

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

-:-

FAO No. 1119 of 2016

Date of decision: 24.07.2018

Mira Devi

... Petitioner

Vs.

Union of India

...Respondent

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

Present: Mr. Somesh Gupta, Advocate, for the petitioner.

Mr. Amit Kumar, Advocate, for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the 1987 Act') is directed against the order dated 29.05.2015 passed by the Railway Claims Tribunal, Chandigarh Bench (for short, 'the Tribunal'), whereby the claim of the appellants on account of death of Om Parkash has been rejected.

The Tribunal came to the conclusion that the testimony of AW-2 Rajesh Kumar was not trust-worthy regarding purchase of ticket of Shalimar Express Train and since the ticket was not recovered from the dead body, the DRM enquiry report was accepted wherein it was stated that the deceased was not a bonafide passenger. Similarly, in spite of the fact that deceased was found in an injured condition on and by the side of the track, did not ipso facto convince the Tribunal that the deceased had fallen from the train. Resultantly, it was recorded that the deceased was not involved in an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 (for short, 'the 1989 Act'). The findings were not

recorded on issue No. 3 regarding dependency of the appellants who are none else but the wife and three minor children.

Counsel for the appellants has taken this Court to the record of the case and accordingly submitted that through the sequence of the events it would be clear that it is a case of untoward incident as defined in Section 123(c)(2) of the 1989 Act and the findings recorded are not justified.

Counsel for the Railways, on the other hand has submitted that the Tribunal was well justified in rejecting the case of the claimants-appellants and the necessary ingredients as such were not fulfilled. He argued that as the mobile phone and Rs.500/- were recovered in jamatalashi and if there was any ticket as such the same would have been recovered but the ticket was not found and therefore, appellants would not be entitled for the claim on account of the fact that the deceased was not a bona passenger and thus they were not entitled for the benefits under the Act.

The Tribunal seems to lost sight of the fact that the 1989 Act is a social and beneficial piece of legislation which is meant for the succor of the passengers who are travelling on the railways especially long distance and on such travel in search of their avocation are not accompanied by any relative. Merely because their dependents as such are not present on the spot to depose about the facts would not throw out the claim of such persons. The sequence of events which can be pieced together from the record are very clear which the Tribunal seems to have lost sight and not appreciated as to in what circumstances, the deceased has become a victim of an untoward incident as defined under Section 123(c)(2) of the 1989 Act. The definition as such provides that for an incident of falling from the train

carrying passengers, it would come within the meaning of untoward incident and to maintain an action for the death of such a passenger under Section 124(A), if the case did not fall within the 5 exceptions provided and as per the explanation (ii), a person who had a valid ticket for travelling by a train carrying passengers on any date or any platform ticket would become a victim of untoward incident.

The claim petition was based on the ground that the deceased was working as a labourer in a factory in Baddi (H.P) and had come to Ambala along with his nephew Rajesh Kumar on 14.10.2012. The nephew had proceeded to Shahjhanpur whereas the deceased in pursuance of desire to get work had gone to Ludhiana and the ticket had been stated to have been purchased by the nephew himself. Both of them had departed in different directions but the body of the deceased was found between Rajpura and Shambhu Railway Stations in the intervening night of 14/15.10.2012, as per information supplied by Balram Singh, the gateman at kilometer 287/10-12 between up and down lines. Resultantly, the memo had been issued to the Station Master, Rajpura and the officials of the GRP had reached the spot and got the injured at that point of time admitted in Civil Hospital Rajpura and from where he was further referred to Rajendera Hospital, Patiala, where he succumbed to his injuries. The case of the appellants was that on account of recovery of slip of mobile number from the deceased, they had been contacted regarding falling down of a person from an unknown train on this number and informed his wife, who attended the phone, and resultantly she had contacted her nephew Rajesh Kumar and they reached Rajendra Hospital, Patiala and identified the dead

body. The Railways had denied the claim on the ground that death was not within the meaning of Section 123(c)(2) read with Section 124(A) and he was not a bonafide passenger. The train number had not been mentioned nor the time of journey of the accident, therefore, it was not a case of bonafide passenger travelling on the train.

The claimants had examined appellant No.1 wife who stood by terms of the claim petition by submitting the necessary affidavit. In cross-examination she had deposed that information had been received on 14/15.10.2012 regarding her husband getting injured in Civil Hospital Rajpura and on 15.10.2012 she had been informed telephonically regarding his death. She also admitted that she was not an eye-witness to these facts. However, she deposed that her husband had rang her up a day or two earlier that he is in Baddi (H.P) and work was not available and he has to go to Ludhiana. She also denied the fact that the deceased had died while crossing the railway line, the suggestion which was put to her. The nephew Rajesh Kumar was also examined, who also stood by the terms of the claim petition and in cross-examination also deposed that an information had been received regarding the death of his uncle. He has also deposed that he and his uncle both were working at Baddi and they had come to Ambala and he bought a ticket of Rs.41, which was a computerised ticket for the Shalimar Super Express, which was due to arrive. He also deposed regarding the information received and how he alongwith his other relatives had come to Rajpura and the phone & Rs.500/- had been received by them in Court proceedings. He also deposed that he had left for Shahjhanpur on the Sadbhawna Express, which left at 9:20 from Ambala.

The railways examined Om Parkash, Station Master Rajpura as RW-1, who in his affidavit deposed that he was informed by Balram, the gateman that one injured person was lying between up and down lines and he had issued a Memo and informed the GRP and RPF and he had no information regarding how he got injured or whether he was a passenger of any train and that he had not received any information from any guard of any train regarding any person falling down. In the cross-examination he admitted as per his Memo that the person was alive as informed by Balram the gateman and he had informed the GRP accordingly. He had not deposed regarding the distance between the said gate and the site where the injured, who was reported to be lying.

Similarly RW-2 Balram Singh, the gateman was examined, who has submitted in his affidavit that he was informed by an unknown person that one injured was lying between the two tracks and he had no knowledge how he had got injured and whether he was passenger on any train. In cross-examination he had deposed about the injured person (who later on died) fell down from the train. He further deposed that when he attended the site at about 7.00 in the morning, he saw that the person was alive and accordingly, he had telephonically informed the Station Master, Rajpura. Since, he went off-duty at 8 PM, he did not know who had taken away the injured/deceased.

A perusal of the proceedings under Section 174 Cr.P.C would go to show that death had occurred at Rajendera Hospital, Patiala and there was deep wound on the head and the deep injuries on the eyes and forehead and left arm was broken at the elbow and there were coal ashes on the whole

body. The reason of the injury was by train and the cause of death as per the inquest proceedings was falling down from the train. The statement recorded in the said proceedings immediately on 15.10.2012 of Home Guard Satpal Singh by Swaran Singh Head Constable GRP would go on to show that when the report was prepared and the said person had deposed regarding the deceased who had died due to fall from a running train. Similar is the statement of Balram Singh, gateman whose statement was recorded on 04.11.2012 that he has been informed that one person who had fallen from a unknown train was lying in injured condition between up and down lines between the Rajpura - Shambhu Railway Stations. He had also deposed about the person lying in injured condition after falling from the unknown train and accordingly, informed the station master on railway telephone. The injured had been put in private vehicle and taken away by Swaran Singh, Head Constable.

Thus, it will be clear that immediately after the incident in the proceedings conducted by the Railway officials themselves sufficient material has come on record that the deceased was lying between the two tracks between Rajpura and Shambhu railway station whose body was located early in the morning of 15.10.2012 around 7.00 AM. There was a report at 6:50 by Om Parkash Station Master to the railway authorities (A-10 – R1/1) which has been attested by the GRPF personnel who received the said information at 7:00 AM. As noticed the deceased is a resident of U.P and therefore his possibility of crossing the train tracks as such would not as such arise. That it was not the case of the railways that there was any railway crossing at site that was closed and the deceased was not a resident

of said area nor he was allegedly working there and that he would be crossing the track.

It is the specific case that he had boarded the train at Ambala and on the way to Ludhiana he had fallen from the train. The injuries as such which are clear from the post mortem report (A-4) would go on to show that the cause of death is on account of the train accident suffered which is sufficient to cause a death. It is also recorded by the doctors that the injuries are consistent to the railway accidents. The person had been taken to the Rajendra Hospital, Patiala by Swaran Singh GRP official wherein also it has been mentioned that the main cause is a railway accident. The findings, thus, recorded on issue No.2 that it was not a case of untoward incident, are not justified.

A perusal of the statement of Mira Devi appellant recorded on 06.11.2012 under Section 175 Cr.P.C also would go on to show that her case was consistent that deceased was working in Baddi (HP) in a factory and had gone to Ludhiana in search of work. The claimants as such had placed sufficient material to show that the deceased died in an untoward incident on account of fall from a train and the finding recorded by the Tribunal suffer from infirmity and cannot be supported in view of the evidence discussed above and the material which is already on the record. Resultantly, the findings on Issue No.2 are reversed.

Regarding Issue No.1 "Whether the deceased was a bonafide passenger of train at the time of incident and was carrying a ticket or not, is an aspect which would also need interference, keeping in view the background as discussed above. The categorical case of the claimants was

that the ticket was lost in an accident and the luggage of the deceased was also lost. Merely because the ticket was not recovered is not a sufficient ground as such as the appellants have been able to bring sufficient material on record in the form of AW-2 to show that he had boarded a train with ticket, which had been purchased by paying Rs.41/-. No evidence as such has also been brought on record by the Railways to controvert this fact that the ticket from Ambala to Ludhiana costs less or fare as such is different. Neither any evidence has been brought on record to show that the train on which the nephew had traveled from Ambala to Shahjhanpur does not leave Ambala at 9.20 PM or that Shalimar Super Express did not ply between Ambala to Ludhiana on the fateful day. The Tribunal had wrongly recorded that the nephew had not seen the deceased boarding the train which is but natural since the nephew's train had departed earlier. In such circumstances merely because the ticket was not found in the jamatalashi, is not a ground as such to deny the benefit. The Railways are under an obligation to check ticketless travelers and reference can be made to Sections 53 and 55. Under Section 137 there is a penalty as such for a person traveling without proper pass or ticket. Since the travel was at night as such it is expected that the personnel of railway on train would be checking unauthorised persons on the train and nothing has been brought on record that he was a trespasser on the train as such.

Various High Courts have held that mere absence of ticket is not a ground as such to reject the claim. Reference can be made to the judgment of Patna High Court **Ram Kumar Sharma Vs. Union of India** **2014 AAC 1721**, wherein also it has been held that the investigation report

by the Railway Police, post-mortem report and the final report is sufficient material to show that the deceased was a victim of untoward incident. Similar is the view of Delhi High Court in **Surendra Prasad Vs. Union of India 2015 ACJ 566.**

Accordingly, keeping in view that the travel as such was inter-state i.e between Ambala (Haryana) and Ludhiana (Punjab), it is expected that the passenger as such would be traveling on a valid ticket. The deceased's luggage was not recovered and in such circumstances the fact that the ticket was lying in luggage which had been carried by the deceased cannot be lost sight of. Therefore, findings on Issue No.1 requires to be reversed. Resultantly it is ordered so.

There is no dispute regarding the dependency as such of the appellants who are wife and minor children, and ration card A-15 has been placed on record.

Accordingly, the appeal is allowed. A sum of Rs.4 lakhs as per the schedule is granted to the claimants along with interest @6% per annum from the date of accident in view of the judgment of Apex Court in Civil Appeal No.4945 OF 2018, **Union of India Vs. Rina Devi**, decided on 09.05.2018.

Accordingly, the appellants shall be entitled for the said sum. However, the minors' share of Rs.1 lakh (each) would be kept in fixed deposit receipt till they attain the age of majority. However, appellant No.1 will be entitled to benefit of interest as such for their upbringing.

July 24, 2018
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(G.S. SANDHAWALIA)
JUDGE

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