

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.4079 of 2012(O&M)

Date of decision: 17.02.2017

Nirmala Devi

.....Appellant

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Ramesh Sharma, Advocate for the appellant
Mr.Praveen Chander Goyal, Advocate for the respondent

- 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 judgment dated 11.5.2012, passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'), vide which, claim application filed by the appellant was dismissed.

Husband of the appellant, Subedar Ramesh Kumar Sharma (now deceased) was an army personnel, posted at Aurangabad. He had to attend the course at Mumbai and for that purpose he was going to attend the training at Mumbai by train. On 6.5.2004 at about 1900 hours his dead body was found lying approximately 300 meters away from Matunga Road Railway Station West near the railway track. It is stated that the deceased was having the travelling warrant issued by the army authorities authorizing him to travel in the train.

Railway in its reply has took the stand that the deceased was not having a valid ticket. He was not the bona fide passenger. There is no proof that he was travelling in the said train at the time of accident and there is also no proof that he was run over by a train.

From the pleadings following issues were framed:-

- 1. Whether the deceased was bonafide passenger of train at the time of incident?*
- 2. Whether the deceased has expired in any incident which does not come under the definition of untoward incident of Railway Act under Section 123(c)(2)?*
- 3. Whether the applicant is the only dependent of deceased?*
- 4. Relief.*

Tribunal held that the deceased was not a bona fide passenger. He was not travelling in the train. Consequently, the application was dismissed.

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

It comes out that Subedar Ramesh Kumar Sharma (deceased) was found lying injured on 6.5.2004 at 3.00 pm. As per Panchnama (Ex.A7), vide date 6.5.2004, it was mentioned by Shri Kale that one male 40 years of age was injured by hitting against some local train. He was rushed to the Seon Hospital for necessary treatment but he died during treatment at 4.11 pm. From his search, one identity card issued by the Indian army authorities, one HMT make wrist watch and Rs.100/- were recovered. The army authorities also inquired into the matter. They recorded the statement of his colleague Parmod Chaudhary (Anx. A5) who stated that he was attached to

17 Rajput regiment w.e.f. 30.4.2004 and used to go to Matunga workshop for turner course. Their class used to start at 6.45 am with a lunch break from 11.30 am to 12.00 pm and used to end at 5.40 pm. On 6.5.2004, Subedar Ramesh Kumar Sharma (deceased) was with them in 6.45 am session and thereafter, everyone went to their respective classes. Ramesh Kumar Sharma (deceased) was not with them afterwards. The Tribunal came to the conclusion that Shri Ramesh Kumar Sharma (deceased) had attended the workshop on 6.5.2004 with other military personnel. It goes to show that he was not travelling in the train from Aurangabad to Mumbai. He was found lying injured at 3.00 pm i.e. during the time when the course was going on from 6.45 am to 5.45 pm. The course was going on at Mutanga workshop and the place of recovery of the deceased is near the said place. The site plan prepared by the army authorities goes to show that the deceased was lying injured near a drain which is two meters away from the railway track. A railway crossing is nearby.

Now, the nature of the injuries would reveal whether it is a case of fall from the train or not?

A perusal of the postmortem report (Annexure A-4) prepared by the army itself shows that there were injuries on the parietal region, right scapula region, linear tissue fracture of occipital bone, fracture of occipital running towards forearm, in addition to injury on the frontal region. All these injuries implies that the deceased was hit by a train and this is not case of fall from the train. When these injuries are co-related with the statement of Parmod Chaudhary, colleague of the deceased, it goes to show that the deceased has to be present in the course from 6.45 am to 5.45 pm. In the morning session, he was found available. Therefore, it is unlikely that he

will travel from Aurangabad to Mumbai around 3.00 p.m. He must be around the place where the training was going on. The place of accident is near the said place of training at Matunga workshop where the turner course was going on.

Therefore, the Tribunal rightly concluded that the deceased was not travelling by the train though in the DRM report there is mentioning of recovery of travelling warrants but such warrants were never produced on file to show that these were meant for the same day. In any case, it is found that the deceased was not travelling on the train on the said date and time. It is a case where the deceased was hit by a train and thrown away near the drain. Report in this regard was made by the police official Shri Kale. Therefore, there is no ground to interfere in the well reasoned judgment of the Tribunal.

Resultantly, the present appeal stands dismissed.

17.02.2017

gk

(Kuldip Singh)

Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes