

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

FAO No.3910 of 2002 (O&M)

Reserved on: 06.08.2018

Pronounced on : 17.08.2018

Jaswant Kaur and others

... Appellants

Versus

Union of India

... Respondent

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

Present : Mr. J.S. Virk, Advocate for the appellants.

Ms. Gurdeep Kaur, Advocate for
Mr. Sandeep Vermani, Advocate for respondent-UOI.

G.S. Sandhawalia, J.

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') filed against the order dated 14.06.2001 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by the wife and the minor daughters, on account of the death of husband and father-Jaswinder Singh.

The claim has been rejected by the Tribunal was on the ground that the ticket recovered was in the waiting list No.69 and was never confirmed. A report had been lodged by the brother of the deceased that he had gone missing a day earlier on 08.06.1999 and, therefore, the Tribunal held that the deceased was having cash and was abducted by unsocial elements and later on done to death after removing the cash from him. Therefore, the finding has been recorded that he was not a victim of a railway accident. The Guard of the Train had stated that no person had fallen down and nobody had pulled the chain and,

therefore, it was held that the deceased was not a passenger on the train in question and it was not a case of untoward incident, to reject the compensation.

Mr. Virk has, accordingly, submitted that once the ticket was found on the person of the deceased then it would be a case of passenger on a train involved in an untoward incident and, therefore, the Tribunal was in error in rejecting the claim.

Counsel for the respondent on the other hand justified the order passed and submitted that the ticket not being confirmed could not be held to be a valid pass or ticket. It was further argued that the pleaded case was of a train being involved in a train accident also.

The reconstructed record of the Tribunal was also examined during the hearing of the appeal.

A perusal of the application filed under Section 125 of the Railways Act, 1989 (for short '1989 Act') would go on to show that the claim as such of the appellants was that the deceased was working as Proprietor of M/s Guru Nanak Enterprises, Shahbad and left for Mumbai for his business and informed his wife that he was travelling by a train. He had reached at New Delhi Railway Station and got his reservation made from New Delhi to Mumbai on Train No.9024. The said train met with an accident at Darian Railway Station, Palwal, in which Jaswinder Singh was killed. The ticket bearing No.10400930 was found in his possession from the clothes on his body As per postmortem report also the cause of death was due to multiple injuries caused. It was submitted

that he was having cash of ₹30,000/- and gold ornaments of ₹1 lakhs. Documents i.e. railway ticket and copy of the reservation/cancellation form of the said train and the ticket of being second class was also attached.

The stand of the Railways in its written statement was that the deceased was not a passenger on the train and no untoward incident or accident by which death of the deceased as per provisions of Section 123 (c) read with Section 124-A of the 1989 Act was caused. Reliance was placed upon the DDR No.10 dated 09.06.1999 lodged by Gurmit Singh brother of the deceased that the deceased was missing since 08.06.1999 and apprehension was that he had been kidnapped by some criminals.

The postmortem report dated 11.06.1999, which was conducted at Government General Hospital, Palwal would go on to show that dead body had been brought by official of the Railways and information had been furnished that it was a case of railway accident at KM 1474/21-24. Injury No.1 would go on to show that the neck was almost severed and multiple ribs were fractured and abdomen showing multiple contusions. Both the legs were almost severed and thighs were fractured. The opinion of the doctor was also that the cause of death on account of multiple injuries to vital organs and are sufficient to cause death in ordinary course of nature and can be a result of a railway accident. The dead body had also been identified by Avtar Singh and Gurmeet Singh his brothers. It is, thus, apparent that keeping in view the

injuries on the person of the deceased, the factum that the deceased having died in a railway accident, cannot be discarded. The severity of the injuries as noticed on the person of the deceased would go on to show that it was a case of being involved with a Train as such, as recorded by the Tribunal, but the fact that the dead body was placed upon the railway track cannot as such be conjectured.

It is not disputed that the deceased was a resident of Shahbad and was engaged in the business. It is the case of the claimants that he was proceeding to Mumbai and died in a railway accident at Darian Railway Station, Palwal, since the train had met with an accident. Admittedly, the wife was not and could not be a eye witness of the said occurrence. More so the deceased had gone missing a day earlier on 08.06.1999 as per report lodged by his brother, which fact is corroborated by the father in the report dated 23.06.1999 to the Police Authorities, Faridabad regarding the earlier aspect that a report under Section 364 IPC had already been lodged on account of him having gone missing.

Requisite conditions as such for claiming compensation and maintaining an action under Section 124-A of the 1989 Act on account of a person being a victim of an untoward incident, would be on account of a passenger accidentally falling out travelling on a train. The basic ingredients are missing to the extent that it has been pleaded that he died in a train accident in the train in which he was travelling.

In such circumstances, even though the body has been found on the track in a badly mutilated condition, but in the absence of the

pleadings, the finding cannot be recorded in favour of the appellants that it was a case of untoward incident on account of falling from the running train.

The issue of being a passenger on the train is not as such covered under Section 2 (29) which talks about the definition of the 'passenger' who has a valid pass or a travel ticket. Section 2 (29) and explanation of Section 124-A read as under:-

“(29) “passenger” means a person travelling with a valid pass or ticket;

[(29A) “person interested” includes,—

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007).

(iii) a person interested in an easement affecting the land; and

(iv) persons having tenancy rights under the relevant State laws;]

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124-A Explanation.—For the purposes of this section,

“passenger” includes—

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

The documents on record would go on to show that for travelling from New Delhi to Mumbai on train No.9024 boarding pass was recovered bearing No.10400093 which was issued on 09.06.1999 at 2.00 PM for a sum of ₹349 only. It was a waiting list at serial no.169 of a male passenger aged 31 years. Reservation/cancellation requisition form

of the same also showed number of berth was one in the said train from New Delhi to Mumbai. Nothing as such has been brought on record to show that the said ticket as such was got confirmed from the railway authorities from the wait list to confirm the berth for the overnight journey and, therefore, it is also cannot be said that he was a passenger having a valid pass or travel ticket, the *sine qua non* which has to be present to maintain an action for claiming damages under Section 124-A of the 1989 Act.

The findings, thus, which have been recorded by the Tribunal do not suffer from any infirmity, which would warrant interference by this Court in the facts and circumstances. Resultantly, there is no merit in the present appeal and the same is dismissed.

AUGUST 17, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No