

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1439 of 2014 (O&M)
Date of decision : March 09, 2017

Union of India

..... Appellant

Versus

Sukhwinder Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Nitin Kumar, Advocate for the appellant.

Mr. D.K. Sihag, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J. (ORAL)

The present first appeal has been filed by Union of India against the judgment dated 30.09.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), vide which the claim application of the applicants-respondents was allowed and the Railway was ordered to pay Rs.4,00,000/- as compensation to the applicants-respondents along with interest @ 6% per annum from the date of filing of the claim application i.e. 12.12.2011 till the date of Award i.e. 30.09.2013. It was further stipulated that if the payment is not made within 60 days, the applicants-respondents will be entitled to interest @ 9% per annum from 01.10.2013 till its realization.

The facts as alleged in the claim application are that on 05.10.2011, Rama (now deceased) son of Banta Singh, who was serving in

the Indian Army as Subedar boarded the train No.13049 from Bhagalpur to Amritsar. On 08.10.2011, on account of jerk, he fell down from the running train near Sirhind Railway Station as he was standing near the door of the compartment. The train ticket was recovered from the personal search of the deceased. The brief case containing clothes and other valuable documents were lost in the incident.

In the reply, the Railway took the plea that mere recovery of ticket does not establish the factum of actual journey. The deceased was not a bonafide passenger nor he died due to any negligence on the part of the Railway in an untoward incident under Section 123(c)(2) read with Section 124A of the Railways Act, 1989. It was averred that the dead body was found outside of the track on down line between Sirhind and Sadhugarh on 08.10.2011 at 7.30 a.m. as reported to the Station Master, Sirhind by the Key-man Shree Nath. The deceased was performing the alleged journey in a reserved seat, therefore, there is no reason to stand near the door of the railway compartment.

From the pleadings, following issues were framed:

- “1. Whether the deceased was a bonafide passenger of train 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 applicant(s) is/are the sole dependent(s) of the deceased?
4. Relief.”

After going through the evidence led by both the parties and hearing them, the impugned judgment dated 30.09.2013 was passed.

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

Learned counsel for the Railway-appellant has vehemently argued that the deceased was not travelling in Bhagalpur Express from Bhagalpur to Amritsar. It is also argued that train No.13049 reached Sirhind railway station on 08.10.2011 at 9.41 hours and the dead body was recovered at 7.30 hours at Sirhind, which was earlier in time. Therefore, the deceased was not travelling by the said train No.13049, Bhagalpur Express. It is also assailed that the view taken by the Tribunal that as admitted by Babu Lal, Railway Guard, in his statement that the said train No.13049 was running late by 4 hours 5 minutes. Therefore, the deceased might have changed the train and route. Regarding the recovery of the dead body on the down track, the Tribunal took the view that the deceased might have been injured due to fall from the train and might have tried to go to safer place and might have crossed the track.

The examination of the inquest report shows that as per the opinion of the GRP, the death was due to fall from the train. The inquest report (Ex. C-3) shows that both the legs above the knee were found fractured and bones were protruding out. There were injuries in the middle of the forehead and chest below the neck. There were bruises on the entire body. The said injuries confirmed the view taken by the GRP that it is a case of fall from the train.

If the case is examined from a broader perspective, the deceased was an Army-man and he had no job at the place from where his dead body was recovered. He was travelling to Amritsar and his dead body

was found near Sirhind Railway Station, where he apparently fell from the train.

Now, the question would arise whether the deceased was travelling from Bhagalpur to Amritsar as claimed by the applicants-respondents in the claim application or as sought to be projected by the Railway?

I am of the view that the applicants-respondents were not present when the deceased started his journey, they made their averments on the basis of the guess. The proceedings before the Tribunal are in nature of the inquiry. The recovery memo shows that from the dead body in addition to the cash, mobile phone and one railway warrant from Bhagalpur to Amritsar, three railway tickets, one from Bhagalpur to Amritsar, the second one from Kiul Junction to Amritsar and third one from Amritsar to Kiul Junction were recovered. The examination of these tickets shows that all the three tickets bear serial Nos.36686937, 36686938 and 36686939. The two tickets ending with 37 and 38 were purchased for the journey from Bhagalpur to Amritsar and from Kiul Junction to Amritsar respectively against payment of zero money. It further shows that ticket No.36686937 Bhagalpur-Amritsar-Kiu is return soldier ticket purchased against railway warrants issued by the Army authorities. Other two tickets for Kiu to Amritsar and Amritsar to Kiu were issued against Return Soldier Ticket.

The closest examination of both the tickets shows that the ticket ending with 37 was purchased for the journey from Bhagalpur to Amritsar and back to Kiu for train, which scheduled departure on 05.10.2011 at 16:55 i.e. 4.55 p.m. The ticket ending with 38 was also

purchased on 05.10.2011 for Amritsar, which scheduled departure was at 23:17 i.e. 11.17 p.m. It goes to show that the deceased might have missed the first train i.e. Bhagalpur Express, then purchased the second ticket for onward journey to Amritsar and one return journey from Amritsar to Kiul on 27.10.2011. Therefore, it cannot be concluded that the deceased must have travelled in Bhagalpur Express. Most probably, the deceased travelled by Amritsar Express, otherwise there is no reason for the deceased to purchase the second ticket for Amritsar on the same day for different train. Therefore, the plea of the Railway that Bhagalpur Express reached Sirhind Junction at 9:41 hours on 08.10.2011 and the dead body was recovered at 7:30 hours it without any force. When two trains start from the same destination, due to halts at different stations and their different speed, the train starting later can take over the other train and reach earlier. The circumstances otherwise suggest that it is a case of fall from the train. The deceased in this case was an Army man, aged about 40 years and it is quiet possible that after the fall from the train, he did not die. Thus, there is no reason to differ with the view taken by the Tribunal that the deceased might have crossed the track to reach the safer place and reached the down line, where he succumbed to the injuries. In any case, it is a case of death due to untoward incident due to fall from the train. The deceased was a bonafide passenger and was having valid journey ticket at the time of incident. Therefore, the findings recorded by the Tribunal are affirmed. It being so, there are no merits in the present appeal. As such, the same is dismissed.

For filing the frivolous appeal, the Railway is burdened with cost of ₹10,000/- payable to the applicants-respondents. Since the learned counsel for the applicants-respondents states that the amount has been disbursed to the applicants-respondents. Therefore, the security against which the amount was disbursed stand released.

March 09, 2017

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

Yes

(KULDIP SINGH)
JUDGE