

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

FAO No. 5198 of 2012
Date of decision: 21.09.2018

Kalawati Devi

....Appellant(s)

Versus

Union of India

...Respondent(s)

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

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

Ms. Abha Rathore, Advocate,
for the respondent-UI.

G.S.SANDHAWALIA, J.

The present appeal is directed against the order dated 03.04.2012 passed by the Railway Claims Tribunal, Chandigarh under Section 23 of the Railway Claims Tribunal Act, 1987. The appellant is the mother of the deceased-Guddu, who is stated to be travelling from Faridabad to Delhi when his death took place on 26.11.2007. The Tribunal, while denying the relief, came to the conclusion that it was a case of a hit and run by some unknown train while crossing the railway lines and the deceased was not a bona fide passenger. Resultantly, the relief was denied while deciding issue no. 3 in favour of the appellant that she was the only dependent of the deceased.

Counsel for the appellant has vehemently argued that the Tribunal did not take into consideration that the body was lying on the track and the statement of the brother that the deceased was travelling and has

relied upon statement of AW-3 Munna Kumar that the ticket had been purchased in his presence. It is accordingly submitted that the legislation being beneficial in nature, the amount of compensation on account of the death of the deceased should be paid by allowing the appeal.

A perusal of the record would, however, go on to show that the Tribunal was well justified in denying the claim as the same was based on categorical facts which have not been proved and rather evidence to the contrary has come on record to prove the fact that the deceased was not a passenger on the train as it did not run on the tracks where the body was found on the day of the incident.

The claim petition which was filed on 13.05.2010 which is also beyond the period of one year limitation which has been prescribed and was supported by an application for condonation of delay. The application had been allowed vide the order dated 20.10.2010 on the ground that the mother was illiterate and resided in the backward area and was mentally upset. It was accordingly held that the applicant was to gain nothing from delay in filing and it seems to be unintentional and to impart substantial justice, the delay was condoned.

The case set up in the claim petition as such was that the deceased on 26.11.2007, alongwith his friend Munna Kumar, had reached Faridabad Railway station to go to Delhi by train and he wanted to visit his aunt (Massi) namely Malti who lived in Kotla Mubarkpur, Delhi. A railway ticket had been purchased in the presence of his friend Munna Kumar, who had come back thereafter. The deceased had boarded EMU Train No. SNP-5 and had fallen down on account of the rush of people in the train between Tuglakabad and Faridabad and sustained grievous multiple and fatal injuries

on his person and died on the spot. On his non-return, his elder brother had reached the Faridabad Railway Station for searching him and came to know that he had died and identified his dead body. The post mortem was conducted at B.K. Hospital, Faridabad by the Medical Officer. The railway ticket was stated to be lost during the accident and was not found which was allegedly purchased from the booking window of Faridabad Railway Station.

The claim was resisted by the railways by taking the plea that the statement of Mahesh Kumar, brother of the deceased had been recorded by the GRP which revealed that the deceased was hit by some unknown train while crossing the railway lines. No ticket had been found as per the *Jama Talashi* which was conducted in his presence. The statement of Munna Kumar had never been recorded by the GRP and, therefore, the claim was contested as not filed under Sections 123-C(2) and 124-A of the Railway Claims Tribunal Act, 1989 (in short 'the 1989 Act'). The replication was also filed by the appellant to controvert the written statement. The plea taken was that Munna Kumar had returned to Bihar on account of the mother's illness and, therefore, his statement could never be recorded as he was also not accompanying the deceased and only left him to the railway station.

Evidence of the claimants including the other son Mahesh Kumar was also tendered into before the Tribunal. In cross examination, he was confronted with the fact that he was literate and before the GRP had given the statement after due thought and thereafter signed on the same. He further stated that in the statement, he had stated that his brother while crossing the railway lines, was hit by some unknown train due to which he

had died. Munna Kumar had also been examined as another witness by the claimant. Railways examined Hari Ram Meena, Station Master, Faridabad to the effect that information was received from the driver of the goods train that one dead body is lying in track on down main line near Intermediate Starter Signal No. 5-6 Km No. 1510/10 between Faridabad and Tuglakahbad. Accordingly, memo was issued at 18:48 hours on 26.11.2007 to take necessary action. Similarly U.P. Tripathi, Loco Inspector submitted that he was posted as Loco Pilot passenger and was on duty on Train No. SNP-5 EMU which departed from Palwal for Shakur Basti at 14.23 hours and reached Faridabad Railway Station at 15:04 hours. It had departed from Faridabad at 15:08-1/2 hours and reached Tuglaqabad at 15:25 hours and no untoward incident had taken place. It was further clarified that the train had started from Faridbad Main Line and diverted to the 3rd line between Faridabad and Tuglaqabad. The train did not run on the down main line between Faridabad and Tuglaqabad. The copy of the driver's note book was also attached alongwith the said affidavit.

The factum of the body lying on the main line was confirmed from the communication dated 26.11.2007 as has been deposed by the witness and that it is further clarified from the inquest proceedings as such. It is in such circumstances the Tribunal has come to the rightful conclusion that the claim of the appellant/applicant was false that the deceased had fallen down from the said train as the said train never passed from the down main line on that day. A reference was also made to the photographs of the deceased (Ex.A-6) to hold that the body of the deceased as lying on the middle of the railway track apart from the fact that a statement had been made by the brother to the same effect that he had been run over by the train

while crossing the railway lines. It is also to be noticed that no train ticket has been recovered from the body of the deceased as per the *Jama Talashi* also and, therefore, he was not a passenger having a valid ticket and, therefore, under Section 2 (29) of the 1989 Act, the claim would not lie in the absence of having any ticket.

Resultantly, the findings which have been recorded by the Tribunal as such do not warrant any interference and are well justified and the railways have been able to rebut the case of the claimants by producing relevant evidence to show that the same was not a genuine claim as such and it was only an after thought which led to the filing of the claim petition after the period of limitation had expired. The cumulative facts, thus, go on to show that the deceased was not a bona fide passenger and would not be covered under Section 123 (c)(2) of the 1989 Act.

The appeal stands dismissed accordingly.

21.09.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No