

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision : 31.01.2017
FAO-8146-2014 (O&M)

1.

Dulari Devi and others

...Petitioners

Versus

Union of India

...Respondent

And

2.

FAO-8327-2014 (O&M)

Dulari Devi

...Petitioner

Versus

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Somesh Gupta, Advocate,
for the petitioners.

Mr. Neeraj Madan, Advocate,
for the respondent in FAO No.8146 of 2014

Mr. Madan Sandu, Advocate,
for Mr. G.S.Bal, Advocate,
for the respondent in FAO No.8327 of 2014

KULDIP SINGH J. (ORAL)

CRM-22630-CII-2014 in
FAO-8327-2014

Prayer in this application is for condonation of delay of 29 days
in filing the appeal.

Reply has not been filed.

Heard.

For the reasons stated in the application, delay of 29 days in

CRM-22631-CII-2014 in
FAO-8327-2014

Prayer in this application is for condonation of delay of 72 days in re-filing the appeal.

Reply has not been filed.

Heard.

For the reasons stated in the application, delay of 72 days in re-filing the appeal, is condoned.

FAO-8146-2014 &
FAO-8327-2014

By way of this common judgment, I shall dispose of two connected appeals bearing FAO No.8146 of 2014 and FAO No.8327 of 2014, as they were arising out of the same accident.

The common facts of the case are that Shiyacharan Manjhi accompanied by his son Daleep Manjhi, who were labourers by profession, had come from Sitamarhi (Bihar) to Punjab to earn livelihood. Both used to work in Paddy season in Zira, Ferozepur, with the farmers in Punjab. After completing their paddy work, they went to Panipat in search of work. On 07.08.2011, Daleep Manjhi informed his mother on telephone that they will come back to Sitamarhi (Bihar) by Jan Nayak Express. They went from Ambala Cantt. to Panipat in the morning hours. They were to come back to Ambala in the evening. In order to avoid the late hours rush, they purchased the tickets at 09:02 hours in the morning for the return journey from Panipat to Ambala Cantt. At night, they boarded the train at Panipat railway station for Ambala Cantt. station. As both of them slept in the train. They could not de-board at the destination i.e. Ambala Cantt. and over travelled. When

railway station, which falls between Ambala and Chandigarh, they woke up and immediately came near the gate to know about the next station. Due to sudden jerk, Daleep Manjhi fell down from the running train. His father Shiyacharan Manjhi tried to save him but he could not do so and he also fell down from the train. Both of them died on the spot. Ramapatti, Gangman saw the dead bodies in the next morning and informed the Station Master, Lalru, who issued the memo to GRP, which conducted the inquest proceedings. Separate railway tickets were recovered from both of them in addition to some other articles.

In reply, Railway has taken the stand that the deceased were not bonafide passengers. It was also denied that the deceased were travelling in the train and the fact that they fell from the train were also denied. It was stated that the false story has been put forward. The time of the commencement of journey and the train number had not been given. The alleged tickets were of 07.09.2011, whereas, dead bodies were noticed on 08.09.2011. According to the Railway, both the deceased appears to have entangled with some moving train.

From the pleadings, following issues were framed separately in both the cases:-

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 only dependents of the deceased in this case.*
4. *Relief.*

The Railway Claims Tribunal, Chandigarh, (for short, 'the Tribunal') recorded the findings that the deceased could not prove to be

bonafide passengers. It doubted the story put forward by the appellants that the deceased had purchased the railway tickets in the morning hours and boarded the train in the evening. It was also observed that if they were to go to Sitamarhi (Bihar) by Jan Nayak Express, there was no need to come back from Panipat to Ambala as the train to Delhi are available and Jan Nayak Express leave Ambala Cantt. at 23:50 hours. The reason why the tickets were purchased in the morning was also doubted. It was observed that Shiyacharan Manjhi had suffered crushed injuries which rule out the possibility of fall from the train. It was further observed that there was no eye-witness of the occurrence. Accordingly, the story was disbelieved and both the applications were dismissed by separate order dated 30.01.2014.

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

The pleadings of file shows that in both the cases, father and son had separate tickets, which were purchased at the same time. The tickets bear Serial No.16018290 and 16018291. It shows that the tickets were purchased at same time for journey from Panipat to Ambala Cantt. It is not claimed by the Railway that these tickets are fake. These are the computerized tickets. The mere fact that these were purchased in the morning hours to avoid wastage of time in the rush hours in the evening, is no ground to doubt the genuineness of the tickets. For the record, the tickets were genuine and meant for journey for 07.09.2011 from Panipat to Ambala Cantt. Regarding the story of the applicant that deceased were to go to Sitamarhi (Bihar) on the same date, it is observed that this is the story put forward by Dulari Devi, wife of Shiyacharan Manjhi. The real story was

Sitamarhi (Bihar) on the same day or they had changed their plans for one or the other reason. Therefore, merely from the averments made in the application, it amounts to going too far to conclude that deceased should have gone from Panipat to New Delhi and why they came back to Ambala. Both, father and son, had no job to come to Chandigarh. Therefore, the story is more credible that they slept in the train and could not de-board at the destination railway station, i.e., Ambala Cantt. and when they woke up, they tried to find out which is the next railway station. Therefore, in such curiosity, it is likely that they would come near the gate. So far as the passenger, who exceed the journey, the Tribunal had already noticed the relevant rule, i.e., Coaching Tariff Part I, Volume I, Note 230. Under such circumstances, if the passenger de-boarded at the next station and purchased the ticket for back journey by the next available train, he is not liable for any penalty otherwise he is liable for the penalty. Therefore, in such circumstances, deceased are held to be bonafide passengers.

Now, the next question arise whether it is a case of untoward incident involving the Railways? The Tribunal had relied upon the injuries on the person of Shiyacharan Manjhi to hold that it is not a case of fall from the train. According to the inquest report of the GRP (Exhibit A-1), it is a case of fall from the train. Both the dead bodies were found within the short distance of the side of the railway track. There is no abadi nearby and it is not known as to why deceased came to the said place. They do not belong to nearby place also. The position of the bodies shows that it is a case of fall from the train. The injuries of Shiyacharan Manjhi show that he had head injury, his right eye and nose were crushed, jaw was fractured and right and left legs were also found crushed. In the case of Daleep Manjhi,

there were injuries on the head and another parts of the body. Similar injuries/bruises were found on the entire body of Shiyacharan Manjhi. I am of the view that when a person falls from the running train, due to vacuum created by the speed of the train, a person falling from the train is likely to suck under the train. It depends as to which part of the body is sucked under the wheel of the train. The injuries show that probably Shiyacharan Manjhi had fall with the head down and part of his head was crushed. Otherwise, the injuries are neither suicidal nor caused due to one coming on the railway track in front of a running train, as in case of suicide. The irresistible conclusion is that the injuries in both the cases are result of fall from the running train and because of crushing of part of the body under the running train. The mere fact that there was no eye-witness of the occurrence is no ground to disbelieve the story which is otherwise established from the documents and circumstances including the inquest by the GRP. Moreover, in case of accidents during journey, it is very difficult even for an influential person to find eye-witness particularly at that night. In the present case both the said deceased were ordinarily labourer and it should not be expected that some independent eye-witness will come forward amongst the co-passengers to state the circumstances under which they fell down from the train. The circumstances under which they fell down from the train were known only to the deceased. They were the labourers and did not intend to commit suicide. Therefore, both of them died as a result of fall from the running train and it is a untoward incident involving the Railway. The negligence on the part of the passengers, is no ground to deny the claim. There is a rule of strict liability in the case of

of the exceptional Section 123(c)(2) read with Section 124-A of the Railways Act.

From the foregoing discussion, I come to the conclusion that both Shiyacharan Manjhi and his son Daleep Manjhi were the bonafide passengers and died as a result of fall from the running train which is an untoward incident. Accordingly, the findings of the Tribunal on Issue Nos.1 and 2 in both the cases are reversed and these issues stand decided in favour of the applicant-appellants.

Now the question would arise as to what would be the amount of compensation, in view of the facts that vide notification dated 22.12.2016 an amendment was carried out in the Railway Accidents or Untoward Incident (Compensation) Rules 1990, wherein, for Rs. 4 lac, Rs.8 lac have been mentioned. In this case, the occurrence/incident took place on 07.09.2011 and the appellants filed the claim application before the Tribunal on 11.01.2012, that is after one year and the Tribunal, decided the claim on 30.01.2014, and the appeal is being decided on today in January, 2017. Learned counsel for the appellants has relied upon the judgment of Supreme Court in ***Appeal (Civil) No. 1778-79 of 2001, Rathi Menon Vs. Union of India***, decided on 13.03.2001 wherein it is held that the compensation as applicable on the date of final adjudication is to be paid. It was held in the said judgment the time of ordering payment is more important to determine as to what extent of compensation, which is prescribed by the rules, is to be disbursed to the claimant. It was concluded that the Apex Court is of the definite opinion that the Claims Tribunal must consider that what rules were prescribed at the time of making the order for payment of compensation. Therefore, the judgment indicate that the rules as

applicable at the time of the adjudication by the Claims Tribunal are to be applied. In the present case, the Claims Tribunal adjudicated the matter on 30.01.2014. Therefore, the rules as applicable on the said date are to be applied. The amendment was made during the pendency of the appeal, i.e., on December 22, 2016 effective from 1th January, 2017. It being so, I am of the view that the compensation as applicable at the time of adjudication by Railway Claims Tribunal is to be disbursed, which at that time was Rs.4 lac. Consequently, both the appeals are allowed. Respondent is ordered to pay Rs. 4 lacs compensation in applications along with interest at the rate of 9% per annum from the date of filing of this application i.e. 11.01.2012, till payment.

31.01.2017
adhikari

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned : ***Yes/No***
Whether Reportable : ***Yes/No***