

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

FAO No.1679 of 2015

Decided on : 25.07.2018

Surya Dev Mahto @ Suraj Dev Mahto and another

... Appellants

Versus

Union of India

... Respondent

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

Present : Mr. Anand Singh, Advocate
for the appellants.

Mr. Sandeep Suri, Advocate and
Ms. Kriti Sharma, Advocate for the respondent-UI.

G.S. Sandhawalia, J. (Oral)

The present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, '1987 Act') is directed against the order of the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal') dated 14.11.2014, whereby the claim of the appellants/claimants for compensation on account of death of their son Deepak Kumar on the intervening night of 30/31.07.2012 has been rejected.

The Tribunal has come to the conclusion that the *Jamatalshi* Report had been fabricated to give benefit to the interested persons in collusion with the Government Railway Police (GRP). The conduct of the co-passengers not to wait at Ludhiana Railway Station for the deceased was dubbed as strange to deny the claim. Similarly, the presence of the body on the up line, which was cut into pieces and the travellers not knowing the name and number of the train had created a doubt in the mind of the Tribunal while rejecting the claim and coming to the conclusion that even the statement of Radhey Shyam, the Gangman would go on to show that he was forced to sign the *Jamatalshi* by the GRP. Resultantly, issue No.1

whether the deceased was a bonafide passenger on the train was decided against the appellants.

Similarly, on issue No.2 whether the incident was covered within the ambit of Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989 (for short '1989 Act'), the injuries were noticed on the body of the deceased, which was badly crushed and cut at the waist. The right and left leg having been amputated was crushed and an injury was inflicted on the left side of the head. The fact that the body was lying on the up line while the train in which the deceased was allegedly travelling was coming in down direction from Jalandhar to Ludhiana were reasons to record a finding adverse to the claimants by holding that a person who had fallen down from boggie would have a trajectory and he would not cut into pieces and he would be not drop on the adjoining up line. The fact that nobody had seen the deceased falling from the train was another reason, apart from the fact that there was DRM's Inquiry Report, to come to the conclusion that he was not a victim of an untoward accident were factors which weighed with the Tribunal.

Regarding issue No.3, the dependency as such of the appellants who are parents of the deceased was decided in their favour regarding their locus-standi. But in view of the fact that they had failed to establish their case, issue No.4 was decided against them and thus compensation was denied.

Counsel for the appellants has accordingly argued that once the ticket had been found in the *Jamatalshi* and injury on the person of

the deceased has come on record, the findings recorded by the Tribunal that he was not a victim of an untoward accident are not justified. He submitted that even the proceedings under Section 174 Cr.P.C would go on to show the presence of the relative and a person who had been travelling with the deceased and, therefore, it was a case of an untoward accident, which would be clear from the postmortem report also. He further submitted that the verification had been done by the railway authorities regarding the issuance of the tickets whether they were bogus or not and, therefore, asked for reversal of the findings.

Counsel for the Railways on the other hand submitted that the conduct of the co-passenger as such was strange as they did not wait for the deceased and it was not possible that the body of the deceased would be cut into pieces if he had fallen down from the train.

After going through the record of the Tribunal and keeping in view the arguments raised by the counsels for the parties, this Court is of the opinion that the appeal is liable to be allowed on the following grounds.

The specific claim as such of the claimants/appellants is that their son Deepak Kumar was working in the Private Industry at Ludhiana for the last 3-4 years and had gone with the persons of his locality for pilgrimage at Jammu from Ludhiana on 29.07.2012 for paying obeisance at Mata Vaishno Devi Shrine. One Gorakh Singh was also mentioned, apart from other five persons who were alongwith the deceased. After purchasing the ticket from Jammu Tawi to Ludhiana, the said persons had

boarded the train in the evening of 30.07.2012 and there was heavy rush of passengers in the general compartment of the train. After 20-25 minutes of the scheduled halt of the train at Jalandhar Railway Station, the deceased went to bathroom and did not come back to his place of sitting in the train. The companions of the deceased had thought that he might have got some another place to sit in the compartment. They had de-boarded the train at Ludhiana in the night and went to their respective residences in Ludhiana thinking that Deepak Kumar might come later on to his residence. On 31.07.2012 early in the morning, the elder brother of the deceased Aklesh Kumar came to know that all persons those who had gone to Jammu had come in the night and had enquired from them about the whereabouts of the deceased. At the same time a telephone call was received by him from the GRP from the mobile phone of the deceased Deepak Kumar that the deceased had fallen from the train at KM No.384/23-25 near Railway Station Ladowal. The brother of the deceased along with other persons went to Railway Station Ladowal and identified the body which was in the presence of Radhey Shyam, the Gangman and Head Constable Prem Singh. Two joint tickets bearing No.67496670 and 67496683 dated 30.07.2012 from Jammu Tawi to Ludhiana had been recovered from the body of the deceased. The postmortem had been conducted at Civil Hospital, Phillaur on 31.07.2012. The deceased had fallen from the train on the opposite track up line due to jerk while washing his hands in the washbasin near the door of the compartment while plying from Jammu to Ludhiana. The

mention of two tickets was specifically made and, accordingly, dependency had been claimed.

The defence of the Railways in the written statement is that the deceased was not a bonafide passenger and neither was a victim of an untoward accident. The tickets placed on record were planted one's and if the deceased had purchased the ticket for all the co-passengers then the tickets had to be in serial order and at the same time. There was no ACP or information to the Driver or Guard of the alleged train, which would be a natural consequence. The nature of injuries and grease marks on the body would go on to show that the same would only be in the case of entanglement and not on account of fall. The body had been recovered from the up track, whereas the train was plying on the down track, which established that he was run over by some up train while unauthorizedly crossing over the track and he was not a victim of an untoward accident.

In affirmative, the appellant No.1, father of the deceased had filed his affidavit and was cross-examined regarding the fact that he was accompanied by six fellow companions while coming back from Jammu. His elder son Aklesh Kumar informed him about the incident on 31.07.2012. Further in cross-examination he submitted that his son was residing in Ludhiana and had a job in Focal Point. He denied that he was a victim of a criminally negligent act or of self inflicted injuries.

AW-2 Gorakh Singh has also submitted his affidavit in affirmative and in cross-examination he has submitted that they had started from Ludhiana at 10:00 PM on 29.07.2012 and at 9:00 PM on

30.07.2012 had started back. The journey tickets were with the deceased and one was for 4 passengers and other was for 3 passengers and there was heavy rush of passengers in the general compartment. On coming back from the station the deceased was not with them and brother of the deceased had been informed about the incident on the telephone. Nearing to Jalandhar Railway Station the deceased had gone to washroom and did not come back and they had assumed that he might have got a seat somewhere in the train, so they had no reason to inform the railway staff or pulling of the chain at that point of time and his statement was recorded by the police. He further deposed that Aklesh Kumar, the brother of the deceased had not gone to Mata Vaishno Devi.

The Railways examined Dinesh Kumar-ASI who had conducted investigation of the case and deposed that trains from Jammu Tawi to Ludhiana were plying on the down track and train no.16318 had passed through the place of incident at 4:47 hours on the down line. He had deposed that it was not possible for a person to fall in up track. The distance between up track and down track was 4.5 to 5 meters. The injuries detailed in PMR i.e. bruises and abrasions were not possible due to fall and such like injuries are only possible in case a person gets entangled with the train and gets dragged. He admitted that he had recorded the statement of Gorakh Singh and that of Aklesh Kumar, the brother of deceased.

Regarding issue No.1 whether the deceased was a bonafide passenger on the train at the time of the incident, is apparent on the face

of the record that in as much as the tickets (Ex.A4) bearing No.67496670 and 67496683 have been placed on record. The first one would go on to show that it was for 4 passengers and was issued for a sum of ₹304/- and the second ticket was for 3 passengers and was issued for a sum of ₹228/- and the same had been issued on 30.07.2012 at Jammu Tawi Railway Station at 08:12 PM and 08:17 PM, respectively. The Railways had got the ticket verified which is also on the record, which would be clear from the DRM's Inquiry Report. A letter dated 28.02.2013 was issued by Inspector Incharge/RPF to the Chief Booking Supervisor, Northern Railway, Jammu Tawi for the verification of two tickets issued on 30.07.2012, which had been recovered in the *Jamatalshi* by the GRP. The verification by the Chief Booking Supervisor on 30.03.2013 confirmed that the tickets had been issued by the Station as per record. A perusal of the Movement Certificate issued by the Station Master, Northern Railway, Ladowal would go on to show that between 5:00 hours to 7:00 hours in the morning on 30.07.2012 there was heavy activity on the up line and down line, which would be clear from the tables given below:-

Up Line		
Train No.	Arrival	Departure
11077	5:31	5:31
18101	5:47	5:47
74965	6:00	6:07
18237	6:13	6:13
13005	6:29	6:29
14681	6:44	6:44
13307	7:00	7:00

Down Line		
Train No.	Arrival	Departure
16318	4:47	4:47
XVP489 CHHBAS	5:42	5:42
EP LDH	6:13	6:21
12014	6:47	6:47
12242	6:56	7:00
74646	7:10	7:15

It is not disputed that the said line is the main line going to Jammu Tawi. The dead body had been found lying on the track and information was received by the Harjinder Singh ASM/Ladowal and he had requested to do the needful. The *Jamatalshi* (Ex.A3) itself on 30.07.2012 also mentions the recovery of ₹300/- and the two tickets. The deceased's phone had also been recovered and the same sim was used to make a call to his brother as per the proceedings under Section 174 Cr.P.C., as the phone was in a very bad shape.

In such circumstances, the Tribunal was in error to record a finding that the ticket as such was procured. The Railways themselves have not produced any evidence from the ticketing department to show that the tickets had been purchased subsequently to show in support of the petition filed. Therefore, the onus was upon the Railways to prove itself firstly how the factum of two tickets had been noticed in the *Jamatalshi*. Though in the statement of HC, Prem Singh recorded on 31.07.2012 the mention of 7 tickets itself has been mentioned and a finding has been recorded by the Tribunal that they should be seriatim wise is without any basis, in view of the discussion above, as they have

been issued 5 minutes apart.

The above evidence, thus, would go on to show that the deceased was a bonafide passenger travelling between Jammu Tawi to Ludhiana and fell out from the train in the early morning on 31.07.2012 and the findings which have been recorded by the Tribunal on issue No.1 are without any basis and are reversed.

Similarly, coming to issue regarding untoward accident which is defined under Section 123 (c) (2) wherein by accidental fall of any passenger from a train carrying passenger, an action is maintainable by the dependents, on account of death of the said passenger under Section 124-A. The passenger is defined under Section 2 (29) of the 1989 Act means a passenger travelling with a valid pass or ticket. The finding has already been recorded on issue No.1 that the ticket was valid, in fact the deceased who was travelling along with 6 other persons and, thus, the two tickets had been verified by the Railways.

The Tribunal has unnecessarily done an independent postmortem of the injuries, which had been found on the body of the deceased to come to an erroneous conclusion that the body was found on the up track and the circumstances in which the deceased fell out of the train in the early morning for which admittedly there can be no such witness.

It is apparent from the postmortem report (Ex.A6) also that there was injury on the head of the deceased, which was conducted at 5:00PM on 31.7.2012 and the body was identified by brother of the

deceased Akhilesh Kumar The postmortem report further would go on to show that a lacerated wound of .20x8cm had been found on the head and the base of the nose to the right side of the head and skull had come apart. The left leg had been amputated from the left thigh and abdominal organs protruding. The right hand had been crushed and a lacerated wound of 6x5cm was found on the upper part of the right leg. A lacerated wound of 5x4cm was found on the left leg near the left knee and the bones were fractured. There were grease marks all over the body. The cause of death was given as a shock and hemorrhage, on account of cranio cerebral injuries and other injuries collectively.

The manner in which the deceased fell out from the train and it was by chance dragged on to the adjoining line are circumstances which cannot as such be deliberated upon in abstract to come to the conclusion that it could not have happened. Sufficient material has been placed on record that the deceased alongwith co-passengers and had a valid travel ticket. The dead body was found lying on the track and the action was taken by the Railways authorities and the presumption as such that the deceased was not a victim of an untoward accident from the falling out the train and the finding that it was in collusion with the GRP is not sustainable. The statement of the brother of the deceased and the witness Gorakh Singh were recorded immediately on 31.07.2012 by the authorities and it has also come on record that the sim card had been removed from the phone and a call had been made to the brother and on that basis the relatives had been informed.

The natural sequence of events, thus, would go on to show that the deceased thus while going to the toilet just before Ludhiana had fallen down at Ladowal which was approximately 10Km away from the Ludhiana. Resultantly the findings recorded by the Tribunal on issue No.2 that the deceased was not a victim of an untoward accident is without any basis and are, accordingly, reversed.

The appeal is, accordingly, allowed and the appellants who are the parents being dependents of the deceased are, thus, held entitled for a sum of ₹4 lakhs along with 6% interest per annum from the date of the accident, in view of the law laid down by the Apex Court in **Civil Appeal No.4945 of 2018 'Union of India Vs. Rina Devi'** decided on 09.05.2018.

JULY 25, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No