

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

**FAO No.3638 of 2012 (O&M)
Decided on : 09.07.2018**

Malkeet Singh and others

... Appellants

Versus

Union of India

... Respondent

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

Present : Mr. Upender Prasher, Advocate
for the appellants.

Mr. Rahul Garg, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as, '1987 Act') is directed against the order dated 19.01.2012 passed by the Railway Claims Tribunal, Chandigarh Bench.

Vide the impugned order the compensation claimed on account of death of Omkar Singh on 27.03.2010 has been rejected on the ground that the deceased was not a bonafide passenger and no ticket was recovered from his body, though a PAN Card and Driving Licence was found and the pockets/clothes were intact. It was further held that the statement of uncle AW-2 Mohinder Singh did not inspire confidence as there was contradiction, as to which train he had boarded for Amritsar, as the witness was not present at Beas on the day of the alleged incident. Under issue No.3, it was held that the appellants would be entitled to compensation being father, mother and minor son.

A perusal of the record would go on to show that the findings are not sustainable in as much as the claim petition which was filed by the appellants on 01.06.2010, it was specifically pleaded to the extent that deceased had boarded the train on 27.03.2010 at 7:30 A.M from Beas Railway Station for Amritsar for paying obeisance at Golden Temple, Amritsar. On account of the train being crowded the deceased was pushed out and fell down accidentally from the running train between Beas and Butari Railway Station. His body was badly crushed and cut into pieces. He had purchased a general ticket, which was lost during the course of the incident. It was pleaded that he was a resident of Rishikesh, Dehradun and on 21.03.2010 had come for attending Bhandara (religious ceremony) of Beas Radha Swami Dera and had intended to visit Golden Temple before returning back to his native place at Uttranchal. He had purchased the ticket in the presence of his relative who had also come to the Dera to meet him and Postmortem was conducted in Government Medical College, Amritsar. It has further been averred that he had travelled in 2nd Class and had purchased general ticket, which had got lost due to the accident and his body got cut into pieces and, therefore, the claim was made for ₹4 lakhs.

The Railways had denied the incident which had caused the death of the deceased which is the meaning of Section 123 (c) and 124-A of the Railways Act, 1989 (hereinafter referred to as '1989 Act'). It was submitted that no such incident had taken place and the train number had not been mentioned.

It is to be noticed that AW-1, Malkeet Singh was examined who is the father of the deceased, who had deposed as an eye witness as such and only could submit that his son was working with Honda Company at Gurgaon and carrying luggage which was not retrieved, which is as such has not been mentioned in the claim petition to the extent of carrying of luggage.

The uncle Mohinder Singh AW-2 submitted his affidavit who is the brother of Malkeet Singh, the claimant/appellant. He submitted that Omkar Singh was his nephew, who had come to Dera Radha Swami Beas on 21.03.2010 for attending religious ceremony. He called him on 26.03.2010 to meet him at Dera Radha Swami Beas and they had passed the night together and they had come to the Railway Station on the next day where the deceased had purchased the general ticket. In the affidavit he submitted that the deceased had boarded the Chhatisgarh Express for Amritsar and he had come to the road for boarding bus. He had taken another bus to reach his village in District Hoshiarpur which is the adjoining District of Jalandhar. He submitted that his nephew had died due to the falling from the train and he was travelling as a bonafide passenger. It is further submitted that the deceased had a son from his marriage who was in custody of his grandfather-Malkeet Singh.

In cross-examination it has come on record that Malkeet Singh was his real brother and he had told him on phone about the incident. He admitted that he made his nephew sit down in the train. He

further deposed that he had died in the incident. In cross-examination he further stated that he had given ₹50/- to his nephew, who had gone to the Railway Station and had fallen down from the Jan Shatabdi. He further admitted that he was also a follower of Radha Swami Cult and that his brother Bal Singh stayed in Rishikesh, where his livelihood was. He further denied the suggestion that he was not there at the Radha Swami Cult, Beas and that his nephew had not gone to the Railway Station.

A perusal of the record would go on to show that the memo of search which was done on the person of the deceased would go on to show that there was a Driving Licence giving the address at Rishikesh and a PAN Card (Income Tax Card) were found and were taken into police possession by Nirmal Singh, Gangman who was accompanied by police officials Rattan Singh and Paramjit Singh from the GRP.

Moreover, the postmortem which was done at Government Medical College, Amritsar at 3:50 P.M. whereby the body was brought by PPHC Paramjit Singh, would go on to show that the death had taken place on account of railway accident. A decapitated and mutilated body of the deceased had been found and the head and neck along with right arm were lying separately. The clothes and the body were sustained with blood and grease. The postmortem report would also go on to show that there was crush injuries and fracture on the ribs at multiple sides. Resultantly, the cause of death was also decapitation of head which was necessarily fatal.

A report was also prepared under the The Railway

Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 only after filing of claim petition on 01.06.2010 and the report was prepared on 11.10.2010, which was forwarded by the Divisional Security Commissioner/RPF, Northern Railway, Firozpur to the Senior Divisional Commercial Manager, Northern Railway, Firozpur Cantt..

The proceedings under Section 174 Cr.P.C. which were conducted would go on to show that the skull was broken, neck cut upto shoulder and badly crushed. Both arms were badly crushed and left foot was cut from body and badly crushed. Right leg was broken from thigh and whole body was badly rolled into pieces. The site plan would also go on to show that the body was lying between the track at KM 471/3-4 near the fields of an agriculturist of village Umaranangal. The public had failed to identify the body, which was lying and it had been taken to the Railway Station, Beas for identification as many devotees had come from the other States on account of religious festival. The above sequence of events would go on to show that death had taken place on account of an untoward incident as has been defined under Section 123 (c) (2) of the 1989 Act on account of the accidental falling of any passenger from a train carrying passengers.

The above sequence of events would also go on to show that the deceased belongs to Uttaranchal (Uttarakhand) and had come to attend the religious ceremony at Radha Swami Cult, Beas and had intended to pay obeisance and visit the Holy City of Amritsar. The Tribunal has wrongly adversely commented upon the presence of the

AW-2, who is none else but the real brother of the father of the deceased, who is a resident of Hoshiarpur, which is the adjoining district of Jalandhar. It was but natural that he had come to Dera Radha Swami, Beas to meet his nephew, who had come from Uttaranchal and they had passed the night together at Dera Radha Swami. He has also stated that he was also a follower of the said Cult. The said conduct is but natural. Merely because there was a contradiction as to the name of the train is of no help. His presence there for helping his nephew to board the train was but natural and therefore finding which has been recorded that he was not present at that stage there is without any basis. The incident had taken place after Beas and the body was found at Butari on route to Amritsar and, therefore, sufficient material has been brought on record in the facts and circumstances to show that the deceased was a bonafide passenger.

The details of the injuries have already been noticed above that the body was badly cut into pieces and even the ticket was not found. It cannot be held that he did not come under the definition of Section 2 (29) of the 1989 Act of being a passenger. The circumstances in which the deceased falling down and cut into pieces due to the untoward accident and ticket was not located as the body had been dragged over several meters. The absence of the purse and other valuables has also to be noticed and, therefore, merely in the absence of the ticket presumption has to be in favour of the deceased who was the victim of the untoward incident. The report under Section 174 Cr.P.C. would also go on to show that body was having marks of abrasions and grease of train was also

smeared on body. Blood has soaked upon the ballasts after flowing out of the body and in such circumstances loss of ticket and purse etc. cannot be ruled out.

The Tribunal, thus, has given undue importance to the ticket, which was not found on the body. In such circumstances, the claimants as such has been able to demonstrate that the deceased had boarded the train by examining the uncle of the deceased. The Apex Court in **Civil Appeal No.4945 of 2018 'Union of India Vs. Rina Devi'** has decided four issues including the issue of principle of strict liability and whether presence of a body near the railway track is enough to maintain a claim. It has also been held that there is a no fault theory under Section 124-A of the 1989 Act and, therefore, on account of negligence on the part of the victim, the claim cannot be denied. The relevant portion 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 Kumar³⁴ 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.

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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.”

It is to be seen that the provisions under the Act is a beneficial piece of legislation in the form of no fault liability. The Apex Court in '**Union of India Vs. Prabhakaran Vijay Kumar and others'** 2008 (9) SCC 527 has held 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), . **AILalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd**R 1981 SC 852 (para 13), **S. M. Nilajkar vs. Telecom Distt. Manager** (2003) 4 SCC 27(para 12) etc.”*

The said view has been followed in '**Jameela and others Vs. Union of India**' 2010 (12) SCC 443.

Accordingly, this Court is of the opinion that the present case does not fall within the exceptions of Section 124-A of the 1989 Act and, therefore, the finding which has been recorded under issue Nos.1 and 2 need to be reversed.

Resultantly, the appeal is allowed. The appellants are held entitled for the compensation of ₹4,00,000/- alongwith interest @ 6% per annum from the date of accident, which shall be paid to them within a period of two months. The share of minor son of ₹2 lakhs alongwith interest will be put in a FDR till he attains majority to give the highest rate of interest and the same can be used for the benefit of the said appellant No.3 by the other appellants.

JULY 09, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No