

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

**FAO No.5236 of 2013 (O&M)
Date of decision : May 02, 2017**

Mohammad Ayub and another Appellants

Versus

Union of Inida Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anand Singh, Advocate for the appellants.

Mr. Sanyam Malhora, 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 the first appeal filed against the judgment dated 07.06.2013 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 Naushad Mohammad son of the applicants-appellants accompanied by his cousin Zisan boarded a train from Dhandari Kalan, Ludhiana on 23.06.2011 for Saharanpur to extend the invitation of his marriage to the relations. When the train reached near Mustabad, District Ambala, Haryana, due to jerk and jolt with the push and pull of the passengers, both Naushad Mohammad and Zisan fell down from the running train. Naushad Mohammad died at the spot, whereas Zisan got injured and was admitted in the Civil Hospital. On 24.06.2011, at about

7.20 a.m., Ganga Ram, Keyman informed the Station Master that a dead body was lying near Dn line near Mustabad at Km 227/24-26. The GRP was informed, which carried out the inquest proceedings. From the personal search of deceased Naushad Mohammad, one mobile phone was recovered. No other article was recorded to have been recovered.

In the written statement, the Railway has taken the stand that no ticket was recovered from the deceased. Therefore, he was not a bonafide passenger. Even if, an incident is proved to have taken place, the same is result of negligence of the deceased. The deceased suffered self inflicted injuries. The dead body was found lying near Dn line near Mustabad and the alleged injuries and the death are not linked with the alleged incident. There is no eye witness of the occurrence.

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)(2) read with Section 124-A of the Railways Act?*
- 3. Whether the applicant(s) is/are the sole dependants of the deceased in this case?*
- 4. Relief.”*

In the evidence, applicant Mohammad Ayub, father of the deceased appeared in the witness box as AW1. Zisan, cousin and co-passenger of the deceased appeared as AW2. Mohammad Irshad, brother of the deceased also appeared as AW3. The Tribunal doubted the story put forth by the applicants-appellants. It was held that no ticket was found from the personal search of the deceased. Therefore, the deceased was not a

bonafide passenger. It was also noticed that the dead body was found lying near the down line on which the train was running. It is not possible that if the deceased fell from the train, he will fell on the same line. It was also noticed that so many trains passed after the alleged incident but nobody informed the railway authorities, which is not possible. It was also observed that co-passenger and injured Zisan did not inform anybody about the incident. It was also noticed that as per the applicants-appellant, the deceased was going to Saharanpur to distribute the wedding cards but the same were not recovered from the personal search of the deceased nor found lying near the dead body. The statement of brother of the deceased that he dropped the deceased and Zisan at the Dhandari Kalan railway station on 23.06.2011 and the deceased purchased a joint ticket, was also disbelieved by the Tribunal. Consequently, the claim application was dismissed.

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

First of all regarding the non-recovery of the ticket and the wedding cards, it is to be noted that the deceased was going to extend the wedding invitation of his own marriage to his relations at Saharanpur. The wedding card due to its large size cannot be carried in the pocket nor the deceased can be expected to carry the wedding cards in his hand during the entire journey. It might be kept in his luggage, which was not found. Secondly, regarding non-recovery of journey ticket, when a person falls from a moving train, there is every possibility that train ticket, which is only a piece of paper might be lost.

There is no reason to disbelieve the statement of the brother of the deceased that he had dropped the deceased and his cousin Zisan at Dhandari Kalan railway station and a joint ticket was purchased.

Even the co-passenger Zisan had also stated that the deceased had purchased the ticket. So far as the presence of Zisan with the deceased is concerned, the Tribunal had gravely erred in ignoring the fact that Zisan was himself injured. The reason for his not informing the police are made out from the police request and the bed ticket produced on file, which show that he was admitted in the General Hospital, Yamunanagar on 24.06.2011 at 1.40 p.m. with crushed injuries. He was referred from CHC, Mustabad for X-ray and management. MLC was also done apparently at CMC, Mustabad, which is near the place of incident. From the police request dated 08.07.2011 placed on file, it comes out that the said Zisan was admitted in Civil Hospital, Saharanpur on 24.06.2011 and was admitted there till 09.07.2011. He was conscious but he sometimes talks with abnormal behaviour, which shows that till 08.07.2011 injured Zisan was not medically fit to inform anybody. There is no reason for Zisan to get himself injured and get himself admitted first in Civil Hospital, Mustabad and then in Civil Hospital, Saharanpur. It goes to show that Zisan also received injuries in the same incident and his statement cannot be discarded the way it was done by the Tribunal. Now coming to conclusion of the Tribunal that the dead body cannot fall on the down line on which the train was running, it has to be noted that as per inquest report, there was injury on the forehead, fracture on the skull. There were injuries on the face. Both the arms, legs were found fractured with abrasions and contusions on the entire

body. As per inquest report, these injuries are result of railway accident.

The Tribunal failed to examine that in the present circumstances, there is possibility of deceased from being thrown bank on the same railway track after fall from the train. The site plan on the inquest report shows that the incident took place at the place, which is surrounded by the fields and where there is a culvert. If a person falls from a train passing on the culvert, he is likely first hit the grill or wall of the culvert, with a result that he is likely to be thrown back on the same track.

Therefore, in these circumstances, there is possibility that the deceased will fall back on the same track. The possibility of committing suicide by the deceased or crossing the railway line is ruled out in the given facts and circumstances.

In view of the findings recorded above, the findings of the Tribunal on issue Nos.1 and 2 are reversed. Consequently, it is held that the applicants-appellants are entitled to compensation.

As a result of foregoing discussion, the impugned judgment dated 07.06.2013 is set aside. The appeal is, accordingly, allowed. The respondent is ordered to pay Rs.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. 17.11.2011 till the date of payment.

(KULDIP SINGH)
JUDGE

May 02, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes