
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.251

FAO No.2216 of 2013

DECIDED ON: July, 04, 2017

GEETA DEVI AND OTHERS

..APPELLANTS

VERSUS

UNION OF INDIA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Upender Prasher, Advocate,
for the appellants.

Mr. G.S. Bajwa, Advocate,
for the respondent.

JASPAL SINGH, J.

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Instant appeal has been filed by unsuccessful claimants-Geeta Devi and others to challenge the Award dated July 17, 2012 passed by learned Railway Claims Tribunal, Chandigarh, whereby claim application bearing case No.OA-II/46/2011 filed by them seeking compensation on account of death of Ishak Mahatam has been dismissed.

2. Brief facts giving rise to the instant appeal are that appellants/claimants preferred an application unfolding that May 29, 2010, Ishak Mahatam aged about 25 years, a labourer by profession, boarded

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Chhattisgarh Express train No.8237-up from Jalandhar railway station for going to Beas. When train was reached in between Suranussi and Kartarpur railway stations, he accidentally fell down from the running train and sustained multiple injuries which proved fatal to him. It has further been appeared that deceased had purchased general ticket from Jalandhar railway station in the presence of his friend namely Dinesh Kumar who left the deceased at the railway station on the day of incident. The matter was reported to the police. The dead body of Ishak Mahatam was shifted to Civil Hospital, Jalandhar, where it was subjected to autopsy on May 30, 2010. The train ticket could not be traced as it was lost during accident.

3. The claim application was resisted by respondent-Railway Department by filing written statement raising preliminary objections inter-alia on the grounds that alleged accident does not fall within the provisions of Section 123(c)(2) read with Section 124-A of the Railways Act; that no untoward incident causing death of Ishak Mahatam took place on the alleged date and place and that deceased was not a bonafide passenger. On merits, it has been alleged that an inquiry by the Railway Department was conducted and deceased was not a bonafide passenger or that he fell down from running train. All the averments have been denied either alleging the same to be wrong or for want of knowledge and respondent accordingly, prayed for the dismissal of the claim application. In order to settle the matter in controversy between the parties, the following issues were culled out by learned Tribunal:-

- i. Whether the deceased was valid passenger of Railway at the time of accident?*

ii. Whether the deceased has been died in an accident which falls under the purview of Section 123(c)(2) of Railways Act?

iii. Whether the applications are valid dependent of the deceased?

iv. Relief.

4. Both parties were afforded an ample opportunity to adduce and conclude their evidence in support of respective pleadings and evidence available on record.

5. After hearing learned counsel for the applicants, issue No.1 was decided against applicants-claimants whereas issue Nos.2 & 3 were decided in their favour. Resultantly, claim application was dismissed vide impugned Award dated July 17, 2012.

6. Aggrieved against impugned Award dated July 17, 2012, claimants have approached this Court by way of filing of instant appeal.

7. In response to notice of motion issued by this Court, Mr. G.S. Bajwa, Advocate, represented respondent/Union of India. The lower court record was also requisitioned and received.

8. While assailing the findings returned by learned Tribunal especially issue No.1 and consequently dismissal of claim application, it has been argued with vehemence by learned counsel for the appellants that same are absolutely against the evidence available on file and settled principles of law. Learned Tribunal has rightly held that deceased had an accidental fall from moving train and further that appellants/claimants are legal dependent of deceased. But while rendering findings on issue No.1, learned Tribunal has fell in error while holding that deceased was not a bonafide passenger at the time of accident. In order to establish that deceased was travelling in the

train and had an accidental fall from moving train, widow of deceased namely Geeta Devi has appeared in witness box as PW-1. She has reiterated the entire facts as unfolded in the claim application. Claimants have also examined AW2-Dinesh Kumar who left the deceased at railway station on May 29, 2010 who was to move Dera Radha Swami Beas (Amritsar) and further that general railway ticket for travelling upto Beas was also purchased by deceased from ticket window in his presence and thereafter AW2-Dinesh Kumar returned. But learned Tribunal has discarded testimony of AW2-Dinesh Kumar while considering his statement by pick and chose. It is well settled proposition of law that statement or testimony of witness has to be read as a whole to work out his intention. Further, learned Tribunal has dismissed the claim application on the ground that deceased was not found in possession of railway ticket. Relying upon the pronouncement delivered in case "Union of India vs. Mamta & ors., 2016 (1) RCR (Civil) 757", it has been argued by the learned counsel for the appellants the mere fact that ticket was not found available from or near body of the deceased is not sufficient to discard the testimony of person who had dropped deceased at railway station and has categorically made a statement that he has seen the deceased while boarding the train. The presumption, therefore, that deceased would have boarded the train with ticket is writ large in the light of the judgment of Patna High Court in case "Bhagmanti Devi vs. The Union of India, in Misc. Appeal No.740 of 2008, dated May 01, 2014", which was subsequently relied upon by this Court in case "Union of India vs. Mamta, (supra)". To the similar fact are the observations made by this Court in case "Union of India vs. Suman, 2013"

(3) RCR (Civil) 700". Thus, merely because at the time of search of body, no ticket has been found on his person or near by the place of incident would not lead to presumption that he was travelling without a valid ticket or without ticket, the possibility of ticket having fallen from the person of deceased during fall from train cannot be ruled out.

9. Adverting to the facts of the case in hand, it has been urged by learned counsel for the appellants that though there is sufficient evidence in the shape of testimony of AW2-Dinesh Kumar that he dropped deceased at railway station, purchased the ticket and boarded the train, then presumption should have been drawn by learned Tribunal that deceased was a bonafide passenger and has lost his life due to accidental fall from running/moving the train. Thus, findings recorded by learned Tribunal on issue No.1 and consequently, dismissal of claim application are liable to be reversed and delivered in favour of appellants/claimants. Resultantly, claim application deserves to be accepted and appellants/claimants deserve just and adequate compensation.

10. On the other hand, Mr. G.S. Bajwa, Advocate has supported impugned Award dated July 17, 2012. He has submitted that learned Tribunal has rightly concluded the claimants have failed to establish that deceased-Ishak Mahatam was a bonafide passenger at the time of his alleged fall from train. Testimony of AW2-Dinesh Kumar has not been taken into consideration by learned Tribunal by pick and chose, rather from the entire statement of AW2-Dinesh Kumar it stands proved beyond doubt that he is a procured witness, neither he dropped deceased in railway station nor railway ticket was purchased by deceased in his presence. His statement

has rightly been discarded by learned Tribunal. Since, it is not proved on record that deceased was a bonafide passenger as defined under Section 2 (29) of The Railway Act, 1989, learned Tribunal has rightly dismissed claim application.

11. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, appraisal of evidence and scrutinizing the impugned Award, this Court does not find any legal and factual weight in the submissions made by learned counsel for the appellants.

12. For the proper appreciation of matter in controversy, it would be desirable to reproduce Section 124-A of The Railway Act which deals with compensation on account of untoward incident, it reads as under:

“124-A. Compensation on account of untoward incident.—

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purposes of this section, “passenger” includes—

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

13. A glance at the aforesaid provision transpires that for the purpose of seeking compensation, the passenger includes a railway servant on duty and a person who has purchased a 'valid ticket' for travelling by train carrying passengers or a valid platform ticket and becomes a victim of untoward incident.

14. A glance at the impugned Award makes it crystal clear that learned Tribunal has come to the conclusion on the basis of evidence available on record that deceased was not a bonafide passenger as appellants have failed to bring on record any material. The appellants/claimants have failed to bring on record the valid ticket authorizing the deceased for travelling by a train. The entire case of the appellants/claimants hinges on the sole testimony of AW2-Dinesh Kumar an alleged eye-witness to establish that deceased was a bonafide passenger, who is alleged to have dropped deceased at railway station and in whose presence deceased had allegedly purchased railway ticket for his journey from Jalandhar to Beas. No doubt, an affidavit furnished by him which is to be read as his examination-in-chief is absolutely in consonance with

averments made in the claim application. But when he was subjected to cross-examination, his aforesaid version stands falsified. In his cross-examination, it has been stated by him that deceased had met him 4-5 days prior to incident and at the time he hastened to add that deceased is used to reside with him, but on the day of incident, deceased would not meet him. It has also been admitted by way of suggestion that deceased neither purchased the ticket in his presence nor he had seen deceased while boarding the train. Even it has also been stated by him that he had met the deceased 4-5 days earlier to incident and further that on the day of incident the deceased did not meet him meaning thereby that AW2-Dinesh Kumar neither accompanied the deceased to railway station on the day of incident as alleged by him nor ticket was purchased in his presence, nor deceased boarded the train. Thus, testimony of AW2-Dinesh Kuamr does not inspire confidence and stood shattered and lost its sanctity.

15. Here it would also be pertinent to mention that had the deceased purchased a ticket or in possession thereof, the same would have been recovered from his person or from place of incident. But at the time of got inspection neither any ticket was recovered nor any other valuable article was found there either from body or from place of incident.

16. As far as judgments relied upon by learned counsel for the appellants captioned as “*Union of India vs. Mamta and ors.; Bhagmanti Devi vs. The Union of India and Union of India vs. Suman*” (supra) are concerned, the same are not applicable in the facts and circumstances of the case in hand and are distinguishable on facts. In those cases, there was sufficient evidence to establish that deceased was dropped by person, who

purchased the ticket in his presence and boarded the train and subsequently, the incident occurred. However, the railway ticket was not found either from body or from place of incident. But in the case in hand, since testimony of AW2-Dinesh Kumar does not inspire confidence and is not worthy of credence as has been discussed above, the deceased cannot be termed to be a bonafide passenger so as to entitle the appellants to the compensation. Learned Tribunal has rightly concluded in this regard while delivering findings on issue No.1 and consequently, dismissal of claim application.

17. As an upshot of the aforesaid discussion, this Court does not find any merit in instant appeal. As such, the same is dismissed, whereby impugned Award dated July 17, 2012 is upheld.

18. No order as to costs.

July 04, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No