

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 209

FAO No.6379 of 2013(O & M)
Date of Decision: July 10, 2017

Girraj Parshad & another

..... APPELLANTS

VERSUS

Union of India through the General Manger, Northern Railway, New Delhi

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Rakesh Kumar Sharma, Advocate, for the petitioners.

Mr. Neeraj Madan, Advocate, for the respondent.

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Jaspal Singh, J

1. Challenge in the instant appeal is to Award dated February 28, 2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, 'Tribunal') whereby the claim petition preferred by the appellants has been dismissed.

2. The facts giving rise to the instant appeal are that Uttam Singh, son of the appellants, was student of Diploma of Engineering in Sai Institute of Engineering & Technology, Jhajjar. On October 18, 2010, appellant No.1 accompanied his son on motorcycle at New Town Railway Station, Faridabad where he purchased a ticket for his son and handed over the same to him. Appellant No.1 left the station and his son boarded local

Singh used to make a call at home informing about his well-being but he did not make any call. The appellants contacted his friend Pankaj to enquire the whereabouts of his son. He also enquired about his son from his other friends and relatives. Lastly, on October 25, 2010 he enquired from GRP Police, Faridabad and came to know that Uttam Singh died due to railway accident and the police, without finding out any relative or kith & kin, cremated him after post mortem as an unknown person. Uttam Singh died due to fall from the running train on October 18, 2010. He was having a valid ticket and a bonafide passenger.

3. Police prepared an inquest report that at about 7.10 pm on October 19, 2010 a dead body was lying at K.M. 1507/20 between FDV-FDN and on the basis of post-mortem report and Medical Officer opined the cause of death to be shock and hemorrhage resulting from injury to the vital organs i.e. brain, lungs, liver spun which were ante mortem in nature and were sufficient to cause death in ordinary course of nature and possibilities of deceased getting injury from railway accident could not be ruled out.

4. The appellants preferred a claim petition seeking compensation to the tune of of ₹ 5 lac alongwith litigation expenses & interest from the date of application till actual realization on account of death of their son Uttam Singh in the incident, alleged to have occurred on October 18, 2010 while travelling by train. The respondent contested the claim application by filing written statement taking preliminary objections that the alleged incident is not covered under the ambit of “untoward incident” as defined in Section 123(c) of the Railways Act, 1989 (for short, ‘Act’) and as such, the applicants are not entitled to any compensation as envisaged under Section 124-A of the Act. It was further averred that as per

while crossing the railway track in an unauthorised manner and thus, the claim application deserves to be dismissed on this ground alone. On merits, the averments made in the claim application were denied.

5. From the pleadings of parties, following issues were framed by the Tribunal:-

“1. Whether the deceased was a bonafide passenger of the train at the time of incident?

2. Whether the alleged incident is covered within the ambit of an untoward incident as defined u/s 123(c)(2) read with Section 124-A of the Railways Act?

3. Whether the applicants are the only dependents of the deceased?

4. Relief.”

6. The parties led their evidence. The Tribunal, after hearing learned counsel for the parties, dismissed the claim petition vide impugned Award dated February 28, 2013. Aggrieved against by the aforesaid Award, the appellants have approached this Court.

7. While assailing the findings recorded by the Tribunal on Issue No.1 and consequent dismissal of the claim application, it has been ebulliently argued by learned counsel for the appellants that the same are absolutely against evidence available on file and settled canons of law. Misappreciation of evidence as well as legal proposition applicable to the facts & circumstances of the case has resulted into mis-carriage of justice.

8. Undisputably, appellant No.1 is father of deceased Uttam Singh. The Tribunal has failed to appreciate evidence which clearly establishes that the deceased was a bonafide/valid passenger at the time he lost his life in the railway incident. It is an admitted that that police prepared the inquest report in respect of autopsy of the dead body of Uttam Singh

the police recorded statements of police officials as well as of private persons in order to find out the cause of death of Uttam Singh and the police came to the conclusion that death of Uttam Singh appears to have occurred due to fall from an unknown train, meaning thereby that Uttam Singh was travelling in the train. Moreover, at the time of recording of statements of EHC Devi Singh and Ved Parkash in respect of incident. SHO also verified with regard to cause of death from other sources also and he has categorically opined that Uttam Singh died due to railway accident.

9. Learned counsel for the appellants has further urged that learned Tribunal has also wrongly concluded and discarded the statement of appellant No.1 Girraj Parshad (PW-1), father of deceased who has submitted his affidavit and reiterated the entire facts contained in the claim application. It has been categorically stated by him that he had gone to the railway station to drop his son Uttam Singh on his motorcycle and further that, he had purchased the ticket for his son and handed over the same to him. Thereafter, he returned. His statement has been ignored and disbelieved by the Tribunal simply on the ground that no railway ticket was found in possession of deceased.

10. While placing reliance upon the judgment captioned as ***Union of India vs. Mamta & others, 2016(1) RCR (Civil) 757***, learned counsel for the appellants has argued that mere fact that no ticket was found available from near the body of deceased is itself not sufficient to discard or disbelieve the testimony of a person who had dropped the deceased at the railway station and had also handed over the railway ticket after its purchase. The presumption therefore is that the deceased would have boarded the train with ticket in the light of judgment of the Patna High Court in the case of

No.740 of 2008, dated May 01, 2014 which was subsequently relied upon by this Court in the case of *Mamta (supra)*. To the similar effect is the observation made by this Court in *Union of India vs. Smt. Suman, 2013(3) RCR (Civil) 700*.

11. Learned counsel for the appellants has further argued that death of Uttam Singh is proved to have occurred due to fall from train and there is no evidence led by the railways that Uttam Singh was knocked down by the engine of train while crossing the railway track. When the passenger has died due to accidental fall from train, claimants are entitled to the compensation. Merely because railway ticket was not found from the deceased, it cannot be pleaded that he was not a bonafide passenger. To fortify this argument, learned counsel has relied upon the judgment rendered by the High Court of Judicature at Bombay in the case of *Ramdhan & another vs. Union of India & another, 2009 ACJ 2487* as well as the decision rendered by the High Court of Kerala at Ernakulam in case *Union of India vs. Leelamma & others, 2010 ACJ 566*.

12. While concluding his arguments, learned counsel for the appellants has submitted that since it is proved on record that Uttam Singh died due to accidental fall from the train and as such appellants being parents of the deceased are entitled to the compensation.

13. Per contra, while supporting the findings recorded by the Tribunal as well as the impugned award, it has been contended by learned counsel for the respondent that besides the fact that deceased was not possessing the railway ticket, there are other material factors which proved that deceased was neither a bonafide passenger of the alleged train nor the incident is covered within the definition of “untoward incident” as defined

deceased by an unknown train as has also emerged in DRM's enquiry report. Moreover, applicants have specifically made out a case of fall of deceased from EMU train PND1 but when the respondent – Railways produced the evidence showing that no such incident occurred with train No.PND1 and the claim petition was at its penultimate, the applications moved an application seeking amendment of the claim petition to substitute an unknown local EMU train instead of EMU PND1. However, that application for amendment was declined. Moving of an application for amendment is suggestive of the fact that applicants were not themselves sure and certain that accident has occurred with train EMU PND1. Moreover, it is unbelievable that if a person falls down on account of jerk from a train, it is a rarest of rare cases that he will go under the same train from which he fell down because normally falling from train has to be few feet away from the train. As such, it is highly improbable that legs of the deceased were crushed by falling from train. To buttress this contention, learned counsel for the respondent has relied upon a pronouncement of Delhi High Court in the case of *Sanjay Chauhan vs. Union of India*, FAO No.132/2011, decided on August 18, 2011.

14. While concluding his arguments, it has been submitted by learned counsel for the respondent that since the award is absolutely in consonance with evidence available on record and settled canons of law applicable to the facts & circumstances of the case in hand, no interference is justified and he prayed for dismissal of the instant appeal.

15. After bestowing due consideration to the rival submissions made by learned counsel for the parties and appraisal of the evidence available on record of the Tribunal and scrutinizing the impugned award,

learned counsel for the appellants do not carry any legal and factual weight. The impugned award is absolutely in consonance with law and provisions of the Act.

16. The main stress of learned counsel for the appellants is that during inquest proceedings, police has concluded that death of Uttam Singh has occurred due to fall from train and further that mere fact that deceased was not possessing the railway ticket, it does not fall within the definition of a valid/bonafide passenger as has been defined under Section 2(20) of the Act. Undisputably, during inquest proceedings or during evidence, no railway ticket or valid pass authorizing Uttam Singh for travelling in the train has been produced. Moreover, at the time of filing the claim application, a specific stand was taken by the appellants that on October 18, 2010, deceased was travelling in EMU Oakwak-Delhi (PND1) train from New Town railway station having a valid journey ticket which was purchased and handed over by appellant Girraj Parshad (AW-1), father of deceased, who had allegedly gone to railway station to drop his son for further journey to Jhajjar to fill some form for his engineering course. But, to the utter surprise, appellants only came to know about the death of their son on October 25, 2010. But, on the other hand, it is a clear cut defence taken by the respondent – railways that no such incident was reported having occurred with train PND1 on October 18, 2010 which passed from Faridabad railway station at 18:35 hours and Uttam Singh, infact, was run over by some unknown train while unauthorizedly crossing the railway line.

17. Here, it would be pertinent to mention that moving of an application for amendment of claim application to substitute the train mentioned therein as PND1 with some unknown EMU train, smashes the

travelling in EMU PND1 train or that Girraj Parshad, AW-1 dropped Uttam Singh at railway station and purchased the ticket, especially in the circumstances that no railway ticket or pass has come on record. During the course of arguments, it has also emerged that as many as 108 trains pass from the place of incident. The matter was reported to Station authorities on October 19, 2010 by the driver of a goods train, who had noticed a dead body lying near railway tract at 7:09 AM on that day. Thus, in such a situation, it was not possible that his dead body remained lying un-noticed on or near railway track by drivers of as many as 108 trains passing in unknown directions from the place of occurrence. Rather, this fact leads to draw an inference that dead body of Uttam Singh was not there at the spot till the morning of October 19, 2010 when it was noticed by driver of goods train and it further creates a doubt regarding the case of appellants that Uttam Singh had a fall from train PND1 on October 18, 2010. Moreover, the mere fact that in the inquest report, it finds mention that Uttam Singh had a fall from train, cannot be said to be an acceptable truth because it is only as per the information given to the police. The judgments relied upon by learned counsel for the appellants are not applicable in the facts & circumstances of the case in hand as in the instant case, it is not proved on record that Uttam Singh was a bonafide passenger of train or that the incident is covered within the definition of “untoward incident”.

18. In the light of what has been discussed above, this Court is of the considered view that findings recorded by the Tribunal on Issue Nos.1 and 2 are absolutely legal and valid, based upon the cogent and convincing evidence available on record and as such, do not call for any interference by this Court. The claim application has rightly been dismissed by the Tribunal

vide impugned Award dated February 28, 2013 which is upheld. As such, instant appeal is dismissed.

17. No order as to costs.

July 10 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No