

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

**FAO No.958 of 2002 (O&M)
Decided on : 13.08.2018**

Smt. Lalita Sharma & another

... Appellants

Versus

Union of India

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Subhash Sachdeva, Advocate, for the appellants.

Mr.Karminder Singh, Advocate, for the respondent-UI.

G.S. Sandhawalia, J.

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987 (for short, the 'Act'), is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 30.03.2001, whereby compensation to the wife of the deceased-Dinesh Kumar Sharma, has been denied.

The reasoning which prevailed with the Tribunal was that it was not proved that the deceased was travelling in the train and the statement of Surinder Kumar Sharma could not be relied upon as he was a procured witness as his services had been requisitioned by issuing an appeal in the newspaper after a lapse of sufficient time from the date of occurrence. Reliance was placed upon the witnesses produced by the Railway administration, namely, S.P.Sharma, Railway Guard and O.P.Sharma, Station Superintendent that the body was lying on the down main line between Faridabad and Junction Cabin and nobody had reported regarding anybody falling down from the train. Resultantly, it

was held that it was a case of run-over and therefore, in the absence of any valid ticket, compensation was not liable to be paid.

Counsel for the appellants has argued that from the place of occurrence, it would be apparent that the deceased was involved in a untoward incident and the case would be covered under Section 123 (c) (2) of the Railways Act, 1989 and the ticket from the purse was lost and therefore, the benefit should go to the widow as the legislation in question is a socially beneficial piece of legislation. Resultantly, the order passed by the Tribunal was questioned.

Counsel for the respondent, on the other hand, submitted that neither the ticket was recovered nor the alleged witness, who had appeared on account of the notice having been put in the newspaper had informed anybody falling from the train and therefore, the Tribunal was correct in coming to the said conclusion.

A perusal of the photocopy of the reconstructed record, produced by counsel for the appellants, would go on to show that the claim petition was filed on 22.02.1999, after the accident taking place on 06.03.1998. In the petition, it was pleaded that the accident was on account of falling from train GDP 3 EMU, on which the deceased was travelling from Faridabad to Junction Cabin (Okhla) and his ticket was a second class ticket and it was not found as it was lost due in the accident.

The defence of the Railways was that the case did not fall within the perview of Section 123 (c) (2) and 124-A of the Railways Act, 1989 and it was not a case of accidental fall from the train. It was for the applicant to prove that he had fallen down from the train and that he was

a *bona fide* passenger.

The widow, in her affidavit dated 26.07.1999, deposed as per the contents of the claim petition but never mentioned a fact about the ticket in question and only the affidavit was regarding the death on account of the accidental fall as he was working in M/s Sunflag Iron & Steel Company Ltd., Okhla. She deposed that on advise of her counsel, she made extensive survey to locate an eye-witness at Faridabad Railway Station and accordingly, an appeal was given in the newspaper-Daily Tara on 19.06.1999. In cross-examination, she admitted that it takes 30/35 minutes to reach the Railway Station on rickshaw and the place of occurrence was nearer to her house than the Railway Station. On the date of accident, her husband had left the house at 10.45 am to go to Okhla for taking charge of the godown. She further deposed that she came to know about Surinder Kumar Sharma 2-2 ½ months back when she had given an advertisement in the newspaper, which came forth in her cross-examination on 04.10.1999. Supplementary affidavit dated 10.01.2001 was then filed and in her second cross-examination on 12.01.2001, she admitted that her husband used to go at at 8 am and come back at 6 pm for work.

The witness, AW-2, Surinder Kumar Sharma deposed about the factum of death on the same train on the same date, vide affidavit dated 17.07.2001. He had described the person who had bought the ticket from the colours of the clothes and what he was wearing and that they were holding the hand-grips at the top and had got standing accommodation just inside the gallery. Due to jerk on the train passing the Badkhal fly-over, the said person had fallen down and he and other

passengers had raised alarm to pull the chain but the train did not stop and it only stopped at Okhla Railway Station. He along with other passengers told the Railway staff present on the platform about what had happened. On reading the daily newspaper 'Tara', on 19.06.1999, which had carried an appeal, he had remembered about the incident and contacted the advertiser on telephone and the brother of the deceased had approached him a few days later. He had recognized the photograph of the deceased and had deposed before the Tribunal. It was admitted that he had studied till 12th and was running a dairy farm and Shastri Colony was about 2/3 kms from Bhour Colony where the claimant's family was staying. He had boarded the train at 11.30 am and he admitted that he had not made any statement, oral or in writing, to the police regarding the accident and the deceased was not known to him.

In contrast, the Railways examined their officials, S.P.Singh, who is a Railway Guard and who was on duty on the said train from Palwal to Ghaziabad. He deposed that nobody had pulled the alarm chain and the train had stopped at Junction Cabin for 2 minutes and nobody had fallen from the said train. It was further clarified that there was no footboard in the EMU train and it is the Driver who stops the train and by pulling the chain, the train does not stop. Similarly, O.P.Sharma, who was working as Station Superintendent, Railway Station Faridabad, deposed that he had got information that one dead body was lying at K.M. 1511/12 & 13 on Down Main Line between Faridabad and Junction Cabin.

A perusal of the documents which has been placed on record,

would go on to show that intimation was sent to the GRP authorities that some passengers had seen the dead body lying at the said place and accordingly, action was asked for. The said communication is dated 06.03.1998 at 1.40 pm and which was received at 1.45 pm. The postmortem was, accordingly, conducted and the cause of death could be due to the injuries caused by a Railway accident.

Thus, from the above sequence of events, one aspect is clear that there is nothing to show that the deceased, as such, was a passenger, as defined under Section 2 (29) of the Act and neither there is any such specific mention of the ticket which he was carrying. The only sole eye-witness who has now been produced as AW-2, Surinder Kumar Sharma, whose credibility is doubtful and has been rightly questioned by the Tribunal. At the time of filing the petition also, the said witness was not available on 22.02.1999. As per the affidavit itself, it has come forth that only on the advise of the counsel, an advertisement had been made in the newspaper on 19.06.1999, during the pendency of the proceedings, on the basis of which, the witness came forth to give his evidence. He was a resident of a close vicinity and therefore, the finding which has been recorded that he was a procured witness, cannot be said to be without any basis. It is further strange that inspite of the fact that he saw the person falling off the train, information was not given to the police or the Station Master regarding the accident, which has come forth in the cross-examination though in the affidavit, it has also been mentioned that he had told the railway staff present at the platform.

The Railways, on the other hand, correctly examined the

FAO-958-2002 (O&M)

staff who was on the train in question and also the Station Superintendent, Railway Station, Faridabad, who had received the information regarding the presence of the dead body lying. In such circumstances, the onus has not shifted, as such, from the claimants to the Railways to dispel the fact that the passenger did have a valid travel ticket. The evidence produced also show that the residence of the deceased was not very far and it took 30-35 minutes to reach the station but the place of accident was nearer to the house than the Railway Station. The chances of the deceased crossing the track and being run down by a train, in all probability, would be the cause of death and therefore, in the absence of being a passenger on the train, the basic ingredient which is necessary regarding the passenger who had accidentally fallen off a moving train, as per the definition under Section 123 (c) (2), the claim has rightly been repelled.

Thus, in the absence of all these factors, this Court is not inclined to disturb the well reasoned order of the Tribunal, denying the claim of compensation and accordingly, the present appeal is dismissed.

AUGUST 13th, 2018
sailesh

(G.S.SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*