

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

FAO No.3311 of 2016 (O&M)

Reserved on : 13.08.2018

Pronounced on : 31.08.2018

Rani Kaur @ Sukhjeet Kaur & others

... Appellants

Versus

Union of India

... Respondent

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

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

Mr.A.P.Singh, Advocate, for

Mr.Sanyam Malhotra, Advocate, for the respondent-UOI.

G.S. Sandhawalia, J.

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987 (for short, the 'Act'), is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 14.03.2016, whereby compensation to the wife, daughter and minor son of the deceased-Jagsir Singh @ Jagga Singh who died on 30.10.2013, has been denied.

The untoward incident is dated 29.10.2013 and the deceased was travelling from Kalanwali to Bhatinda and railway ticket on his person bearing E-19778007 (Ext.A-2) was also found which had been purchased at 10.56 am on the said date. The Tribunal, while declining the claim, came to the conclusion that there was no witness of the accident and neither the name of the train and its number was mentioned. The police only took action on 30.10.2013 after they had received information from the Civil Hospital, Bathinda and the factum that the

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police had got mentioned that the deceased got injured by falling from the train, was found to be dishonest. The statement of Sandeep Kumar, driver of the ambulance, given to the police that the deceased had boarded the train at about 3 o' clock at Kalanwali and that the train ticket was purchased at 10.56 am, were the factors which weighed with the Tribunal while declining the relief. The non-production of the brother, Tej Singh, who had dropped the deceased and nor the driver who worked with the Sahara Jansewa were also adverse circumstances as there was no mention of recovery of telephone and address slip from the deceased, especially when the money which was recovered, which were reasons to discard the claim on account of the fact that the deceased had boarded the train at 15.10 hours at Kalanwali.

Issue No.3 was decided in favour of the claimants that they were dependents of the deceased-Jagsir Singh @ Jagga Singh but compensation was denied under issues No.1 & 2, which were held against the claimants.

Mr.Somesh Gupta, appearing for the appellants, argued that there was sufficient material on record to show that the deceased was travelling on the train. The statement had been recorded by the police officials that the deceased had been taken to the Civil Hospital, Bathinda, which was further clear from the jamatalasi that the deceased was brought to the hospital by Sahara Jansewa and the postmortem report would further substantiate that it was a case of Railway accident. The DRM report had been filed after the claim had been initiated and there was no evidence to the contrary laid by the Railways to dispel the claim of the

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appellants.

Mr.A.P.Singh, on the other hand, appearing for the Railways, justified the award passed by the Tribunal and contended that the person working with the Sahara Jansewa had not been produced and therefore, the documentation could not be relied upon in the absence of the said witness who had picked up the person from along the track.

As per the pleadings of the appellants, it was their case that the deceased was doing labour work and he had gone to Bathinda by train from Kalanwali Railway Station, Sirsa and was travelling alone in the train on the fateful day, i.e., 29.10.2013. After purchase of the ticket at 10.50 am at the Railway Station, he had remembered that he had not taken the address and phone number of the person who he was going to meet and therefore, had come back to his house and after taking the slip, again reached to the Railway Station and boarded the train. The train reached B-Cabin near Bathinda and had taken a jerk and he had fallen down and got serious injuries and some passer-by informed the Sahara Jansewa that one person had fallen down from the train and was lying injured. Sandeep, the driver of the said Jansewa, had reached the spot and got admitted the deceased to Civil Hospital, Bathinda, where he succumbed to his injuries on 30.10.2013. The hospital authorities had sent rukka to the GRP and Constable-Gurmeet Singh had reached the spot and prepared the report. Railway ticket from Kalanwali to Bathinda Railway Station and Rs.50/- in cash had been recovered from the said search, as per jamatalashi (Ext.AW-1/2). The legal heirs of the deceased had been contacted and they reached the Civil Hospital and identified the

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deceased. The ticket number was specified which was stated to be in custody of the police and resultantly, the claim of Rs.4 lakhs was preferred.

The defence of the Railways was that the claimants had not mentioned the time of departure of the train and the train number and the ticket was a planted one as there was no proof of an eye-witness that the deceased met with the accident while travelling in the train. The case of death had been by striking of a train while trespassing on the tracks, for which, no responsibility of the Railways could be fixed and therefore, he was not a *bona fide* passenger. The arrival time and departure of the train from the Railway Station, Kalanwali was not mentioned and it was on his own criminal and negligent act, for which, the Railways could not be held liable.

The claimant-appellant No.1 had filed her affidavit regarding this context that on account of the accident having taking place, the railway ticket had been recovered and GRP had contacted the legal heirs of the deceased. In cross-examination, it has come forth that her house was 10 minutes from the Kalanwali Railway Station and the deceased had been carrying cash of Rs.100-200/-. Admittedly, she was not an eye-witness and had only been informed by the police.

The proceedings which were conducted under Section 174 Cr.P.C., by the GRP, Bathinda, would go on to show that Tej Singh, the brother of the deceased had identified the body along with Darshan Singh. The body had an injury on the left shoulder and on the wrist and the blood had coagulated. The reason of the wound under clause 12 was

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on account of falling from a train and the cause of death was also similar. The jamatalasi which had been done on 30.10.2013, on account of his death, showed the presence of the ticket for Rs.10/-, which was from Kalanwali to Bathinda and the ticket had been issued at 10.56 am. The recovery proceedings had been conducted in the presence of Tej Singh, the brother of the deceased and Darshan Singh, by Head Constable, Gurmeet Singh. The statement of Sandeep had also been recorded on 30.10.2013 itself, who was working with Sahara Jansewa. He had stated that he had received a telephone call from a person who had told his name as Jag Singh of Village Taruana, PS Kalanwali, District Sirsa, Haryana that there was a person lying near the Bathinda by-pass at the Railway lines in an injured condition. On reaching the spot, the injured person was found in the shrubs next to the Sirsa Railway Line and B-Cabin by-pass Railway Line, Bathinda and he had informed that he was travelling on a train coming from Kalanwali. He had informed the said witness as to how he had fallen on account of a jerk and had become unconscious and on regaining consciousness, he had raised noise and some person had noticed him and informed the said helpline. The said witness had asked about the contact number on which the relatives could be contacted and on his search to find such an identity number, Rs.50/- was found in denominations of Rs.10/- and the ticket of Rs.10/-. The injured was shifted to Civil Hospital, Bathinda for treatment and as per the statement of the said person, the death took place on account of falling down from a train. The witness had, accordingly, given his statement that he did not have any suspicion regarding the death of the

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injured which was recorded by Gurmeet Singh, H.C.

The admission to the Civil Hospital Bathinda which was done on 29.10.2013 (Ext.A-8) would also go on to show that there was an endorsement that he had been brought by the Sahara Jansewa at 11 pm. The treatment chart would go on to show that he was not responding to the verbal commands and to the pain stimulation and could not be revived and eventually died on 30.10.2013 at 9.05 am. The Medical Officer had also informed the Railway authorities regarding the patient being brought by the Sahara Jansewa and the dead body had been shifted to the mortuary. The postmortem was conducted on 31.10.2013 at 10.30 am, in the presence of the brother of the deceased and Darshan Singh, who was the Ex-Sarpanch, though the body had already been received on 30.10.2013 at 9.30 am. The postmortem report would go on to show that multiple aberrations were present on the right upper arm and right humerus bone was fractured and upper bone on the right side was fractured and similarly, there were two fractures on the left side. The cause of death was hemorrhage and due to multiple fractures and tuberculosis of the lungs. Resultantly, it was sufficient to cause death in the ordinary course of nature, as per the opinion of the SMO.

In the enquiry proceedings, which had been initiated after the filing of the claim petition on 14.02.2014, an effort was made by the Railways, at the initial stage, to enquire into the same, as per Railway Passengers (Manner of Investigation of Unoward Incidents) Rules, 2003. The conclusion, thus, arrived was on 17.06.2014 that the accident had happened during the day and there was no eye-witness and therefore, the

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Railways was not at fault and also in view of the fact that there was no intimation even by the authorities regarding the falling of the deceased from the train.

The above sequence of events would go on to show that findings which have been recorded that the deceased was not a *bona fide* passenger, as such, on issue No.1, cannot be approved. The factum of the ticket, as such, having been purchased at 10.56 am between the 2 stations, is already on record. Merely because the person had boarded the train at a later point of time, would not make out a ground that the ticket was purchased later. The Railways have not produced any evidence to this extent that the claim was based on a procured ticket and the onus to that extent was on the Railways and it was not for the claimants to prove to the contrary. The onus only lay to this extent that the deceased was travelling with a *bona fide* ticket and the Tribunal has, thus, wrongly shifted the onus upon the claimants and rejected their claim on the reasoning that the ticket had been bought at a later stage. Merely because the slip which led to the delay of boarding had not been found, would not be a good ground to reject the claim of the appellants.

The sequence of events would go on to show that it has come on record that the deceased was admitted by the volunteer of the Sahara Jansewa at Bathinda who had informed of the possibility of the deceased falling down from the train and admission to the Civil Hospital, Bathinda on 29.10.2013 itself. Information had been sent to the Railway authorities also on account of his death. In the jamatalasi which was done on 30.10.2013 by Gurmeet Singh, H.C., the ticket had been

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recovered in the presence of his brother Tej Singh and therefore, there was enough evidence to show that he was a *bona fide* traveller. Neither the police official-Gurmeet Singh, H.C., who recorded the statement of Sandeep on 30.10.2013 in the proceedings under Section 174 Cr.P.C., has been produced by the Railways to dispel the theory that the ticket was purchased at a subsequent point of time and the statement of Sandeep was not recorded on 30.10.2013, who had taken the deceased to the hospital.

The Tribunal has wrongly accepted the defence of the Railways, as such, in the absence of any evidence to the contrary. In an incidence like falling from a train, the dependents who are not accompanying the deceased or the injured, cannot give a parrot like statement in favour of their case and once specific defence has been taken of fraud, it was for the Railways to prove the said facts. The Tribunal has erred, as such, in shifting the onus upon the claimants who could only prove in affirmative of their case regarding the finding on issue No.1, which cannot be sustained and the same are, accordingly, reversed and it is held that the deceased was a *bona fide* passenger travelling in the train, who had accidentally fallen off the train and the case would be covered under Section 123 (c) (2) of the Act.

Regarding the findings under issue No.2, the factual aspect has already been summarized above and the claim of compensation would lie on account of the death of the person and the appellants would be entitled for the necessary compensation as provided under the Schedule, since the provisions of the Act have been held to be socially beneficial piece of legislation and in the form of no fault liability. The

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onus to prove that compensation would not be payable and to bring the case within the five exceptions, as provided under Section 124-A, has not, as such, been brought forward by the Railways. The action to recover the compensation, therefore, was very much maintainable, in view of the law laid down by the Apex Court in **Union of India Vs. Prabhakaran Vijaya Kumar & others 2008 (9) SCC 527.** Relevant portion of the judgment read 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.

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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

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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 view was taken in *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.

Accordingly, in view of the above, this Court is of the opinion that the findings under issue No.2 are also liable to be reversed and the death of the deceased is covered under Section 123 (c) (2), being an untoward incident. Accordingly, the appellants/claimants are held entitled for a sum of Rs.4 lakhs, on account of death of Jagsir Singh, along with interest @ 6% per annum, from the date of the accident. The amount shall be bifurcated in a sum of Rs.2 lakhs, to the wife and Rs.1 lakh each to the two children. The amount of appellant No.3-Ravi Singh, who is a minor, shall be put in a Fixed Deposit Receipt, to earn the highest rate of interest and would be payable to him on attaining the age of majority. Appellant No.1, the mother, would however, be entitled to the amount of interest which accrues, for the welfare of the minor.

The present appeal stands allowed, in the above terms.

AUGUST 31st, 2018
sailesh

Whether speaking/reasoned:
Whether Reportable:

(G.S.SANDHAWALIA)
JUDGE

Yes/No
Yes/No