

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

FAO No. 3186 of 2016 (O & M)

Date of decision: 19.07.2018

Om Parkash

....Appellant(s)

Versus

UOI

...Respondent(s)

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

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

Mr. P.C. Goyal, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present appeal filed under Section 23 of the Railways Act, 1989 (in short 'the 1989 Act') is directed against the order dated 02.03.2016 passed by the Railways Claims Tribunal, Chandigarh Bench whereby, in spite of the amputation of the right lower limb and the disability having been shown as 80%, which is a scheduled injury as per the Railway Accidents and Untoward Incidents (Compensation), Rules, 1990 (in short 'the 1990 Rules', the claim has been disallowed. The same is on the ground that the applicant-injured had failed to prove even travelling in the train as a bona fide passenger under Section 2(29) of the 1989 Act on the date of incident and it was held that it was a self inflicted injury and it was covered under the exceptions provided under proviso (b) and (c) to Section 124-A of the 1989 Act.

Counsel for the appellant has submitted that from the evidence on record and in view of the statement of the injured himself, a finding

which has been recorded that he was travelling without ticket is without any basis. The onus had shifted on the Railways to prove that the computerized ticket was not purchased as averred and, therefore, the Tribunal was in error in denying the claim and also holding that it was not a case of an untoward incident under issue no. 2. It is accordingly submitted that in view of the unimpeachable evidence on record including the medical treatment chart and the record of the Railways itself, the relief has been wrongly denied.

Per contra, Mr. Goyal submitted that it was for the appellant-claimant to produce necessary evidence to show that he had a valid ticket or a pass to travel and, therefore, the Tribunal was justified in dismissing the claim petition.

After hearing counsel for the parties and going through the record, this Court is of the opinion that the appeal is liable to be allowed, for the reasons given below.

A perusal of the claim petition would go on to show that there were specific pleadings as such of the applicant that he had boarded the train at Phillaur Railway Station on 26.08.2014 alongwith 5 other known persons including one Jeevan, who had purchased the computerized ticket for six persons. It was specifically alleged that the tickets were in possession of Jeevan and when the train called Duplicate Hawara Express had arrived at Phillaur Railway Station, there was heavy rush. Three persons had boarded from the front gate and the other three had boarded from the back gate of the same coach and on account of the jerk, the appellant had fallen down and got seriously injured. On account of pulling of the chain, the train was got stopped and the co-passengers had pulled out the applicant and got him admitted in the Civil Hospital, Phillaur from

where he was referred to CMC, Ludhiana. The tickets in the hand of Jeevan had been lost when he had pulled out the applicant from the railway track and the guard had informed the Station Master, Phillaur, who issued a memo to the GRP, Phillaur.

The defence of the Railways was that it was a concocted version regarding the purchase of ticket and the applicant had no valid ticket at the time of the incident. It was further averred that the applicant was neither a bona fide passenger at the relevant time at the place of alleged incident nor a victim of any untoward incident as defined under Section 123(c) read with Section 124-A of the 1989 Act. It was submitted that in the absence of the ticket on record, the only inference could be drawn that he was not having any valid ticket at the time of incident. The nature of injuries and amputation mentioned in the PMR and other record of the case belied the falling down theory as a result of entanglement and there was no alleged untoward incident on the alleged date.

In support of his claim, the applicant furnished his affidavit, which is in consonance with the petition filed and cross examination came forth that the train was caught about 7.00 p.m. and Jeevan had purchased the tickets and the amount was not known but it was a joint ticket. The ticket was in possession of the said person and he was standing at the door and the appellant had just boarded the train and got a jerk and fallen down. He had been taken to the hospital at Phillaur by his companions and the ticket had been lost after the incident. The Railway officials, guard and Station Master had also reached the site.

The Railways also examined Raj Kumar, Guard, who submitted his affidavit that he was on Train No. 13050DN from Amritsar to Hawara

and he was on duty till Saharanpur. The train had taken its halt at 20.22 hrs. at Phillaur and started from there. There was an alarm raised by the passengers that a person had fallen down from the train. The train was immediately got stopped and a person was found on the track who was badly injured and his right leg got severed while getting him out of the track. The witness stated that he had not seen him falling from the train despite he being attentive on the platform area as per his routine duty but he had informed the Assistant Station Master on duty in writing and proceeded for his onward journey. In cross examination, he also admitted that the injured had fallen out from the second/third coach in front of the guard van. The incident had taken place at the platform itself.

It is, thus, apparent from the deposition of the Railway witness itself also that the incident had taken place on the platform at Phillaur Railway Station and, therefore, the finding which has been recorded that it is not a case of an untoward incident is without any basis. A perusal of the record also would go on to show that as per AW-1/8, the Station Master, Phillaur had also sent a message to the GRP at 8.30 p.m. that one man had been run over and needful action to be taken.

A perusal of Ex.AW-1/13 would show that there is an admission and card made by the Medical Officer at Phillaur at 9.05 p.m. and there was a discharge also as the case was referred to CMC, Ludhiana at 9.30 p.m. on 26.08.2014 itself. The name of the patient is mentioned as Om Parkash, aged around 60-65 years and the history of the illness would show that it was a alleged case of railway accident and an amputation had taken place near the knee. An effort was also made to record the statement of the injured by ASI Vijay Kumar, Incharge GRP and the said official was

informed that the patient had as such been referred to CMC Ludhiana at 9.30 p.m., which would be clear from Annexure A-12. AW-1/14 is a document of admission and discharge from CMC Ludhiana from the department of Orthopedics which would show that there was Traumatic below knee amputation right side and the treatment had been carried on and there was wound debridement and closure of stump done on 01.09.2014. The admission was at 10.00 p.m. on 26.08.2014 and was on account of an alleged rail traffic accident and the preliminary investigation revealed that there was an amputation of right lower limb and the condition was serious. The place of accident was shown as Phillaur Railway Station, District Jalandhar. The record would, thus, go on to show that an untoward incident had taken place and the findings are not justifiable in any manner under issue no. 2 which are accordingly reversed.

The sole question, thus, arises whether under Section 2(29) of the 1989 Act, the appellant was a passenger and had a valid travelling pass/ticket. The appellant had himself stepped into the witness box and stated categorically about the fact that the computerized ticket for six persons was purchased at Phillaur Railway Station. The onus, therefore, had shifted to the Railways and they chose not to examine any person from the ticketing counter to show from their record that no such ticket was purchased for six persons at Phillaur on 26.08.2014 apart from relying upon a bald averment in the written statement. The procedure before the Tribunal is summary in nature on the basis of affidavits as per Section 18(2) and the case had to be decided on perusal of documents, written representations, affidavits and after hearing such oral arguments which may be advanced. The claimant as such had discharged the basic onus that he was travelling

with a valid pass which was issued jointly and, therefore, it was for the Railways to negate the said averments made and also to produce witnesses in support. Only the Guard has submitted his affidavit which also goes on to show that the accident had taken place, as observed earlier, and in such circumstances, the averments made and the statement that in the jostling once the appellant had fallen between the platform and the moving train, the accompanying co-passengers had raised an alarm and pulled the chain and tried to get him timely aid and taken him to the hospital immediately.

The first concern of the said persons at that point of time was to save the life of the appellant and in the melee, if the tickets have been lost, the appellant as such cannot be thrown out on this aspect as he has stood by his claim. Merely because Jeevan was not examined as a witness, as argued by Mr. Goyal would not as such mean that the appellant is not entitled for the benefits of the claim as per the schedule under the 1990 Rules as it cannot be lost site of the fact that the appellant has become 80% disabled on account of the above knee amputation of the right lower limb, which would be clear from the certificate issued by the Medical Officer, Ludhiana Ex.A-1/16, which is supported by photograph of the deceased also showing the amputation below knee. Therefore, the case would fall under clause 18 which would entitle the appellant for a sum of Rs.2,80,000/- as amputation is below the hip with a stump exceeding 5 inches in length measuring from tip to great trenchanter but not beyond middle thigh. This Court cannot lose sight of the fact that the 1989 Act is a beneficial piece of legislation as it has been consistently held by the Apex Court in ***Union of India Vs. Prabhakaran Vijaya Kumar & others 2008 (9) SCC 527; Jameela & others Vs. Union of India 2010 (12) SCC 443*** and in CA-4945-2018 titled

Union of India Vs. Rina Devi, decided on 09.05.2018. The law is, thus, settled that it is only in cases of an exception where there is a criminal act on the part of the claimant as provided under Section 124-A, the relief is to be denied. An untoward incident as such has happened on account of the boarding the train at Phillaur Railway Station and would be covered under Section 123(c)(2) of the 1989 Act, which provides for the accidental falling of a passenger from a train carrying passengers.

Resultantly, the findings on issue no. 1 are also reversed and the appellant is held entitled for the above said amount i.e. Rs.2,80,000/- alongwith interest @ 6% per annum from 26.08.2014, the date of the incident. The appeal is accordingly allowed. The payment be made within a period of 2 months.

19.07.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No