

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

**FAO No.3354 of 2012 (O&M)
Date of decision : March 20, 2017**

Rajan Kumar Mehra

..... Petitioner

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

Mr. G.S. Bajwa, 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 16/17.04.2012 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), vide which the claim application of the applicant-appellant was dismissed.

Brief facts of the case are that the applicant-appellant aged about 21 years, who was running a grocery shop at Banur, boarded the Ex. Nangal Dam train on 09.12.2008. When the train reached near Sarai Banjara railway station at about 4.30 p.m., the applicant-appellant was standing near the door. The other passengers also gathered near the door. When the train slowed down for halt, due to sudden jerk, the applicant-appellant lost his balance and fell down from the moving train. His left arm was crushed

under the wheels of the train. He became unconscious at the spot. Some fellow passengers informed the police. The police removed him to Civil Hospital, Rajpura, from where he was referred to PGI, Chandigarh. He was treated at PGI and his left arm above elbow was amputated on 10.12.2008. On 13.12.2008, he was again admitted to the Fortis Hospital due to complaints of severe pain at operated site and was treated and revision amputation was done on 16.12.2008 and his left humerus was cut by 5 cms. and was discharged on 29.12.2008.

It is also stated in the claim application that the applicant-appellant lost his luggage, purse containing Rs.1,000/-, railway ticket and other documents.

In the written statement, the railway took the plea that the alleged incident is not covered under the ambit of 'untoward incident' as defined in Section 123(c) of the Railways Act, 1989 because it is clearly made out that the applicant-appellant suffered on account of self-inflicted injury; his own criminal act while standing at the door of the moving train. As such, the railway administration is not liable to pay compensation in terms of proviso to Section 124-A of the Railways Act, 1989. It was also denied that the applicant-appellant was a bonafide passenger.

From the pleadings, the Tribunal framed the following issues:

“1. Whether the injured 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 injured person has sustained self-inflicted injuries due to his negligent act?

4. What are the scheduled and un-scheduled injuries sustained by the applicant/injured?

5. Relief.”

The Tribunal took issue Nos.1, 2 and 3 together and came to the conclusion that the applicant-appellant has failed to prove that he was a bonafide passenger as he could not produce the ticket. Consequently, his version that he was travelling in the train was also doubted as it was stated to be thresher injury.

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

First of all, I will examine whether the deceased received injuries as a result of fall from the train. A person may lie but not the documents. The statement of the applicant-appellant is supported by co-passenger Chhotu. The documents of file established beyond doubt that it is untoward incident involving railway. The process was initiated on receiving intimation by the Assistant Station Master, Sarai Banjara to General Railway Police on 09.12.2008 at about 17:15 hours intimating that one person has fell down from 2 SUN train, therefore, necessary action be taken. The same statement was made by the Assistant Station Master to the police. It also comes out that on receiving the said intimation, the General Railway Police, swung into action. It recorded the DDR (Ex.A-2) at 17:50 hours, whereby by referring to the information received from the Assistant Station Master, it was recorded that the injured was got admitted in the Civil Hospital, Rajpura. Thereafter, another DDR was recorded at 8.10 p.m. that the injured was got admitted into A.P. Jain, Civil Hospital, Rajpura and that his family members were informed, who had come to the hospital and that

injured was found unfit to make the statement. Thereafter, it comes out that the injured was removed to PGI, Chandigarh, where the amputation of his left arm above elbow was done. Further discharge summary (Ex.A-4) was prepared on 29.12.2008, which shows that the applicant-appellant was again admitted in Fortis Hospital on 13.12.2008 and discharged on 29.12.2008, where revision amputation was done.

All sequence of events shows that the applicant-appellant fell down from the train. Even in the injury report prepared by the Station Master of Sarai Banjara, in Form -1, it is mentioned that one person had fallen down from 2 SUN train and was got admitted in Civil Hospital, Rajpura. Therefore, the Tribunal erred in concluding that the deceased did not fall from the train. Otherwise, there is no reason of a young boy of 21 years old to be found near the railway track with his left arm crushed under the wheels of the train.

Now, coming to the second part regarding the non-production of the railway ticket. It comes out that when the applicant-appellant fell down from the train, his left arm was crushed and he became unconscious. The police authorities removed him to the Civil Hospital, Rajpura, where his family members were called. Thereafter, he was removed to PGI, Chandigarh. In this process, he was handled by several persons. According to the applicant-appellant, he lost his luggage and purse containing Rs.1,000/- and railway ticket. Therefore, it cannot be said that the applicant-appellant was a ticket less passenger.

The authority of this Court delivered in case of ***“Maru Ram and another v Union of India and another”***, 2016(4) R.C.R.(Civil) 234 is

not attracted in the present case as this Court has come to the conclusion that the possibility of loss of ticket is there. It is to be noted that as per report of DRM and the police report, there was a fair at Fatehgarh Sahib and there was heavy rush in the train. Therefore, due to heavy rush, the possibility of fall from the train cannot be ruled out.

It being so, the findings recorded by the Tribunal on issue Nos.1 to 3 are reversed. The impugned judgment dated 16/17.04.2012 passed by the Tribunal is set aside. As per schedule of the Railways Act, 1989, for the amputation of left arm above elbow joint, a compensation of Rs.3,20,000/- is ordered to be paid by the Railway along with interest @ 9% per annum from the date of filing of the claim application i.e. 13.07.2010 till its actual payment.

As such, the present appeal is allowed.

(KULDIP SINGH)
JUDGE

March 20, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes