped at some distance on the platform itself as the people had raised hue and cry that one person while boarding the train had slipped and fell under train. The injured was taken out with the help of the passengers and removed to hospital. It goes to show that an untoward incident had taken place. The train was not at high speed as it stopped at the platform itself. The train stopped for 12 minutes and thereafter again left for

Malerkotla. It goes to show that all the passengers of the said train also left with the train on the same day. The General Railway Police carried out the personal search of the dead body from which the railway ticket was recovered. The ticket is computerized one and as per DRM report at Annexure R-1, same was found to be genuine.

Now the only question arises whether the claim can be declined on the ground that the deceased was having a ordinary ticket of 2nd class where as tried to board mail/express train namely Dadar Express? The Tribunal has mentioned in the judgment itself that in case if a person having ordinary ticket boards any mail/express train, then he is required to pay the difference of the fare between the ordinary train and mail/express train. It means that the ticket itself is not invalid. Though the passenger could be made liable to pay the difference of the fare. The mere fact that the deceased belongs to Dhuri is no ground to hold that a ticket from Hissar to Malerkotla was procured. As observed earlier, all the passengers left within 12 minutes along with train and there was no passenger available who could produce the ticket from Hissar to Malerkotla. The deceased was a poor worker and his family was not in a position to produce such ticket. The ticket was recovered immediately, when the deceased was brought to the hospital. In these circumstances, it has been held that deceased was a bonafide passenger, though he was liable to pay the difference of ordinary and mail/express train fare.

In the circumstances, the finding of the Tribunal on issue Nos. 1 and 2 are reversed and these issues stands decided in favour of the claimant/appellant. Consequently, it is held that claimant are entitled to compensation. The finding on issue No.4 is also reversed.

In view of the above, the appeal is allowed and the impugned judgment dated 19.01.2012 is set aside. The respondent is directed to pay a compensation of Rs. 4 lacs to the claimant/appellant along with interest at the rate of 9%per annum from the date of filing of the claim i.e. 08.11.2010 till the date of payment.

20th February, 2017
hemlata

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned

Yes

Whether Reportable

Yes