

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

-:-

F.A.O No. 124 of 2015 (O&M)
Date of decision : March 18, 2017

Paramjit Kaur

... Petitioner.

versus

Union of India

... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Paul S. Saini, Advocate, for the appellant.

Mr. Vikas Chatrath, Advocate, for the respondent.

KULDIP SINGH, J

C.M No. 460-CII of 2015

For the reasons mentioned in the application, delay of 117 days
in re-filing of the appeal is condoned.

C.M stands disposed of.

C.M No. 461-CII of 2015

For the reasons mentioned in the application, delay of 318 days
in filing of the appeal is condoned.

C.M stands disposed of.

F.A.O No. 124 of 2015 (O&M)

This is the first appeal against the judgment dated 17.05.2013,
passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, vide
which claim application filed by the applicant/appellant was dismissed. The
case of the applicant is that on 08.07.2006, Jasbir Singh now deceased, aged
33 years, resident of Mohalla New Shivpuri, Ludhiana, who was engaged in
the business of Hosiery, had gone to Kota. At Kota railway station, he

purchased a train ticket No.66405277 from Kota Railway Station to Shamgarh and boarded train No.2926 Paschim Express train from Kota at about 12.00 mid night. When the train reached near Hadmani, at a level crossing falling between Garoth and Shamgarh railway stations, he accidentally fell out of the running train due to sudden jerk and received serious and greivous injuries on all parts of his body and died. On receiving information about the incident, the police authorities of Shamgarh police station reached the spot and recovered one mobile phone from the dead body from which his identity was established. The family of the deceased at Ludhiana was informed on phone. The inquest report was prepared. On the receipt of information, both the elder brothers of the deceased rushed to Shamgarh and identified the dead body. It is further alleged that original train ticket recovered from the possession of the deceased was handed over to the brothers of the deceased in damaged and torn condition.

In reply, the respondent-railway took the plea that no untoward incident took place. It appears to be a case of self negligence of the deceased. All the other averments in the claim petition were denied. From the pleadings following issues were framed:-

1. Whether the deceased was a bonafide passenger at the time of incident?
2. Whether the death of the deceased was due to the accident and which comes under the provisions of untoward incident of Section 123(c)(2) of the Railway Act?
3. Whether the incident in question is covered within the ambit of Section 123(c)(2) read with Section 124A of the Railways Act?

4. Whether the applicant(s) is/are the sole dependants of the deceased?

5. Relief.

The claim Tribunal came to the conclusion that the deceased fell from an unknown train. However, the ticket was doubted on various grounds and it was held that the recovery of ticket from the dead body was not proved. Therefore, the deceased was not found to be a bona fide passenger and accordingly, the claim application was dismissed.

I have heard learned counsel for the parties.

It is to be noted that deceased belonged to Ludhiana. He was doing Hosiery business which was not disputed by Railway. Therefore, probably deceased was on a business tour. In the claim application, it is stated that deceased had purchased a ticket from Kota to Shamgarh and boarded train No.2926 Paschim Express. The original half torn ticket produced by the applicant during evidence shows that serial No.66405277 is intact. The date of purchase i.e. 08.07.2006 is also intact. The train ticket was purchased for second class, super fast train on 21.06 hours for journey of 134 Kms. The Tribunal has heavily relied upon the letter of the Chief Ticket Supervisor, Western Railway, Kota, who, though admitted that ticket was issued from Kota but the fare of super fast train from Kota to Shamgarh was ₹55 only and not ₹108. Therefore, on this ground only the genuineness of the ticket was disbelieved. I am of the view that the Tribunal gravely erred in disbelieving the ticket merely on account of fare. The fact remains that the ticket was purchased from Kota and fare of ₹108 was paid for the journey of 134 Kms for super fast train and the ticket was for second class. How more charges were paid could be within the

exclusive knowledge of the deceased or the railway. The deceased belonged to Ludhiana and it is not possible for his family to procure the said ticket issued from Kota Railway Station. The ticket was otherwise computrized ticket and its genuineness is not disputed by the railway. Therefore, merely on account of difference of fare the genuineness of the ticket cannot be disbelieved. It comes out that as the ticket is half torn, the destination station is missing. It is also observed that according to the claim of the applicants on receiving information about the railway accident, the two brothers of the deceased rushed to the place of incident. Their statements were also recorded by the G.R.P. Therefore it is possible that though in the recovery memo said ticket is not shown, the Railway police might have handed over the half torn ticket to the brothers of the deceased or the deceased might have found the same at the place of incident. Since the genuineness of the ticket is not disputed and it is not possible for the family of the deceased living at Ludhiana to procure such a ticket from Kota, therefore, it has to be believed that the ticket belongs to the deceased and was genuine one. Hence, it is held that the deceased was a bona fide passenger.

Now coming to the next point as to whether the deceased fell from Paschim Express or some other train, the Railway Tribunal has come to the conclusion that the train departed from Kota at 01.10 hours and as per D.M report passed through Garoth at 2.40 hours. The dead body was found lying between Garoth and Shamgarh stations at about 17.40 hours i.e. after about 15 hours. It was observed by the claims Tribunal that the duty of the railway patrolling staff starts at 8.00 AM in the morning and had the deceased fallen from Paschim Express train, the same might have been

detected by the railway staff. I am of the view that the Tribunal has assumed that the railway staff punctually start their duty at 8.00 AM and must be very vigilantly examining each and every spot. The other possibility is also there that the railway staff might not have started the duty as per the duty timings or might have passed casually from the spot with the result that the dead body could not be detected till evening. Otherwise, it is a case of fall from the train. The time of the purchase of the ticket points that after purchasing the ticket at 21.06 hours i.e. 9.06 PM, the deceased might have boarded the next train, which is train No.2926 Paschim Express. Therefore, on this ground also it cannot be held that the deceased did not fall from train No.2926 Paschim Express. In any case, it is a case of fall from the running train and it is an untoward incident within the ambit of Section 123(c)(2) Railway Act, 1989 involving Railway.

In view of what has been expressed above the finding of the Tribunal on issue No.1 is reversed and findings on issue No.2 and 3 are accordingly affirmed with above noted alteration.

In view of the above discussion, the present appeal is allowed. Respondent-railway is ordered to pay a sum of Rs.4 lac compensation to the applicant-appellant along with interest @ 9% per annum from the date of filing of the claim petition i.e. 05.07.2010 till payment.

March 18, 2017
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(KULDIP SINGH)
JUDGE

Whether speaking/reasoned – Yes
Whether reportable – Yes