

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

FAO -7274-2015 (O&M)
Date of decision: 28.03.2017

Ram Nandan

.....Appellant

versus

Union of India

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Satinder Kumar Rana, Advocate for the petitioner
Mr.P.C.Goyal, 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?*

Kuldeep Singh, J. (Oral)

This is first appeal against the judgment dated 2.7.2015, passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'), vide which, claim application filed by the applicant-appellant was dismissed.

Brief facts of the case are that the appellant, who belongs to village Imamganj, Tehsil Milki, District Faizabad (U.P.) had come to Punjab in search of the work. On 10.5.2012, after purchasing a ticket from Rajpura Railway Station to Sultanpur, he boarded Train No.13050 Amritsar-Howrah Express in General Compartment. When the train reached Ambala Railway Station, the appellant got down from the train to fetch water. When he was trying to re-board the train, the train had already started moving and caught the speed. The foot of the appellant slipped and he fell between the train and platform and suffered serious injuries. Train stopped after the incident.

His right leg from the hip joint and right arm from the shoulder were

amputated in the incident. The petitioner was removed to General Hospital, Ambala City, from where, he was referred to PGI, Chandigarh and discharged on 19.5.2012. The incident took place around 10.50 PM. According to the appellant, clothes were torn, cash and ticket were also lost in the untoward incident.

In the reply, the railway took the plea that the appellant was not a bona fide passenger as defined under Section 123(c) of the Railway Act, 1989. It was further stated that the alleged injuries are not covered under the untoward incident as defined in Section 123(c) read with Section 124-A of the Railways Act, 1989. No ticket was produced by the applicant. Appellant himself is guilty of the criminal negligence in trying to board the running train. Hence, the railway is not liable to pay compensation. From the pleadings, following issues were framed:-

- 1. Whether the injured/ applicant was a valid passenger during the journey?*
- 2. Whether the injured/ applicant was the victim of the untoward incident within the definition of Section 123(C) read with Section 124-A of the Railways Act? If yes, to what extent of injury?*
- 3. Whether the injured applicant is eligible for the compensation? If yes, how much?*
- 4. Relief.*

The Tribunal after considering the evidence of both the parties, came to the conclusion that no ticket was produced by the appellant. Hence, he was not a bona fide passenger. The Tribunal also relied upon some discrepancies and found that name of co-passenger Radhika was not found anywhere and hence, the application was dismissed.

I have heard learned counsel for both the parties and have also

carefully gone through the file.

The evidence on file show that the appellant in fact fell from the running train. The DRM report makes it clear that during the inquiry by the Railway, it was found that the appellant fell down while trying to board the running train and received the injuries. However, conclusion was drawn that no railway ticket was found. Therefore, he was not a bona fide passenger. An intimation sent by the Station Master also indicates that at about 10.50 PM when an unknown person was trying to board the running train, he fell down between platform and the train and his right arm from shoulder and right leg from hip joint were amputated. The request of the General Railway Police to SMO PGI, Chandigarh on 12.5.2012 also shows that while making request to the concerned doctor for recording the statement of the injured, a mention was made that he had fallen down at Ambala Railway Station while trying to board the train. Therefore, it is established that appellant while trying to board the running train fell down between platform and train and his right leg from hip joint as well as right arm from the shoulder were amputated. Record of the PGI (Annexure A7), conclusively proved the same.

Now, the question would arise as to whether the act of the appellant in trying to board the running train is a self inflicted injury and falls within any of the exceptions provided in Section 124-A of the Railways Act, 1989?

The definition of untoward incident given in Section 123(c) of the Railways Act, 1989 makes it clear that accidental fall of passenger from the train is an untoward incident. Section 124-A of the Railways Act, 1989 makes it clear that irrespective of the fact whether there is any wrongful act,

neglect or default on the part of the railway, the railway is liable to pay the compensation except when the case falls within one of the exceptions mentioned therein.

I am of the view that it is not a case of attempt to suicide nor it is self inflicted injury. It was a negligent act of the appellant in trying to board the running train. It is also apparent that at that time, the train was at the platform. As the appellant fell down between the platform, the train stopped indicating that the train was not at a high speed and it was purely an accident. Therefore, the said incident is untoward incident involving the railway.

Now, the further question would arise as to whether the appellant was bona fide passenger or not?

Admittedly, no ticket was found from the person of the appellant. In this case, right leg from the hip joint and right arm from the shoulder of the appellant were amputated. The appellant was first removed to the General Hospital, Ambala City as an unknown person and from there, he was referred to PGI, Chandigarh. The statement of the appellant in this regard is sufficient without any corroboration regarding his journey.

Now, the question would arise as to whether in these circumstances, the plea of the appellant that the ticket was lost can be accepted or not?

When appellant lost his right leg and right arm as indicated above, his clothes also might have been torn. His belongings were not found. Therefore, in these circumstances, his plea has to be accepted that the ticket was also lost. As such, the findings of the Tribunal on issue Nos.1 to 3 are reversed and are decided in favour of the applicant-appellant.

Learned counsel for the appellant claims that in view of the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016, came into force w.e.f. 1.1.2017 vide notification dated 22.12.2016, Rs.8 lacs compensation be allowed. The said point was considered and declined by this Court in FAO No.5148 of 2008 titled as Gian Kaur and another vs. Union of India, decided on 20.1.2017.

As a result of the foregoing discussion, the impugned judgment dated 2.7.2015, passed by Tribunal is set aside. Application is allowed. Respondents are ordered to pay compensation @ Rs.four lacs to the applicant-appellant with interest @ 9% per annum from the date of filing of the claim application i.e. 22.8.2012 till the date of payment.

Appeal stands allowed accordingly.

28.03.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes