

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

202

**FAO No.2230 of 2009
Decided on : 05.07.2018**

Sheela Devi & others

... Appellants

Versus

Union of India

... Respondent

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

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

Mr.Banni Thomas, Advocate, for the respondent-UOI.

G.S. Sandhawalia, J. (Oral)

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987, against the order of the Tribunal, Chandigarh Bench dated 27.02.2009, wherein the claim application of the appellant was dismissed qua the death of Malkeet Singh, who is the husband of appellant No.1 and father of appellants No.2 & 3.

The reasoning given by the Tribunal for rejecting the case is that the onus was on the respondent-Railways that the deceased was a ticket less traveler but contradictory evidence was produced on record. The respondent-Railways had been absolved in discharging its onus and the statement of Constable Surinder Singh regarding the two journey tickets from Rurki to Jalandhar City bearing No.63895 and 63896, which had been recovered, had not been mentioned in the recovery memo (Ext. A-8). The only recovery was of one identity card of one Ex-serviceman and nothing else was recovered. Same was also witnessed by Constable Surinder Singh and therefore, the subsequent recovery memo dated 10.01.2004 was held to

be manipulated and not worth reliance. The tickets had not been placed on record and therefore, the conduct of Sham Singh-AW1, son was found strange that he had gone back to the village instead of looking for his father after alighting the train. Resultantly, the deceased was held not to be a *bona fide* passenger on the date of the incident and therefore, issue No.1 was decided against the claimants and resultantly, compensation was denied. Issue No.3 was, however, decided in favour of the claimants regarding the relationship and locus standi, as such, to file the petition.

The reasoning given by the Tribunal is not liable to be accepted, in view of the sequence of events, which would clearly go on to show that the deceased was a *bona fide* passenger who had boarded the train along with his son on 09.01.2004 from Rurki to Jalandhar and was involved in an untoward incident as his body was found at Sarai Banjara by the Trackman-Bandhan, RW1. The pleadings were very explicit in as much as in the claim petition itself, there was a reference of the two second class tickets from Rurki to Jalandhar and the incident which had taken place.

The defence of the Railways was that no untoward incident had taken place and the deceased was not a passenger on the train much less a *bona fide* passenger and it was a forged and fabricated story which was put-forth.

It is not disputed that on account of the body having been recovered on 10.01.2004 by Babdhan-RW1, who was working as a Gangman and was examined the deceased was alive at that point of time

and was lying between the up-line and the loop-line of the Sarai Banjara Railway Station and Jagdish, Patrolman had remained at the spot while he went to inform the Station Master. It has also come on record by the statement of Janak Raj, Assistant Station Master who was examined as RW-3 that he was informed during his duty hours by Jagdish that one injured man was lying near West Cabin outside the track. He further deposed that he had requested the Control, who had advised him that the injured be taken in brake-van of Goods Train which was to come and pass from the station and the injured was lying between up-loop line and up-main line. To the Court question put by the Tribunal, he admitted that the train had scheduled stoppage at Sarai Banjara and the IUL passenger arrived at 0659 hours and departed at 0700 hours. The Patrolman had informed him at 0700 hours about the injured lying along side the Railway track and thus, the IUL had already passed at that moment and the possibility of the injured having fallen down from IUL could not be ruled out, although he volunteered that he was not sure about this fact.

From the record, it would be clear that an enquiry, as such, under Rule 7 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003, was done regarding the incident by the DRM, which was forwarded to the Deputy Chief Commercial Manager, which mentions that one man had died and was lying in the West Cabin. On the body being removed, the postmortem was done on 11.01.2004, whereby on account of the multiple injuries, as such, it was opined that the death was due to a railway accident on account of the compression of

the brain.

It is a matter of record that on the basis of the Jamatalasi and the identification, the police officials had visited the house of the deceased and informed the son who alongwith his relatives reached Rajpura. The death report by the Police Station Patiala GRP dated 10.01.2004 also shows that there were various injuries and black patches of coal. The statement of Sham Singh, son who was travelling alongwith the deceased was also recorded under Section 174 Criminal Procedure Code, 1973 dated 11.01.2004, wherein also he specifically mentioned that his younger brother Khushal had joined Army 6 months before the incident. He alongwith his father had been returning from Rurki to Jalandhar and he was on train and had gone to sleep and the father was awake. When he awoke, his father was not in the compartment and he got out when the train left the Railway Station, Jalandhar and he went to his Village Makowal thinking that his father had left at some railway station and would return. Police Constable had then came and told him about his death at Sarai Banjara Railway Station. Thus, the statement of witness-AW1, immediately after the death and 2 days later, was the same as what has been set up in the claim petition. Rather in the claim petition, the details of the tickets from Rurki to Jalandhar had been produced.

The Railways have made no efforts to rebut as to whether these tickets were issued for travel from Rurki or not and therefore, the Tribunal was in error in not considering this aspect that the onus had shifted to the Railways to rebut the claim that the deceased alongwith his

son were not travelling from Rurki on an overnight journey. It is the duty of the Railways that the passengers who are travelling without tickets are checked and on a long journey, it was not possible that the deceased would have, on an inter-state travel, taken the risk to travel without ticket. The affidavit of Sham Singh is also categorical regarding the fact that they were returning after visiting his younger brother who had joined Army 6 months before the incident and was undergoing Military training and in consonance with the claim petition. The Tribunal has, thus, given unnecessary weightage to the fact that Surinder Singh who had witnessed the Jamatalasi and thereafter also, given a statement under 174 proceedings qua the recovery of the tickets from the deceased. Similarly, the statement of Sham Singh has wrongly been discarded only on account of the fact that he had left for his village without making any effort to locate his father.

The Apex Court has held that the Railways Claims Act, 1989 is a beneficial piece of legislation and only in case there was proof that the compensation is not payable on account of the exceptions provided under Section 124-A of the Act, the claim is to be denied. Once the passenger had fallen down from the train and died while travelling, the death has to be held as an accidental death, as such, and an untoward incident, in view of the judgment in Jameela & others Vs. Union of India 2010 (12) SCC 443. Similarly, in Union of India Vs. Prabhakaran Vijaya Kumar & others 2008 (9) SCC 527, it has been held that the claim is in form of no fault liability, as such, under Section

124-A. The relevant portion of the judgment read as under:

“11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the [Railways Act](#) is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide [Kunal Singh vs. Union of India](#) (2003) 4 SCC 524(para 9), [B. D. Shetty vs. CEAT Ltd.](#) (2002) 1 SCC 193 (para 12), [Transport Corporation of India vs. ESI Corporation](#) (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide [Alembic Chemical Works Co. Ltd. vs. The Workmen](#) AIR 1961 SC 647(para 7), [Jeewanlal Ltd. vs. Appellate Authority](#) AIR 1984 SC 1842 (para 11), [Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd.](#) AIR 1981 SC 852 (para 13), [S. M. Nilajkar vs. Telecom Distt. Manager](#) (2003) 4 SCC 27 (para 12) etc.

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14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in [Section 123\(c\)](#) of the Railways Act, we will be depriving a large number of railway passengers from

getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the [Railways Act](#). Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.”

In CA-4945-2018 titled ***Union of India Vs. Rina Devi***, decided on 09.05.2018, the said view had been reiterated. Para 16.6 reads as under:

“16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under [Section 163A](#) of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to [Section 124A](#) merely on the plea of negligence of the victim as a contributing factor.”

In such circumstances, keeping in view the above cumulative discussion, the findings which have been recorded on issue No.1 are not sustainable as the Railways have failed to rebut the claim that the deceased was not a *bona fide* passenger, on account of the specific tickets which find mention in the claim petition. Accordingly, the said findings are reversed and it is held that the deceased was a *bona fide* passenger on 09.01.2004 and had boarded the train at Rurki and his death on 09.01.2004 was on account of an untoward incident. Resultantly, the present appeal is allowed and the appellants are held entitled for Rs.4 lacs as per the schedule provided under the Act, along with interest @ 6%, from the date of the accident, i.e., 09.01.2004, in view of the law laid down by the Apex Court in **Rina Devi (supra)**.

JULY 05, 2018
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No