

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

**FAO No.1985 of 2013 (O&M)
Date of decision : February 15, 2017**

Deepak Sharma and another Appellants

Versus

Union of India and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Budhwar, Advocate for the appellants.

Mr. Karminder Singh, Advocate for the respondents.

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 31.10.2012 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, vide which the claim application of the applicants-appellants was dismissed. As claimed by the applicants-appellant, the brief facts of the case are that on 06.04.2009, at about 5.15 am, Pinky Sharma (since deceased) accompanied by her husband Deepak Sharma and minor son Master Dhruv Sharma, who was less than five years of age boarded DMU train from Jalandhar Cantt. to Fazilka after purchasing two valid journey tickets. Master Dhruv Sharma was below five years of age, therefore, no ticket was required for him. There was no toilet in the DMU train. When the train reached the Jogewal station, deceased Pinky Sharma needed to pass urine. Therefore, she alighted from

the train. When after passing urine, she came back, the train had already started moving. When she tried to board the running train, due to moist on the handle of the train, her hand got slipped from the handle and she fell down and her left hand got amputated being run over by the train. She received multiple injuries. The train was stopped and she was taken into the train to railway station Makhu, where she was taken to the hospital but was declared brought dead.

The railway in its reply had taken the plea that the deceased was not a bonafide passenger within the meaning of Section 123(c) read with Section 124-A of the Railways Act, 1991. The deceased died due her unlawful act. Hence, the railway is not responsible for the same. 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) read with Section 124-A of the Railways Act?

3. Whether the applicant (s) is/are the sole dependents of deceased in this case?

4. Whether the deceased was trying to board the train as applicant has stated in claim application and therefore, respondent is absolved of liability to pay compensation to the dependents of the deceased under Section 124-A proviso of the Railways Act?

5. Relief.”

The Tribunal denied the compensation to the applicants-appellants on the ground that the deceased was running towards a train and hit the coach of the train and fell down and at the time of accident, she was

not a bonafide passenger. The reliance was placed on the DRM as well as the affidavit of the guard.

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

So far as the journey tickets are concerned, these are not denied by the railway. These were produced before the Tribunal and were duly exhibited. The deceased along with her husband and minor son boarded the train from Jalandhar Cantt. for Fazilka. The Jogewal station is at a short distance from Jalandhar Cantt. Admittedly, there are no toilets in the DMU trains. Therefore, if a passenger to go to toilet, he/she has to de-board the train and go to the toilet of the railway station. The DMU train was having two minutes halt at Jogewal station. As the deceased needed to pass the urine, she was to go to the toilet at Jogewal railway station but when she came back, the train had already started moving. Even as per the affidavit of the train guard, the deceased was running towards the train and struck against the coach of the train on account of the fact that the speed of the train was more than the speed of the lady and she was wearing *sari* and *sandals*.

I am of the view that the view taken by the Tribunal is erroneous. In the statement of the husband of the deceased, it was clearly stated that on account of the fact that the deceased was to pass urine and there was no toilet in the train, therefore, she alighted at the Jogewal railway station and when she came back, the train had already started moving. She tried to board the train and grasped the handle of the compartment of the train. There was moist on the handle, due to which her hand slipped and she

fell down and her left hand got amputated being run over by the train. She received multiple injuries. The train was stopped immediately and she was taken into the train to railway station Makhu, where she was taken to the hospital but was declared brought dead. So far as the accident is concerned that is not denied.

I am of the view that when a passenger after buying a valid journey ticket boarded the train and for the reason that there is no toilet facility in the train, he/she has to deboard at a particular railway station and tried to again board the train, he/she continues to be a passenger of the train travelling on a valid ticket. Therefore, the deceased is held to be a bonafide passenger. The statement of the guard of DMU train appears to be contrary to the medical evidence. The medical evidence shows that the left hand of the deceased was cut, which shows that it was a case of run over by the train when deceased fell down while trying to board the train. There were injuries on the right side of the cheek and on the left side of the head. As per postmortem report, there were abrasions on the knee joint, the jaw was fractured and there were abrasions on the right side of the face in addition to amputation of left wrist joint. All these injuries indicate that in all probabilities the deceased while trying to board the train fell down and his left hand was amputated under the wheels of the train and her head struck against the ground. As a result of which, there were injuries on the face and fracture of jaw. She died at Makhu Railway Station. Therefore, it is held that the deceased was a bonafide passenger of the train and that the injuries received by her resulting in her death are the result of untoward incident involving railway. The action of the deceased in trying to board the running

train may be foolish or negligent act but it cannot be called self inflicted injury. Under the Railway Act, there is rule of strict liability on the part of the railway to pay compensation. Therefore, findings on issue Nos.1, 2 and 4 are set aside. As such, the present appeal is allowed. The railway is ordered to pay ₹4,00,000/- as compensation to the applicants-appellants along with interest @ 9% per annum from the date of filing of the claim application i.e. 01.10.2010 till the date of its payment.

(KULDIP SINGH)
JUDGE

February 15, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes