

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

-:-

FAO No. 1779 of 2014 (O&M)

Date of decision: 03.07.2018

Har Parshad Nanda

... Appellants

Vs.

Union of India

...Respondent

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

Present: Mr. Rakesh Kumar Sharma, Advocate, for the appellant.

Mr. Sanyam Malhotra, Advocate, for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present appeal under Section 23 of the Railways Claim Tribunal Act, 1987 (for short, 'the 1987 Act') is directed against the award dated 14.02.2013 of the Railways Claims Tribunal, Chandigarh Bench (for short, 'the Tribunal') whereby the claim petition of the appellant has been rejected on account of injuries received. The appellant's grouse was that he had fallen on 15.03.2010 at Ballabhgarh Railway Station out of the train, namely, Paschim Express, which he had boarded from Bharatpur to Faridabad and sustained multiple injuries and his left leg had been amputated.

The Tribunal has rejected the claim on the ground that the person who had admitted the appellant to the hospital has not been brought on record and nor examined and there is no record of the alleged incident with Station Master Ballabhgarh. No driver or guard of train had been

informed about the incident and the appellant himself is a resident of Ballabhgarh and therefore he might have entangled with the train while crossing the railway line. It was held that he has failed to prove that he was traveling from the train and it was also held that it was not untoward incident as defined under Section 123(c)(2) of Act. Resultantly issues No. 1 and 2 whether the applicant/injured was a bonafide passenger at the time of accident and neither the incident was covered under the provisions of the act were decided against the appellant.

The findings of the Tribunal suffer from perversity, which cannot be sustained on the basis of record. The incident as noticed was of 15.03.2010. Specific case of the appellant in his claim petition was that he was traveling on ticket No. 67331418 dated 15.03.2010, which had been issued from Bharatpur to Faridabad Railway Station, for 2nd class super fast. He was employed with M/s Printer House a private factory and he was admitted in Sarvodhya Hospital, Faridabad on the same date and thereafter had undergone treatment at various places. Alongwith the claim petition he had also submitted the details as how he had left his children and his wife at Bharatpur, Rajasthan and was coming back in the said train and when he was washing his hands in wash-basin, due to the heavy jerk he had fallen down out of the running train and received multiple and grievous injuries. Some person had taken him into the hospital and thereafter his statement was recorded on 17.03.2010 by the GRP Police, Faridabad. In support of his claim he also submitted the affidavit on the same lines.

The defence of the Railway was that he was not a bonafide

passenger and that no such untoward incident had been caused.

A perusal of the medical treatment chart and the discharge summery Ex. 6 would go to show that he was admitted in the said hospital at 12:10:56 hours on 15.03.2010 and was discharged on 22.03.2010. It has been noticed by the hospital authorities that he was admitted due to the crush injury at Ballabgarh, Railway Station around ½ an hour back having been hit by a train and sustained injuries over left leg and muscle & bone were exposed skin deglowed and there was a crush injury. A certificate Ex. A/11 dated 15.09.2011 issued by the All India Institute of Medical Sciences, New Delhi would go to show that there was a below knee amputation of left lower limb of the appellant who is a 36 years old male and he has become physically handicapped to extent of 60% impairment in relation to his left lower limb.

The admission immediately after the falling down from the train would go to show that there can be no doubt as such regarding that the accident had taken place in the terms as expressed by the appellant. He has specifically given the details of the ticket upon which he was travelling and the onus shifted upon the Railways as such to hold that ticket was not issued. It is thus held he was a bonafide passenger and was traveling on the train when the untoward incident happened leading to the amputation of his left leg. At the point of the incident which had taken place the first concern of the persons who were present there was treatment of the injured and he was taken to the hospital. The arguments which has now been raised by the railways that no such incident was recorded with the SM/RPF/GRP is

without any basis as it was the primary concern to save the appellant at that point of time and not go to the authorities to lodge the incident as such at that point of time, by a “good Samaritan” who would not like to be involved in legal proceedings subsequently.

It is not disputed that he was unfit to give a statement on 15.03.2010 when an attempt was made by the official of the Government Railway Police, Faridabad, Ex. A/1. He was declared fit to make statement only on 17.03.2010, as per the endorsement of Ex. A/1 and thereafter his statement was recorded on 17.03.2010 vide Ex.A/2 wherein he specifically deposed regarding said factor of traveling from Bharatpur to Faridabad. He had mentioned about the ticket No. 67331418 (A-3) at that point of time; and also mentioned that the ticket was with his brother Chater Singh. A photocopy of the railway ticket had been given to the Railway Police Faridabad on the said date which is immediately after the accident. Therefore the Tribunal was in error in holding that he was not a bonafide passenger. Thus the findings such are apparently erroneous and the record has not been perused in a proper perspective and the claim has wrongly been denied.

In view of the above once the appellant was bonafide passenger under Section 2(29) and traveling with a valid pass or ticket he would come under the definition of the 'untoward incident' under Section 123(c)(2) read with Section 124-A and he would thus come under the provisions of Section 124-A as he had a valid ticket for traveling.

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

Kumar & Ors., 2008(9) SCC 527 has also held that no fault liability is provided under Section 124-A in case of railway accidents and only where, if the case falls within the exceptions the compensation is liable to be denied, as it is a beneficial piece of legislation. In the said case the deceased was trying to board a train and had fallen down. The relevant portion reads 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.

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."*

Similar is the view in **Jameela & Ors. Vs. Union of India**

(2010) 12 SCC 443.

Resultantly, the findings on issue No.1 and 2 are reversed and it is held that he was bonafide purchaser and the incident was covered under the untoward incident. Issue No.3 and 4 have already been decided in favour of the appellant to the extent that there was traumatic amputation of left leg below knee, which was a scheduled injury as per the scheduled

attached to the said Rules. Resultantly he is held entitled to sum of Rs.4 lakh as per the schedule on the amputation of the left leg. The appellant shall also be entitled to the interest @ 6% from the date of the accident, as per the judgment of the Apex Court in Civil Appeal No. 4945 of 2018, decided on 09.05.2018 **Union of India (UOI) Vs. Rina Devi**. The amount accordingly be paid to him within a period of two months.

The appeal is allowed and the impugned award dated 14.02.2013 is set aside.

July 03, 2018
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(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No