

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

FAO No.2719 of 2012

Date of Decision:10.12.2018

Kashmir Kaur

.....APPELLANT

Vs.

Union of India

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Upender Prashar, Advocate for the appellant.

Mr.Khushkaran Kumar, Advocate and
Mr.Vikas Chatrath, Advocate for
the respondent-UI.

DR. RAVI RANJAN, J.(Oral)

I have heard learned counsel for the parties and perused the records of this case.

This appeal filed by the appellant/claimant-Kashmir Kaur, is directed against the judgment dated 27.02.2012 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”), by which the claim of the applicant that the deceased died in untoward incident and, thus, she is entitled for the compensation, has been rejected and the claim petition has been dismissed.

Short facts which would be necessary for consideration of the *lis* stand enumerated as under:-

The claimant-Smt. Kashmir Kaur, by filing the claim petition sought compensation for the death of her son Gurbir Singh in railway untoward incident which according to her happened on 23.07.2010 at about 3.45 a.m., as the deceased Gurbir Singh boarded the Jammu Tawi Express train from Amritsar to Ferozepur. When the train was between Amritsar and Manawala

railway stations, the deceased fell down from the said train and died on the spot. The claim is that the train was crowded and the deceased was standing near the door and fell down. It is further claimed that the deceased was a bonafide passenger and he had purchased ticket for 2nd class from Amritsar in the presence of his relative, however, the ticket was lost during accident. The deceased was unmarried.

A written statement was filed on behalf of the respondent denying the averments made in the claim petition and a plea was taken that the deceased was not a bonafide passenger not having any railway ticket. Thus, the alleged incident does not fall within the purview of Section 123(C) of the Railways Act (hereinafter referred to as “the Act”) and, as such, the applicant is not entitled for any compensation under Section 124-A of the Act.

Upon consideration of the rival pleadings, the Tribunal framed following issues:-

1. *Whether the deceased was a bonafide passenger at the time of incident?*
2. *Whether the incident is covered within ambit of Section 123 (a) (2) read with Section 124-A of the Railways Act?*
3. *Whether the applicant is the sole dependents of the deceased?*
4. *Relief.*

The claimant-appellant, in support of her contention, got examined herself as AW-1 and she was cross-examined also. In her testimony, she has clearly stated that, on 22.07.2010, her son Gurbir Singh(deceased) had left the house informing her that he was to visit to his maternal grandfather's residence at Ferozepur by train which leaves early in the morning from Amritsar railway station to Ferozepur railway station. She gave Rs.200/- to him for purchasing a ticket.

When the train was between railway station from Amritsar and Manawala, he fell

down from the running train and died on the spot. She came to know about the incident on 23.07.2010. She has further claimed in her affidavit that her son was travelling as bonafide passenger in JammuTawi Express train from Amritsar to Ferozepur railway station in general compartment. Her son had purchased the railway ticket in the presence of my relative residing at Amritsar, who accompanied him till railway station Amritsar but the ticket was lost during the incident.

In her cross-examination, she has accepted that she had made the statement before the GRP and she stands by the same. She has further stated in her cross-examination that she did not know the date when Gurbir Singh left home. She has also accepted that her son did not purchase any journey ticket in her presence and she had not witnessed her son boarding the train. She has also stated that her son left the home at about 5.00 P.M.

AW-2, Resham Singh has stated that deceased-Gurbir Singh was his relative and he came to his residence on 22.07.2010 in the evening. He was to board at JammuTawi Express train from Amritsar railway station to Ferozepur railway station. He stayed at his house till late night and at about 12.00 A.M., left his house to railway station Amritsar. The deceased-Gurbir Singh purchased general ticket from ticket window in his presence valid upto Ferozepur railway station and then he said that train would depart at about 2.00 a.m. and then he went inside the railway station. Thereafter, Resham Singh returned back to his residence. Next day, he came to know about the incident of death of Gurbir Singh.

In the cross-examination, Resham Singh has stated that on 22.07.2010, he along with the deceased reached railway station on a motorcycle of his neighbour. It was red in colour and he accompanied the deceased to the ticket window. To a question asked as to how many windows are there at Amritsar railway station for sale of ticket, reply given by him was that there are so many ticket windows, but he does not exactly remember the number, however, he has

stated subsequently that ticket was purchased from either from 2 or 3 number window and it was for Jammu Tawi Express. There was a queue of 10-15 persons on one side and 20-25 persons on the other side. He has also stated that it is correct that he does not know the fact that no railway ticket was found from the body of Gurbir Singh in jama talashi.

These statements have been disbelieved by the Tribunal simply on the ground that AW-1 has testified in her cross-examination the she does not know the date of deceased-Gurbir Singh leaving home.

In my considered opinion, such single piece of statement picked up from the examination cannot be enough to oust the entire claim. In fact, the entire statement of Kashmir Kaur should have been considered by the Tribunal in which, she had clearly stated that the deceased was going to meet his maternal grandfather and he took money also for purchasing ticket which withstood the test of cross-examination. If that is accepted as prima facie evidence and then burden would shift upon the railways to prove otherwise.

Respondent had brought on record the evidence as R-1 i.e. the DRM report, which shows that no train ticket or any authority to travel was recovered from the deceased during personal search by GRP.

Learned counsel for the respondent has made much emphasis at the time of hearing upon the testimony of the guard of the train who has been examined as a witness in this case and has stated about the timing of the train. However, upon going through the testimony of RW, I fail to appreciate any remarkable thing on the basis of which claimant could be ousted.

It is further urged that, as per the postmortem report, body was cut into pieces. The head and right arm of the deceased was found lying between DN and UP track and rest of the body was lying in DN track. Injuries were on head/forehead. Chin was broken, left wrist was broken and right arm was also broken

from two places. Right foot was cut off from ankle, which could not be found out.

On the basis of the aforesaid, it is being urged by learned counsel for the respondent that if a body falls from the train, such type of accident cannot happen. In support of his contention, learned counsel has relied upon a decision of the Apex Court rendered in Union of India Vs. Rina Devi, 2018 AIR (SC) 2362, in which the Hon'ble Supreme Court, according to the respondent, placing reliance upon earlier decisions, has held that in such a situation, it would be very difficult to accept that the deceased fell down from the train and, thus, it can be held that he was not a bonafide passenger, as he was not in possession of a ticket. However, had there been a ticket found in the pocket the story would have been different. In the judgment in para 17.4, the Apex Court has observed that mere presence of a body on the railway premises will not be conclusive proof to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained, however, mere absence of ticket will not negative the claim also that he was a bonafide 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 issue can be decided on the facts shown or the attending circumstances which has to be dealt with from case to case.

In the present matter, the claimant has discharged her onus by leading evidence that the deceased was going to his maternal grandfather by the said train and he left his house along with sufficient money to purchase ticket. Thereafter, he stayed at his relative's house at Amritsar who accompanied him to railway station where he purchased ticket and boarded the train. Now the burden will shift upon the railways to prove otherwise, which, in my considered opinion, could not be discharged by the railways. By merely raising a finger towards the bonafide of the statements made would not be sufficient unless there is some cogent evidence available to the railway explaining as to why the deceased travelled such a long

distance from Tarn Taran and reached at Manawala for committing suicide or for coming under a train at about 3-4 a.m. in the morning. If he wanted to commit suicide, he could have done it well at anywhere at the nearest place. Otherwise also, even if it is assumed that some accident might have taken place still there is no explanation as to how he reached Manawala from Tarn Taran.

On appreciation of material available, in my considered view, the claimant has been able to prove that the deceased boarded a train and it is also prima facie established that he purchased a ticket also. Once that is the situation, he has to be taken as a bonafide passenger irrespective of the fact that a ticket was found or not because in such type of incident as there would always be a possibility of loosing a ticket because one limb of the dead body was also missing. Railways has also failed to bring anything on record to show that extensive search was made to find out the ticket from the place of incident but that effort was unsuccessful.

In such a situation, this Court would not have any hesitation in holding, in view of the attending circumstances, that the deceased has to be treated as bonafide passenger.

In the result, this appeal succeeds. The impugned judgment dated judgment dated 27.02.2012 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, is quashed and set aside and the appellant-claimant is held to be entitled for compensation of Rs.4 lacs as per the provisions under the relevant statute. The appellant-claimant would also be entitled for interest @ 9% to be calculated from the date of filing of application till the date of payment of the compensation award.

(DR. RAVI RANJAN)
JUDGE

10.12.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No