

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6496 of 2011(O&M)
Date of decision: 20.02.2017

Kamla Devi and others

.....Appellants

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Paul S. Saini, Advocate for the appellants
Mr.Karminder Singh, Advocate for the respondent
Mr.Raman Sharma, Amicus-Curiae

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

This is first appeal against the judgment dated 12.5.2011 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'), vide which, the application filed by the applicants-appellants was dismissed.

Brief facts of the case are that on 18.3.2010, Pawan Kumar @ Pawan Singh (now deceased), accompanied by his brother-in-law, namely, Ram Niwas, were to go from Gharaunda to Panipat. At about 1.30 pm Pawan Kumar @ Pawan Singh (now deceased) purchased two second class ordinary train tickets, one for himself and the other for his brother-in-law Ram Niwas and kept the same in his pocket. Thereafter, both of them boarded 4 KDM (MEMU) train from railway station Gharaunda. Due to huge rush, Pawan Kumar @ Pawan Singh (now deceased) was standing near

the door of the compartment. When the train reached between Gharaunda and Kohand, Pawan Kumar @ Pawan Singh (now deceased) accidentally fell down from train due to jerk and jolt coupled with the pull and push of passengers, as a result of which he received multiple grievous injuries on the vital parts of his body. His brother-in-law Ram Niwas shouted and pulled the alarm chain but the train did not stop and stopped only at village Kohand. Thereafter, Ram Niwas intimated his sister regarding the accident of Pawan Kumar @ Pawan Singh (now deceased) and de-boarded the train at Kohand railway station. Om Parkash, gang man, sent the intimation to Station Superintendent, Gharaunda regarding the injured. The injured was first taken to Primary Health Centre, Gharaunda where first aid was given to him. From there, he was referred to General Hospital, Karnal, from where he was further referred to PGI, Rohtak on the same day. The injured remained admitted in PGI Rohtak and ultimately succumbed to injuries on 21.3.2010. It is further stated that ticket was lost in the incident.

In the reply, the railway denied that the deceased was travelling in the train and fell from the train. Purchase of two tickets was also denied. It was stated that no ticket was recovered from the deceased. The story of loss of ticket was also denied.

From the pleadings, following issues were framed:-

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

4. Relief

Thereafter, after hearing both the parties, the Tribunal held that the deceased died in an untoward incident involving the railway and accordingly decided issue no.2 in favour of the claimants. However, it was held that the deceased was not a bona fide passenger as no ticket was found from him and consequently, the claim application was dismissed.

I have heard learned counsel for the parties and also learned Amicus Curiae Mr.Raman Sharma and have carefully gone through the file.

It also comes out that vide order dated 21.9.2016, this Court has observed that the matter was decided by a Technical Member only and this Court decided to examine the issue to make certain recommendations whether a particular matter should be heard by a single member or two members.

First of all coming to the merits of the case, the copy of the personal search memo (Ex.A7) shows that personal search of the deceased was conducted on 21.3.2010 only after his death. From the personal search, nothing was recovered from the dead body.

Now, the question of appreciating evidence is as to whether such a personal search memo could be relied upon to hold that the deceased was travelling without a ticket?

In this case, when the deceased fell between Gharaunda and Kohand, his brother-in-law Ram Niwas de-boarded at Kohand railway station. Pawan Kumar @ Pawan Singh was found by Om Parkash, gang man, when he was lying injured near railway track at KM 103/20 between Gharaunda and Kohand. Thereafter, the injured was removed to Primary

Health Centre, Gharaunda, where he was given first aid and then probably keeping in view his serious condition, he was removed to Civil Hospital, Karnal, which is a bigger hospital. It appears that the condition of the injured Pawan Kumar @ Pawan Singh, was found to be serious, therefore, he was further referred to PGI, Rohtak on the same day, where he remained admitted for three days i.e. from 18.3.2010 to 21.3.2010 and ultimately succumbed to injuries on 21.3.2010.

Now, when a injured person was removed from one hospital to another and in this process, he was shifted to three hospitals in a single day, there is every possibility that during the handling, the ticket might have been lost. Sometimes, it also happens that the hospital staff itself tell the attendants to remove all the valuables so that they may not be blamed for theft of the same. In this case, nothing including, the purse, money, papers, gold ring etc. was found, which means that before death of the deceased, all the valuables were removed or got removed by the hospital staff or were voluntarily removed by the attendants to secure them. Therefore, from the mere search memo (Ex.A7), conducted after the death of the deceased, wherein nothing was recovered, it cannot be concluded that the deceased had not purchased any ticket.

There is a testimony in the form of statement of Ram Niwas stating that he was also on the same train and that he had raised hue and cry and in place of de-boarding at Panipat, he de-boarded on next railway station Kohand and informed his sister about the incident. The intimation by Primary Health Centre, Gharaunda to SHO PS Gharaunda dated 18.3.2010 (Ex.A2) to show that till the time of handling of the injured at Primary Health Centre, Gharaunda, his identity was not known as he was

described as 'unknown person' and was referred to Civil Hospital, Karnal. Further, the record of the PGI, Rohtak shows that the name of the deceased finds mention in the intimation (Ex.A3). Similarly, in the intimation sent by Karnal Hospital (Ex.A4), name of the injured finds mention. The date and time of sending intimation is 18.3.2010 at 6.20 pm., which means that by the time injured reached Civil Hospital, Karnal, his attendants had arrived and they attended him at Civil Hospital at Karnal and thereafter at PGI, Rohtak. Therefore, the Tribunal, on the basis of search conducted after the death of the deceased, was not justified in concluding that the deceased was a ticket less traveller. When a person falls from the running train, he rolls over and the possibility of loss of ticket is also there. Secondly, when a person is taken from one hospital to another, sometimes, his clothes which may be torn, are changed and valuables are removed by the attendants themselves or on the instructions of the hospital staff. Therefore, the possibility of loss of ticket is there.

In these circumstances, it cannot be said that the deceased was ticket less traveller. Therefore, the findings of the Tribunal on issue No.1 are reversed and this issue stands decided in favour of the claimants/appellants and against the respondents.

As a result of the foregoing discussion, the appellants shall be entitled to compensation of Rs.four lacs to be paid by the Railway along with interest @ 9% per annum from the date of filing of the claim petition i.e. 3.5.2010 till the date of payment.

It comes out that the matter in this case was decided by a Member Technical only, having been authorized by the Chairman vide order dated 19.11.2007 to try and decide the cases pertaining to untoward incident

and the train accident. The authorization is given apparently under Sub-section (4) of Section 4 of the Railways Claim Tribunal Act, 1987. Section 4(4) is reproduced as under:-

4. (4) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the Jurisdiction, powers and authority of the Claims Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may, by general or special order, specify :

Provided that if at any stage of the hearing of any such case or matter, it appears to the Chairman or such Member that the case or matter is of such nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer, to such Bench as the Chairman may deem fit.

A perusal of aforesaid section shows that admittedly, the Chairman is competent to authorise any member to function as a bench and exercise the jurisdiction, power and authority of the Claims Tribunal. However, the proviso to the said sub-section (4) is equally important which provides that if at any stage of the hearing of any such case or matter, it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer, to such Bench as the Chairman may deem fit.

The difficulty experienced by this Court in the railway claims cases is that though the Members Technical are well qualified in handling the matters regarding the Rules of the railways and departmental procedure, however, many times, they are unable to properly appreciate the evidence

led by the parties, for want of the legal background and also unable to appreciate the medical evidence which is material in many cases to decide whether it is a case of fall from the train or a case of suicide or a case of run over by the train. The result is that many of the judgments of the Railway Claims Tribunals are being reversed on the appreciation of evidence by this Court in the background of the law and on the appreciation of the medical evidence.

Therefore, this Court feels that some categorization should be done as to which cases can be heard by a Technical Member only and which cases should be heard by a Bench consisting of Technical Member and Judicial Member.

Learned Amicus Curiae has produced authority of the Delhi High Court in the case of Union of India and another vs. S.K.Sharma and another, W.P. (C) 7109/2011 decided on 01.03.2013. A perusal of this authority shows that in case pertaining to the Central Administrative Tribunals certain categorization has been done.

I am of the view that the categorization may be useful in cases pertaining to Railway Claims Tribunal also. It is ultimately for the Chairman of the Railway Claims Tribunal to consider and decide as to which cases are to be heard by Member Technical and which cases are to be heard by Bench consisting of Member Technical and Judicial Member. However, this Court is of the view that where appreciation of medical evidence is required to determine the cause of the untoward incident or where evidence is to be appreciated in the background of the Indian Evidence Act and the appreciation of the law of the land, then assistance of Judicial Member is must.

In these circumstances, with the above noted observations, matter is left to be determined by the Chairman, Railway Claims Tribunal as to which cases should be heard by Member Technical only and which cases are to be heard by Bench consisting of Member Technical and Judicial Member. It will be appreciated if certain guidelines are framed or categorization is done by the Chairman in this regard.

A copy of the order be sent to the Chairman, Railway Claims Tribunal, Baroda House, New Delhi, for taking further action in the matter.

20.02.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
Yes