

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-8009-2014 (O&M)
Date of decision: 16.05.2017

Morshree and others

.....Appellant

versus

Union of India

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Somesh Gupta, Advocate for the appellant
Mr.Neeraj Madan, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

This is first appeal against the judgment dated 30.10.2013, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), vide which, application for compensation filed by the applicants/ appellants was dismissed.

Suresh Kumar husband of applicant no.1 was working with contractor Surender Kumar. On 24.10.2011 he received his salary and informed the contractor that he is going to his native place Bareilly via Sonapat and that he will board a train from Sonapat for Bareilly. Suresh Kumar reached Rathdhana railway station and purchased a ticket ex-Rathdhana to Sonapat and boarded the train. When the train crossed the Harsana, he accidentally fell down from the train and got seriously injured. Somebody removed him to PGI Rohtak, where he succumbed to the injuries on the next day i.e.

25.10.2011. Nothing was recovered from the personal search of the

deceased. It was also claimed that the ticket was also lost in the incident along with cash and bag of clothes.

In the written statement, railway took the plea that the deceased was not the bona fide passenger of the train. Number of the train and time of the train is not given. He was not victim of untoward incident. He was not bona fide passenger as no ticket was recovered from the personal search. Further stand was taken that from the injuries, inference can be drawn that these are self inflicted injuries while unauthorisedly crossing the railway track and being run over by a fast running train.

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.*

The Tribunal, after discussing the evidence, came to the conclusion that the deceased was the labourer under contractor Surender Kumar, who was working for railway and had a contract of construction/repair of railway stations. In this background, the Tribunal examined the facts and stated that if one is to go Bareilly from Rathdhana railway station, one need not to go to Sonapat, which is in the opposite direction and from Rathdhana one can go to Narela which is big station near Sonapat and then board a train for Delhi for onward journey to Bareilly. It was also noticed that Rathdhana railway station is not between Harsana Kalan and Sonapat, rather it is next to Harsana Kalan while going towards Delhi from Sonapat.

The Tribunal also found that the deceased was not travelling in the train at

the time of incident. He came running from ticket booking office side and trying to board the running train. Therefore, it is not an untoward incident as defined in Section 123(c)(2) of the Railways Act and that the case is not covered under Section 124A. Case is covered under exceptions to Sub-Section 2 of Section 124A of the Railways Act.

I have heard learned counsel for both the parties and have also carefully perused the record.

Deceased was admittedly working with the contractor Surender Kumar who had some contract for repair of railway stations. The fact that the deceased was going to board the train to go to Delhi was within his exclusive knowledge and for the applicants, who are his legal heirs, it is just a matter of wild guess as to from where he boarded the train and why he went to Sonapat first. However, one fact remains that the deceased died at Harsana Kalan railway station. In this regard, statement of RW2 Vijender Pal, the then Assistant Station Master, Harsana Kalan, is important. According to him, on 24.10.2011, he was on duty. He was informed by some passengers of train 64451 UP that a person while trying to board a running train from the off side has been injured. Thereafter, he went to the spot and found the injured lying on the other side of the railway station and not towards the platform. He arranged for the ambulance from Sonapat and sent the injured to Civil Hospital, Sonapat. It appears that from Sonapat, he was referred to PGI Rohtak, where he succumbed to injuries on the next day. The cross-examination of said Vijender Pal further reveals that there is platform on the both sides of the railway track and nobody can board the train off side. The people board the train from both the sides. Therefore, Vijender Pal had first hand knowledge of the detection of the injured on

account of the information supplied by some passenger. He was the first man to reach the spot. Therefore, the fact remains that as per stand of the Assistant Station Master, the deceased was trying to board the train No.64451 UP, fell down and died. The nature of the injuries in the post mortem report also corroborate that the deceased most probably fell from the running train. Injuries in the post mortem shows the following injuries:-

3. *A lacerated wound of size 2x1 cm was present over the middle of the chin. On dissection underlying tissues were ecchymosed.*
4. *Multiple grazed abrasions reddish in colour of size 6x2 to 1x1 cm were present over anterior aspect of the right side of the chest and abdomen over an area of 18x10 cm. On routine dissection of the chest 800 ml of the fluid blood was found in the thoracic cavity. The left lung was found lacerated on its posterior aspect.*
5. *Abraded contusion of size 4.5x3.5 cm was present over the left side of the face 3.5 cm from the left angle of mouth and 2.5 cm above the left angle of mandible. On dissection underlying tissues were ecchymosed.*
6. *Abraded contusion of size 6.5 x 2 cm was present over the body of the right side of mandible extending from centre of the chin to the angle of mandible. On dissection underlying tissues were ecchymosed.*
7. *Multiple abraded contusion 5 in no. with size ranging from 2x1 to 1x1 were present over the lower 1/3rd of the right arm and upper 1/3rd of the forearm over an area of 12x5 cm on its postero lateral aspect. On dissection underlying tissues were ecchymosed.*
8. *Multiple abraded contusion with size varying from 5x1 to 3x1 were present over the upper 1/3rd of the left lower leg on its antero medical aspect. On dissection underlying tissues were ecchymosed.*

Right leg of the deceased was amputated. There were abrasions

on the chest, abdomen, right arm and left lower leg, indicating that the deceased has fallen down from the train. Therefore, the same is an untoward incident within the definition of Section 123(c)(2) of the Railways Act.

The next question would arise as to whether on account of non-recovery of ticket, claim could be declined?

The examination of the evidence and the documents on file would show that when the deceased met with an untoward incident, he lost his right leg and there were abrasions almost on each and every part of his body. Thereafter, he was removed to Civil Hospital, Sonapat in ambulance by the strangers and from there he was probably handled and sent to PGI Rohtak, where he was further handled by the hospital staff till his death. It was only after his death that the family came to know about the incident. Therefore, during this transactions, the possibility of loss of ticket cannot be ruled out.

In view of the foregoing discussion, the findings of the Tribunal on issue Nos.1, 2 and 4 are hereby set aside. Consequently, the appeal is allowed. The respondents are directed to pay compensation of Rs. Four lacs to the applicants/ appellants with interest @ 9% per annum from the date of filing of the application i.e. 7.3.2012 till the date of actual payment. Out of the above amount of compensation, 50% of the same shall go to the widow of the deceased, who is of very young age and remaining 50% shall be equally shared by the parents of the deceased.

16.05.2017

gk

Whether speaking/ reasoned:

Whether Reportable:

(Kuldip Singh)

Judge

Yes

Yes