

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

FAO No.2373 of 2015 (O&M)

Date of decision: 29.10.2018

Arjun Parsad

... Appellant

Versus

Union of India

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Anamika Mehra, Advocate
for the appellant.

Mr. Karminder Singh, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

CM Nos.7376, 11417 & 7375-CII of 2015

Prayer in these applications is for condonation of delay of 271 days in re-filing and 265 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the appellant coupled with that provisions of the Railways Act, 1989 providing for compensation are benevolent social legislation, applications are allowed and delay of 271 days in re-filing and 265 days in filing the appeal is condoned subject to the condition that the claimant shall forgo interest for the period of delay, in case compensation is allowed.

Main Case

The present appeal directs challenge against award dated 05.06.2013 passed by the Railways Claims Tribunal, Chandigarh whereby

application for grant of compensation on account of death of Arvind Kumar in an untoward incident, alleged to have occurred on 28.06.2010, has been dismissed.

In brief, case of the appellant/claimant is that Arvind Kumar, son of the claimant was unemployed and he was called by his elder brother for search of job at Ludhiana. The claimant accompanied the deceased till boarding Varanasi-Jammu Tawi Express train 2237 at Railway Station, Sultanpur. The claimant purchased ticket for his son from Sultanpur to Ludhiana and got him boarded in the train. In the morning of 28.06.2010 at about 4.00 am, the deceased accidentally fell down from the train near Sadhugarh railway station at KM 305/23-25 up line and got injured. Sh. Baboo Ram, Keyman reported the incident to railway authorities, Sadhugarh. GRP rushed the injured to Civil Hospital, Fatehgarh Sahib and then to PGI for medical treatment. The deceased succumbed to the injuries on 03.07.2010. GRP registered case vide Naksha No.90 dated 03.07.2010. The claimant received message from GRP regarding the incident who then informed Gobind Lal, his elder son at Ludhiana. Train ticket along with luggage viz black bag containing two bottles of desi ghee, home made pickle, clothes, mobile phone, silver ring, purse having some cash were lost and not received till date.

The respondent contested the claim application raising preliminary objections that same is not maintainable and liable to be dismissed for want of proof that on 27.06.2010, the deceased was travelling

by train or got injured due to any negligence on the part of the respondent in any untoward incident under Section 123(c)(2) read with Section 124A of the Railways Act, 1989. The deceased was not a bonafide passenger as no ticket was recovered from his person. All other material averments of the application have been denied with a prayer for dismissal of the same.

The controversy between the parties led to framing of the following issues:-

1. Whether the deceased was a bonafide passenger of train at the time of incident?
2. Whether the incident is covered within ambit of Section 123(c)(2) read with Section 124-A of the Railways Act?
3. Whether the applicant(s) is/are the sole dependent(s) of the deceased?
4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions.

The claimant appeared in the witness box and examined Gobind Lal, elder brother of the deceased.

To rebut claimant's evidence, respondent examined Babu Ram, Keyman RW1, Bachhu Singh Meena RW2 and A.K. Banerjee RW3.

Having heard counsel for the parties in the light of materials on record, the Tribunal answered issues No.1 and 2 against the claimant and on the basis whereof, the application for grant of compensation has been dismissed.

Counsel for the appellant/claimant would urge that testimony

of Arjun Prasad is more than sufficient to establish that he purchased a ticket from Sultanpur Railway Station to Ludhiana and accompanied the deceased till he boarded Summer Express Varanasi-Jammu Tawi at Railway Station, Sultanpur when admittedly the deceased was found in an injured condition at the railway track near Sadhugarh/Kharar. It is further argued that recovery of railway ticket from possession of the victim is not sine qua non to establish the plea that he was bonafide passenger of the train at the time of accident.

Another submission made by counsel is that no such plea is available to the respondent that untoward incident has not occurred because of wrongful act, neglect or default on the part of the railway administration in order to maintain an application for compensation. In support of her contention, she has relied upon the latest judgment of Hon'ble the Supreme Court **Union of India Vs. Rina Devi, 2018(3) RCR (Civil) 40.**

Counsel representing the respondent has supported the award with the submission that as the claimant failed to establish that the deceased was a bonafide passenger in the train, he has rightly been non suited by the Tribunal.

I have heard counsel for the parties, perused the paper book and the records.

In **Rina Devi's case (supra)**, Hon'ble the Supreme Court has held that regarding question No.3, a burden of proof when body found in railway premises and definition of passenger that mere presence of a body

in railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative claim that he was a bonafide passenger. Initially, the burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the railways and issue can be decided on the facts shown or attending circumstances. This will have to be dealt with from case to case on the basis of facts found.

Reverting to the case at hand, Arjun Prasad appeared in the witness box and tendered into evidence his duly sworn affidavit and reiterated the version of the claimant with regard to his having purchased a ticket for travel of his son in Summer Express Varanasi-Jammu Tawi from Railway Station, Sultanpur to Ludhiana on the fateful day of 28.06.2010. The witness was cross examined by representative of the respondent. Nothing tangible and material has been brought forth in his cross examination to impeach his credibility and evidential value of his testimony. His testimony finds corroboration from the statement of Gobind Lal AW2 that the deceased was coming to Ludhiana for job as Gobind Lal his elder brother was already working at Ludhiana.

Counsel for the respondent has not disputed that the deceased in an injured condition was found lying at the railway track in the morning of 28.06.2010. The recovery memo was prepared on 03.07.2010 after death of the deceased in PGI, Chandigarh. As has rightly been argued by counsel

for the claimant that recovery of railway ticket is not sine qua non for maintaining an application for compensation. Taking into consideration testimony of the claimant supported by Gobind Lal coupled with the factum that deceased was found in an injured condition at the railway track by officials of the railway along with the fact that the respondent has failed to successfully rebut evidence adduced by the claimant, it is difficult to sustain findings of the Tribunal that the deceased was either not bonafide passenger or he did not sustain injuries in an untoward incident. That being so, findings of the Tribunal on issues No.1 and 2 are liable to be set aside and ordered accordingly.

For the foregoing reasons, the appeal is allowed. The claimant is held entitle to compensation of Rs.4 lakh with interest @ 7.5% per annum from the date of application till realization except for the period of delay in filing and refiling the appeal or a sum of Rs.8 lakh available on the date of decision by this Court, whichever is higher, in the light of judgment in **Rina Devi’s case (supra)**.

29.10.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No