

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

**FAO No.3605 of 2003
Decided on : 27.08.2018**

Union of India

... Appellant

Versus

Palwinder Kaur and others

... Respondents

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

Present : Mrs. K.K. Kahlon, Advocate
for the appellant.

G.S. Sandhawalia, J.

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') is directed against the order of the Railway Claims Tribunal, Chandigarh Bench, Chandigarh dated 28.03.2003.

Vide the said order compensation of ₹4 lakhs was directed to be paid to the claimants-applicants, who are wife and five children of Kulwant Singh, who died in the train accident which was occurred on 02.12.2000.

Counsel for the appellant has mainly argued that the deceased Kulwant Singh was not a bonafide passenger as he did not have a ticket. His name was not found in the reservation chart and resultantly amount of ₹4 lakhs directed to be paid alongwith 12% interest per annum from the date of filing the claim petition i.e. 04.10.2001 was not justified.

The argument is only to be noticed and rejected. It is to be taken into consideration that the deceased was an Army personnel and employed as a Sepoy with the Sikh Light Infantry, Fatehgarh (U.P) at the

time of his death. It is not disputed that while travelling in the General compartment of Train No.3005 Amritsar-Howrah Mail Train for journey from Shahjahanpur to Beas (District Amritsar), the train met with an accident near Sarai Banjara Railway Station. On account of the death, the Railways themselves as such paid a sum of ₹2 lakhs as ex-gratia relief to the members of the family of the deceased. The respondents have also admitted the accident in question and the name of the deceased was mentioned in the list of the dead persons, which has been noticed by the Tribunal including the cheque of ₹1,85,000/- paid by the Railway Administration. Resultantly, in such circumstances, it was held that the payment of ex-gratia relief would be in respect of bonafide passengers only and, therefore, the burden was shifted upon the Railways.

The death, thus, has taken place by virtue of an untoward accident, which is defined under 123 (c) of the Railways Act, 1989 (for short '1989 Act'). Under Section 124 of the 1989 Act also when an accident occurs being either a collision between two trains or the derailment, then irrespective of whether there has been any wrongful act or default, the Railways would be liable to be pay compensation to the extent of loss of passenger dying as a result of such accident. Section 124 reads as under:-

“124. Extent of liability.

When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part

of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.”

Under Section 124-A, the right to maintain an action and to claim compensation would be for wrong act or neglect on the part of the Railway Administration which has led to the passengers having been killed. Once the deceased family as such found are entitled for the payment of ex-gratia relief, the Tribunal was right in holding that there was a presumption that that he was a bonafide passenger and merely because the ticket had not been produced would not be a ground as such to deny him the relief, once it was the specific claim of the claimants that the same had been lost in the accident.

It is to be further noticed that the deceased was a Army man and would not taken the risk of travelling without a pass, as they are entitled of benefits of concessional fare etc. and more so specially when it was inter-state travel from Utter Pradesh to Beas, Punjab and he would not take the risk of travelling without a ticket. Even otherwise once an accident has taken place on a railway track of the train, chances of the ticket being misplaced or lost in the luggage would arise in the confusion which follows on account of the derailment or a collision. From the

respective circumstances that the family was to produce the ticket would not be justified in the peculiar facts and circumstances of the case, once there is an admission by the appellant that the name of the deceased was in the list of dead persons and had been given ex-gratia amount.

Resultantly, there is no merit in the present appeal and the same is, accordingly, dismissed.

AUGUST 27, 2018

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No