

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

FAO No.3960 of 2011
Reserved on : 02.07.2018
Pronounced on : 20.07.2018

Suman Sharma

... Appellant

Versus

Union of India

... Respondent

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

Present : Mr. D.K.Khanna, Advocate for the appellant.

Mr.Jagdish Marwaha, Advocate, for the respondent-UOI.

G.S. Sandhawalia, J.

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987, is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 22.02.2011, whereby the claim petition filed by the appellant on 08.10.2008, for compensation on account of death of her husband, Rajinder Sharma, on account of being involved in an untoward incident, was rejected, on the ground that the deceased was not a *bona fide* passenger, as defined under Section 2 (29) of the Railways Claims Act, 1989.

The case of the appellant before the Tribunal, as such, was that her husband was working with M/s Attam Associates at Parwanoo, Himachal Pradesh. He continued to do various duties at various places at Haryana also like at Ambala, Chandigarh and sometimes Delhi, on account of his earlier employment at Kundli, Sonapat. The appellant was residing in her parental house at Hamirpur and the deceased had informed her that at the end of April, 2008, he would be joining her as there was a family

function (puja) after attending some job at Ambala. She had come to know about his death by falling from train on telephone by the Police and her father-in-law and uncle had reached Kalka where the dead body was handed over to them. Resultantly, the claim was put-forth.

The defence of the Railways was that no particulars about the alleged incident had been given and therefore, it was denied that the deceased suffered on account of an untoward incident, as defined under Section 123(c). The particulars of train journey and the date of incident had not been given and therefore, it was further alternatively pleaded that the deceased had suffered on account of self-inflicted injury, on account of his own criminal act while standing at the gate of the compartment of a moving train as on account of his body had been found at mid-station between Kalka and Chandimandir. The liability was, thus, denied to pay compensation and it was pleaded that since an enquiry was pending, the factum of the deceased being a *bona fide* passenger was denied and liberty was sought to file amended written statement.

It is, thus, apparent from the facts and circumstances, as such, that there was no eye-witness to the fact that the deceased had died while falling of from the moving train and tell about the incident and that he was a passenger travelling with a valid pass/ticket, as defined under Section 2(29). It is, on this account, the Tribunal has rejected the case of the appellant, since no ticket was recovered in his Jamatalasi, as per the DRM's report (Ext. R-1) and since even in the claim petition, the class of travel and ticket number was stated to be unknown. However, the

Tribunal also held that the deceased met with an untoward incident and died due to the injuries but has denied the relief under issue No.1, that he was not a *bona fide* passenger. Similarly, the *locus standi* as such, to file the petition was also decided in favour of the appellant being the wife of the deceased.

Counsel for the appellant has, accordingly, argued that the body was found on the track, as noticed above and the widow, as such, could not lead or state anything more as she was not travelling with the deceased and therefore, the Tribunal has erred as there was a presumption, as such, that the deceased was a *bona fide* passenger, in view of the averments made. The fact that even the Railways admitted that the incident had taken place and a finding had also been recorded regarding his death on account of an untoward incident. It was, accordingly, argued that the onus had, thus, shifted upon the Railways, to explain that the case fell under the exceptions provided under Section 124-A.

A perusal of the record attached by the appellant alongwith the paperbook would go on to show that the appellant had filed an affidavit in consonance with her pleadings as to the fact that her husband had informed that he would be joining her after attending some work at Ambala and that he was working at Parwanoo. She had been informed about the incident by the Police and thereafter, her father-in-law and uncle had reached there. It was pleaded that the deceased was hail and hearty and his death had been caused on account of the accidental fall from the train.

The post-mortem report would go on to show that on 03.05.2008, the body of the deceased had been brought by one Ranbir Singh, GRP, Kalka and it had been mentioned in the same that the death was due to Railway accident, as per the information furnished by the Police. The injuries were to the extent that they were crushed injuries with multiple fractures on the left foot and ankle joint, part of the left foot & toes were separated from the body and the left arm had been fractured from multiple sides. Right shoulder was displaced and part of the left hand and fingers were separated from body and there was a head injury on the skull on the left side and multiple aberrations on the left side and a black eye. In the opinion also, the cause of death was head injury and hemorrhage.

Section 174 Cr.P.C. proceedings would also show that the dead body was lying near the track between Chandimandir and Kalka Railway Station, as per intimation given to SHO/GRP at 10.50 pm on 01.05.2008 by Vinod Kumar, Driver of a Down Electric Engine that a dead body was lying on the side tracks between KM No.259/2-259/01 and action should, thus, be taken. An enquiry, as such, was, thereafter, conducted lateron as would be clear from the statement of the appellant which was recorded on 22.10.2009, wherein also, the appellant stated regarding the employment with M/s Attam Associates and that on 01.05.2008 while coming from Ambala to Kalka, her husband had expired. The information had been given by the Police and that she had 2 minor children to look after on account of the accident which took place.

Vinod Kumar, RW-1 had also submitted his affidavit that while driving down the Electric Engine on 01.05.2008, he had noticed that one man was lying at the track at the said KMs at 10.30 pm and there was sufficient ground, as such, between the objects lying in the track upto about 11-12” and without disturbing the body he drove through the engine and he could not tell whether the said male person was dead or alive. Due information had been noticed in the Driver's Notebook and the ASM, Chandimandir had been informed through written memo. As per the report of the Driver, the Station Master, Kalka had also intimated the SHO/GRP regarding the dead body lying on the track and requested that he should attend the same for further action.

Merely because there has been no recovery, as such, of any ticket from the body of the deceased, would not be a ground to deny the benefit of the no fault liability, which is to be paid on account of the untoward incident, under Section 124. The statement of the appellant would go on to show that her husband was shuttling between Ambala and Parwanoo and therefore, presumption would arise that if he was using the facilities of Railways for travelling from Kalka which is well connected with Ambala. He would be using a ticket or a pass and therefore, would normally travel alone, in pursuance of his duties assigned to him, as per his employer and in search of his professional work. The appellant-wife could not, in such circumstances, depose regarding the details of travel with a valid ticket and details of such journey, thus, could not have been given by the appellant-wife being stationed 200 kms away at Hamirpur.

The onus would fall to this extent upon the Railways that he was not a traveller on the train and had fallen down and thus, was a victim of untoward incident, which aspect had also been recorded by the Tribunal. Merely because no ticket was found from his body would not, as such, mean that the dependents are not entitled for the compensation. The Railways authorities would be under an obligation to check the passengers, especially in case of an inter-state travel of a long distance as it would not be expected that the deceased would be travelling between Kalka to Ambala, which is at a distance of 60 kms. Therefore, keeping in view the fact that the provisions of Section 124-A are in a form of no fault liability, the Railways would be liable to pay compensation on account of the untoward incident. Admittedly, the Railways had not been able to prove that the case fell within the exceptions which fall under Section 124-A whereby no compensation is to be paid by the railway administration if the passenger dies or suffers injury due to suicide or attempted suicide by him; self-inflicted injury; his own criminal act; any act committed by him in a state of intoxication or insanity.

Reference can be made to Section 54, regarding the duty of the passenger to present his pass or ticket, to such Railways servant for examination, during the railway journey or at the end of the journey. Similarly, under Section 55, there is a prohibition from travelling without a pass or a ticket. Sections 54 and 55 read as under:

“54. Exhibition and surrender of passes and tickets.—

Every passenger shall, on demand by any railway servant

authorised in this behalf, present his pass or ticket to such railway servant for examination during the journey or at the end of the journey and surrender such ticket—

[\(a\)](#) at the end of the journey, or

[\(b\)](#) if such ticket is issued for a specified period, on the expiration of such period.

55. Prohibition against travelling without pass or ticket.—

[\(1\)](#) No person shall enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket or obtained permission of a railway servant authorised in this behalf for such travel.

[\(2\)](#) A person obtaining permission under sub-section (1) shall ordinarily get a certificate from the railway servant referred to in that sub-section that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be travelled.”

Similarly, under Section 137(1), there is a provision for a penalty of imprisonment upto 6 months if a person tries to defraud the Railway authorities or attempts to travel without a proper pass. The said section reads as under:

“137. Fraudulently travelling or attempting to travel without proper pass or ticket.—

[\(1\)](#) If any person, with intent to defraud a railway administration,—

[\(a\)](#) enters or remains in any carriage on a railway or travels in a train in contravention of section 55, or

[\(b\)](#) uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may

extend to one thousand rupees, or with both: Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.”

In such circumstances, ticketless travel is an illegal act and therefore, it was further for the Railway authorities to check and detect any unauthorized person travelling without an authorized ticket and a presumption would arise in favour of the appellant that the deceased was travelling with a valid ticket from Ambala to Kalka and had covered majority of the distance before he fell from the train when it had crossed the Chandimandir Railway Station around 10 pm. The onus, thus, should have been shifted upon the Railways, to prove that he was a trespasser, as such and was travelling without a ticket and not a *bona fide* passenger and therefore, the Tribunal has committed an error in dismissing the claim petition of the claimant and the impugned order is, accordingly, not liable to be sustained.

In similar circumstances, in **Union of India Vs. Smt. Suman 2013 (2) PLR 28**, the appeal of the Railways was dismissed, wherein the claim was that the ticket purchased was lost during the incident. Accordingly, it has been held that the deceased was a *bona fide* passenger and there was a burden upon the Railways that whether he was travelling without ticket. Reliance had been placed upon the judgment of the Bombay High Court (Nagpur Bench) in **Maniben Paljibhai Parmar v. Union of India 2005 (1) RCR (Civil) 255**.

The Apex Court in **Union of India Vs. Prabhakaran Vijaya**

Kumar & others 2008 (9) SCC 527, has noticed the aspect of the provisions being a beneficial piece of legislation. The said view was followed in the case of *Jameela & others Vs. Union of India 2010 (12) SCC 443*, wherein a person who had fallen down from a open door compartment, was held to be covered, as such, under the provisions of Section 124-A, as it may be a rash and negligent act to stand next to the door but it is certainly not a criminal act.

In similar circumstances, the Apex Court in CA-5608-2017 titled *Kalandi Charan Sahoo & another Vs. General Manager, South-East Central Railways, Bilaspur*, decided on 25.04.2017, on account of a proper enquiry not having been held under Rule 7 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003, the appellants were held entitled to compensation payable under Section 124-A of the Railways Act, 1989, to the tune of Rs. 4 lakhs. It had also been noticed that the enquiry was conducted only after the claim petition had been filed before the Railways Claims Tribunal, which is also the case in the present case, since the enquiry herein also was conducted on 08.10.2009, whereas the petition had been filed on 08.10.2008. In the above-referred case, the deceased had fallen down from a running train at the D. Cabin without stoppage of the train and invited the accident. The claim had been rejected, both by the Tribunal and the High Court. The SLP was allowed, by holding as under:

“It is in these circumstances, the appellants are before us in these proceedings via Article 136 of the Constitution. After hearing learned counsel for the parties, we find that it is

not even necessary to go into the issue as to whether it was the fault of the deceased or that he accidentally fell down. Learned counsel for the appellants has drawn our attention to the provisions of Section 124A of the Railways Act, 1989, which warrants payment of compensation whenever untoward incident occurs whether or not such an incident has occurred by any wrongful act, neglect or default on the part of the Railway administration. Going by the aforesaid provisions and in the peculiar facts of this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the appellants shall be entitled to compensation payable under Section 124A of the Railway Act, 1989. We are informed that, at the material time, compensation payable under the said provision was Rs. 4 lakhs.

This appeal is, thus, allowed allowing the compensation of Rs. 4 lakhs (Rupees Four Lakhs) to the appellants which shall be paid by the respondent within two months.”

In **Prabhakaran Vijaya Kumar** (supra), 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.

xxxx xxxx xxxx

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.”

The principles of strict liability, rate of compensation and the liability to pay interest, alongwith the presence of the body near the railway track being *bona fide* are conditions to maintain a claim and the amount of interest, as such, payable, was subject matter of consideration by the Apex Court in CA-4945-2018 titled ***Union of India Vs. Rina Devi***, decided on 09.05.2018. The Apex Court has, resultantly, held that Section 124-A is in the form of a no fault liability in the case of a untoward incident and the death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation without going into the issue of negligence of the victim as a contributing factor. 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.”

Similarly, on the issue of burden of proof which has to be discharged as a passenger was also discussed regarding the fact that the initial burden has to be of the claimants, which can be discharged by filing an affidavit and then the burden shifts to the Railways and this aspect is to be dealt with from case to case basis. Relevant portion reads as under:

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

Keeping in view the above, this Court is of the opinion that the findings on issue No.1, as such, need to be reversed in the present case, as sufficient material was brought on record that the deceased, as such, would fall within the definition of Section 2(29) and his case would not fall within the exception provided under Section 124-A. Merely in the absence of the ticket on his body would not disentitle the appellant to claim compensation, in the absence of any such proof that he had committed suicide or was intoxicated, as such, to fall within the exceptions under Section 124-A and could not be held to be a trespasser

in the Railway train on the date of the accident.

Resultantly, the present appeal is allowed, the appellant shall be entitled for a sum of Rs.4 lakhs along with interest @ 6% per annum, from the date of the accident, i.e., 01.05.2008, keeping in view of the law laid down by the Apex Court in **Rina Devi (supra)**. The amount be paid equally to all the four dependents including the father, in instalments of Rs.1 lakh each alongwith interest. The amount of the two minors, however, will be kept in Fixed Deposit Receipt, to earn the highest rate of interest till they attain the age of majority. The appellant-mother will, however, be entitled to use the interest for the purpose of their welfare.

JULY 20th, 2018
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No