

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

**FAO No.3766 of 2012
Decided on : 02.08.2018**

Hamant Kumar @ Happy

... Appellant

Versus

Union of India

... Respondent

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

Present : Mr. Surinder Sharma, Advocate for the appellant.

Mr.Sandeep Vermani, Advocate, for the respondent-UOI.

G.S. Sandhawalia, J. (Oral)

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987 (for short, the 'Act'), is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 06.02.2012, whereby the claim for injuries on account of the left arm totally being crushed and right arm being fractured on an accident which took place on 15.01.2010, has been rejected by the Tribunal on the ground that they were self-inflicted injuries and would fall within the exceptions of Section 124-A of the Act. It was further noticed that there was no ticket alongwith the appellant and therefore, it was held that he was not a *bona fide* passenger of the train in question. Resultantly, it was held that on account of his own negligence, the accident, as such, had happened and the Railway Administration was absolved of the liability to pay compensation, by bringing it within the ambit of Section 124 -A (b) (c) of the Act.

Counsel for the appellant has vehemently submitted that there is no doubt, as such, to the factum of injury having taken place at Doda

Kheri Railway Station and therefore, the findings which have been recorded by the Tribunal that it was not an untoward incident, is not justified. The appellant had been taken to the hospital by the Railway authorities themselves and there was sufficient material to show that proceedings were recorded regarding his falling down from the train.

Counsel for the respondent, on the other hand, submitted that for the own negligent act of the appellant and there cannot be a premium for such acts, as such, and the appellant is not entitled for the benefits claimed. He, on his own account, had got out off a moving train which was not scheduled to have a stop at that station.

A perusal of the record would go on to show that it was the case of the appellant-claimant himself that he had boarded the train from Panipat to Kurukshetra, to see the Mela at Kurukshetra on the eve of Eclipse on the Malwa Express train. It is his case that the train did not stop at Kurukshetra and when it had slowed down at Doda Kheri Railway Station, he had tried to get down and got unbalanced, leading to the injuries.

The respondent, in their written statement, have taken a specific plea that neither there was any journey ticket and secondly, he had tried to deboard the moving train unauthorizedly and on account of having fallen down, suffered the injuries and it was his own fault. In the affidavit also, it was pleaded that the train did not stop at Kurukshetra Railway Station and had slowed down at Doda Kheri Railway Station where the appellant had tried to get down and resultantly, suffered the

injuries in question. In cross-examination also, it was denied that the train did not stop at Kurukshetra on the said date.

Railways had produced Station Supervisor, who was working at Doda Kheri Railway Station and filed his affidavit that he had reported that one person who was trying to deboard the moving train, had fallen down. Resultantly, he was sent to the LNJP Hospital, Kurukshetra by ambulance. Similarly, M.P.Sharma, the Railway Guard, in his affidavit, submitted that there was no scheduled stoppage of the train at Kurukshetra Railway Station but only due to the ACP at Km 154/23 for 2 minutes, the train had stopped. In his affidavit, he had submitted that nobody had fallen down from the train at Doda Kheri Railway Station. The DRM report also showed that the appellant was trying to get down from the moving train and during the process, had fallen down and it was due to his own mistake and carelessness.

The above facts would go on to show that the appellant himself had got off from the moving train on seeing the train slowing down at Doda Kheri and it was obvious that he had tried to deboard at Kurukshetra but could not do so for whatever reason. It is, in such circumstances, the accident had happened. The untoward incident as defined under Section 123 (c)(2) of the Railway Act, 1989 is of a passenger who had accidentally fallen down from a train and to maintain a action for compensation, 5 exceptions are provided under Section 124-A and the same is not liable to be paid if the passenger suffers injury due to self-inflicted injury or on account of his own criminal act and if it

was a case of suicide or attempted suicide by him. The act of disembarking a running train which was not having a stoppage at the said station, would thus, definitely be covered under the definition of the exceptions. The said act cannot also be said to be an accidental falling of a passenger but rather a voluntary act of the appellant. The appellant was, thus, well aware of the risks and consequences of such dangerous acts.

The argument, as such, that it is a socially beneficial piece of legislation and on that account, the appellant would be covered as it is in a form of a no fault liability, cannot be accepted. The said benefits are to be granted where a person falls accidentally and not gets off on his own account. The Railways cannot be burdened with compensation for the negligent acts of a passenger who chooses to get off from a moving train at any stage.

The relief which has been denied by the Tribunal, in such circumstances, is not liable to be interfered with. Resultantly, the present appeal is dismissed.

AUGUST 2nd, 2018
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No