

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

**FAO No.1714 of 2014 (O&M)
Date of decision : March 24, 2017**

Rajesh Rani and another Appellants

Versus

Union of India Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Subhash Sachdeva, Advocate for
Mr. S.S. Rana, Advocate for the appellants.

Ms. Kulwant Kaur Kahlon, 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 first appeal against the judgment dated 20.09.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), vide which the claim application filed by the applicants-appellants was dismissed.

Brief facts of the case are that one Randip (now deceased), aged about 26 years, an Agriculturist by profession, who was son of the applicants-appellants is stated to have boarded a train No.2 US from Barara to Ambala Cantt. railway station on 22.05.2009. It is further stated that one Ram Kumar deboarded the said train and he saw Randip (deceased) purchasing the ticket from the ticket window of Barara railway station and boarding the said train. When the train reached between Barara and Mustafabad, Randip (deceased) accidentally fell down from the train and sustained grievous and multiple injuries on the vital parts of his body and

succumbed to the injuries. On 23.05.2009, Om Parkash, driver of another train No.5212 informed the Station Master, Barara regarding the dead body lying near the railway track. It is also stated that the ticket was lost in the incident. Accordingly, GRP conducted the inquest report. Nothing was recovered from the personal search of the deceased. According to the applicants-appellants, when their son did not return for days together, then he enquired from his daughter whereupon she stated that Randip did not come to her place. Thereafter, they started searching for his son from his relatives and also enquired from the railway station about his son and came to know from Shri Ram Kumar resident of Adhoya that on 22.05.2009, when he (Ram Kumar) was coming from Ambala Cantt. to Barara by 2US train and as the train had reached Barara railway station and after de-boarding the train, he was going outside, then in his presence, Randip after purchasing the ticket from the ticket window, boarded the train in his presence. The witness has further stated in his affidavit that thereafter, he along with his son visited railway station Barara, Jagadhri and then Ambala Cantt and came to know that on 23.05.2009, one dead body was found in between railway stations Barara and Mustafabad and on being shown the photograph and clothes, he (deponent) identified the same as that of his son Randip after 14 days of the incident.

The Railway in the reply took the plea that no untoward incident within the meaning of Section 123(c) of the Railways Act, 1989, causing the death of Randip (deceased) took place. He was not a bonafide passenger. It was also stated that the applicants-appellants are resident of a place nearby to Barara and it appeared to be a case of deceased having got

entangles with some moving train and the incident did not fall within the ambit of Section 123(c) of the Railways Act, 1989 as alleged. The proceedings of GRP are not based on any material to support the same.

From the pleadings, the Tribunal issued the following issues:

- “1. Whether the deceased was a bonafide passenger at the time of incident?*
- 2. Whether the incident is covered within the ambit of Section 123(c)(2) read with Section 124-A of the Railways Act?*
- 3. Whether the applicant(s) is/are the sole dependents of the deceased in this case?*
- 4. Relief.”*

The Tribunal while deciding issue Nos.1 and 2 together disbelieved the statement of Ram Kumar that the deceased had boarded the train No.2US in his presence. It was stated that the train No.2US reached late at Barara Station at 20:23 hours and departed therefrom at 20:25 hours and that Ram Kumar had reached Barara Railway Station at 5.30 p.m. and deboarded the said train 2US. Therefore, he could not see the deceased purchasing the ticket and boarding the said train. Reference was also made to some other train bearing No.312 passenger from Amabla, which left Ambala Cantt. Station at 16:25 hours and reached at Barara on the said date at 17:12 hours being late. It also comes out that the distance between Barara and Mustafabad is barely 9 Kms. The Tribunal also took the view that nobody saw the deceased falling from the train and even the family members enquired about him after 14 days. Therefore, the statement of Ram Kumar, witness was disbelieved and it was also disbelieved that the deceased fell from train No.2US. It was also held that the deceased was not

travelling in the said train. It was also observed that there is no reason why the dead body was not noticed on 22.05.2009 and was noticed in the early hours of 23.05.2009 by the driver of another train. The Tribunal also doubted the statements of the applicants-appellants that why they did not bother and enquire from their daughter for 14 days i.e. from 22.05.2009 to 05.06.2009 about the arrival of their son Randip (deceased) and dismissed the claim application.

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

It has come out in the evidence that as per the claim of the applicants-appellants the deceased had boarded the train 2US from Barara Railway Station. It also comes out that as per railway record, the train passed from down side towards Jagadhri are 2SUN, 2US, 5934, 2232, 5934, 8238 and 3006. It also comes out that on the alleged date of incident, one passenger train bearing No.312 from Ambala was scheduled to depart from Ambala at 4.25 p.m. and arrived Barara Railway Station at 5.12 p.m., being late.

The question would arise that when the applicants-appellant are not the eye witnesses either of the boarding of the deceased or of the accident and they relied upon the statement of a third person, whether on the basis of the statement of said person regarding the boarding of the train by the deceased appearing to be doubtful, is a ground to discard the entire claim of the applicants-appellants?

I am of the view that this Court is to first establish whether it is a case of fall from the train? It hardly matter whether it is from the one train

or the other train. For this purpose, this Court has to rely upon the inquest report. A perusal of the inquest report shows that there was injury on the head, multiple abrasions and arm was broken. As per inquest report, the dead body was found by the side of down line. It also comes from the site plan that there is a wall of the bridge on both the sides of the line, where the dead body was found lying. It rules out the possibility that the deceased was crossing the railway line from the said place. Moreover, the injuries suggested that it is a case of fall from the train.

Now, coming to the investigation done by the GRP. The SHO, GRP in his report (Ex.A-1) came to the conclusion that in his opinion, it is a case of death in the railway accident. Some views were expressed in the inquest report.

Now, the question is that whether the inquest report prepared by the GRP, which found the dead body and examined the spot, is to be believed or the DRM report is to be believed?

I am of the view that the GRP, which had prepared the inquest report and examined the dead body and removed it to the hospital, had the better mean to determine whether it is a case of fall from the train or it is a case of unauthorized crossing of the railway line.

It is to be noted that the deceased did not belong to Barara village but he belonged to village Thamber. Therefore, there is no reason for the deceased to cross the railway line from the said place of incident. Otherwise also, it is safe to rely upon the GRP report that the deceased Randip died due to fall from the moving train. It is to be noted that in the post-mortem report, the deceased is mentioned as unknown person. Once, it

is established that the deceased fell from the moving train, now this Court is to decide as to from which train he fell.

I am of the view that since the statement of Ram Kumar is not found to be dependable and there is no eye witness, who saw the deceased boarding the train and it is found that it is a case of fall from the train, therefore, it can be safely assumed that the deceased boarded one or the other train. There are many trains mentioned above running between Ambala to Jagadhari. It also comes out that one passenger train 312 on that day arrived at Barara Railway Station at 5.12 p.m. Since the name and number of the train is seldom noticed by the passenger, therefore, the possibility of misreading of the number of the train is there. However, all the trains belong to the railway and once it is found that the deceased fell from the train, whether from one or the other, it has to be held that it is an untoward incident within the ambit of Section 123(c) of the Railways Act, 1989, involving railway.

Further, now coming to the non-discovery of the ticket, it has come in the statement of the father of the deceased, Naresh Kumar that the deceased had gone to his sister's house with a tin of *desi ghee* and some other belongings. Apparently, when the deceased, who was aged only 26 years old left for his sister's house, he will not go empty handed without any belongings, particularly, a wallet containing some currency. When the dead body was discovered on the next day of the incident, nothing was recovered from the personal search of the deceased, showing that all the belongings of the deceased were lost. Therefore, the possibility of loss of ticket as a result of fall from the train for one or the other reason is also there. Thus, non

discovery of railway ticket cannot be made a ground to discard the claim of the applicants-appellants, when there are strong chances that all the belongings of the deceased are lost in the untoward incident. Further, this Court is to take note of the fact that the judgment was passed by the Member (Technical), who was technical even on the ground that the parents of the deceased came to know about the incident after 14 days, to disbelieve the story put forward by them. It is again reminded that the railway claim cases in the nature of inquiry. Once it is found that the death occurred due to untoward incident involving the railway and possibility of loss of ticket is there, the mere fact that the parents of the deceased came to know about the incident some days later, for one or the other reason, cannot be made a ground to disbelieve their statement.

It being so, the findings of the Tribunal on issue Nos.1 and 2 are reversed and the issues are decided in favour of the applicants-appellants.

As a result of the foregoing discussion, the impugned judgment dated 20.09.2013 passed by the Tribunal is set aside and the respondents are ordered to pay ₹4,00,000/- as compensation to the applicants-appellants in equal share with interest @ 9% per annum from the date of filing of the claim application i.e. 02.05.2011 till the date of actual payment.

As such, the present appeal is allowed.

(KULDIP SINGH)
JUDGE

March 24, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes