

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

**FAO No.3805 of 2016  
Decided on : 11.07.2018**

Bala Devi and another

... Appellants

Versus

Union of India

... Respondent

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

Present : Mr. Subhash Sachdeva, Advocate for  
Mr. S.K. Rana, Advocate for the appellants.

Mr. Neeraj Madaan, Advocate  
for the respondent-UI.

**G.S. Sandhawalia, J.**

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, '1987 Act') filed by the parents of the deceased, is directed against the order of the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') dated 03.02.2016.

The Tribunal has rejected the claim by holding under issue No.1 that the deceased was not a bona fide passenger as the ticket bearing No.32624073 dated 20.01.2014 was not recovered by the police anywhere. The same had neither been produced by any relative or any person to the police nor had been attested by them. The statement given to the police and deposition in the Court were stated to be contradictory to each other and, therefore, the authenticity of the ticket was seriously questioned. Similarly, on issue No.2 whether the incident came within the ambit of Section 123 (c) (2) of the Railways Act, 1989 (for short '1989 Act') of an untoward accident and the same was also answered against the appellants/claimants on the ground that the deceased had fallen down from some train and he had not

yet started his journey as a passenger. Issue No.3 that whether the parents of the deceased were competent to file a claim was held in their favour by holding that the parents were dependents of the deceased. Accordingly, on issue No.4, the relief was denied for a sum of ₹4 lakhs on the ground that the bonafide passenger status of the deceased having been doubted under Section 2 (29) and the case did not fall within the ambit of Section 123 (c) (2) of the 1989 Act.

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

The application filed under Section 16 of the 1987 Act read with Section 124-A of the 1989 Act was on account of the fact that the deceased was around 24 years old and was doing private job in a cloth shop situated at Sonapat. He had purchased one ticket from Railway Station, Samalkha to New Delhi on Train No.64452. On account of boarding the train due to a jerk, he had fallen down from the train in the yard and received serious, grievous multiple injuries. He had been rushed to the Primary Helath Centre, Samalkha and after being given the first aid referred to the PGI Rohtak where he remained admitted. From the clothes one ticket, cash and visiting cards etc. had been recovered by the doctor and given to the relative of the injured. The ticket had been given to the Investigating Officer, but he had refused to receive the same and ticket no.32624073 dated 20.01.2014 was specifically mentioned alongwith the original ticket itself, attached therein.

The Railways denied the death to be falling under Section 123 (c) and the fact that it was an untoward accident. The plea taken was that it was a case of having got entangled with some moving train and the said person was not a passenger on the train. The ticket was procured just to raise a false claim.

The mother of the deceased, claimant/appellant No.1 Bala Devi had submitted her affidavit in affirmative in support of the claim petition. In cross-examination it came forth that she was not a witness of the purchasing of the ticket and boarding the train or falling down. She had denied that the deceased had got entangled with some moving train while crossing the track at Samalkha. The plea taken was that the GRP had refused to record the fact of delivery of the ticket by the doctor. The deceased had been taken from the place of incident by the family members and, thereafter to PGI Rohtak. The suggestion that the ticket was a planted one was denied.

The Railways examined RW-1 Dharmvir, Station Master, Bhodwal Majri to depose that he was on duty as Station Master from 7:00 AM to 3:00 PM and train No.64452 Passenger had arrived at 8:16 AM at the said station. The Guard of the train had given a written memo to the effect that one injured person was lying near starter signal toward Delhi end Station Yard, Samalkha. The information was passed on to the Duty Station Master, Samalkha for further necessary action and GRP had taken necessary action. Copy of Memo, Station Dairy and TSR were annexed with the affidavit.

Similarly, RW-2 Babu Lal Meena, Station Master, Railway Station, Samalkha in his affidavit deposed that the train referred to above had arrived at 8:09 AM on Platform No.1 and had departed after its one minute scheduled halt at 8:10 AM and had reached at the next station, Bhadowal Majri at 8:16 AM. A telephonic message had been received from the said Station Master that as per written memo by the Guard of Train No.64452 that one injured person was lying near starter signal towards Delhi end in Samalkha Station Yard. A person had been deputed by the deponent to verify the information and by the time the injured was removed by some unknown persons. On the basis of the information, a message was issued but the GRP personnel had refused to receive the same as the injured was not available. On intimation by Guard, a memo was issued and ambulance was called.

Similarly, RW-3 Varinder Singh who was working as a Guard on train No.64452 down from Ex. Ambala Cantt. to Delhi had filed his affidavit and deposed in the same manner that train was on time and as per his deposition one person was already lying near the track beyond platform and prior to starter signal and the said person had not fallen down from the train.

In the proceedings under Section 174 Cr.P.C. (Ex.A1/11), the statement of Bala Devi, the mother of the deceased was recorded to the extent that her son was working at Sonapat in a cloth shop and used to go Delhi in connection of his avocation via train. On 20.01.2014 he had left the home at the normal time and subsequently they were informed

that he had been involved in a accident at the Railway Station, which information had been received by the other son Ravi. When they reached the said place, he had been taken to the hospital by the officials and resultantly shifted to the PGIMS, Rohtak, where he expired. Similarly, the statement of brother of the deceased, Ravi was recorded in which he also deposed that he had received information at 8:20AM regarding the incident, in which his brother was involved and that he had taken him to PGIMS Rohtak in his vehicle. Similarly, the statement of the father of the deceased Raj Kumar was recorded on 20.01.2014 by ASI Tara Chand in which he had also deposed about how his son used to work at Sonapat and he was informed regarding the incident at 8:20AM, though in the statement recorded that there was no recovery of ticket from *Jamatalashi*.

The postmortem report (Ex.AW1/17) would go on to show that the body was brought by ASI Tara Chand of the GRP at 1:00 PM. As many as 8 injuries were on the person of the deceased. A lacerated wound of size of 8x4 cm was present over antero-lateral aspect of right knee joint and underlying bone was visible. A lacerated wound of 25x15 cm was present at middle part and 5cm above the left knee joint. The underlying muscles could be seen and were found to be ecchymosed. The underlying bone of femur was fractured at middle 1/3<sup>rd</sup> which could be seen and blood infiltration was present. An abrasion of size 15x20cm was present over right side of chest and it was 2cm below nipple. On further dissection, underlying intercostal muscles were found to be ecchymosed on dissection. On further dissection 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> ribs of

right side were fractured and blood infiltration was present. The cause of death was due to the multiple injuries and its complications, which were caused by hard blunt surface.

Ex.AW1/4 would go on to show that the Junior Resident had recorded that the death was on account of Railway Track Accident and he had been admitted and during treatment the patient had expired at 2:00PM. Ex.AW1/3 would go on to show that ASI Tara Chand was the In-charge and made report regarding the death of the deceased at PGIMS. Similarly, Ex.AW1/2 would go on to show that the Station Master, Bhodwal Majri had been informed that a injured person was lying next to the starter signal and necessary action be taken which was at 8:16AM on 20.01.2014.

From the above sequence of events one thing would be clear that the deceased had left his home in the morning and was seen injured near the starter signal towards Delhi end by the Guard of the train itself, who had passed on necessary information to the next Station Master at 8:16AM which was only 10 minutes away as the train had departed Samalkha at 8:10 AM and reached at next station at 8:16AM. It is, thus, apparent that the finding which has been recorded by the Tribunal that the deceased was not a victim of an untoward accident as defined under Section 123 (c) (2) of the 1989 Act is without any proper reasoning. The Guard at that point of time may not have seen the deceased as such falling from the train, but had noticed him lying next to the track towards Delhi side.

In the cross-examination of RW-3 Varinder Singh this fact had come forward, wherein he had stated that he had not received any message from the Driver of the train with regard to lying of a person out of the track. He could see outside to exchange signal uptill the end of railway station. After crossing the starter signal the train had entered the block section and in the block section he would come to know about any incident only where there is ACP or information by somebody.

It is, thus, apparent that when the train had passed by, the Driver of the train had not seen the deceased but Guard as such had seen the deceased lying near to the starter signal. In the intervening period the deceased apparently seems to have fallen out of train which was noticed by the Guard passing by in the Guard Van who had also noticed that a injured person and not a dead person was lying. Section 123 (c) (2) of the 1989 Act provides that the incident of falling of a passenger from a train carrying passengers is a case of untoward incident and the above discussion would go on to show that the Tribunal was not correct in coming to the finding that it was not a case of untoward accident. Admittedly, thereafter also on the information as such received by the Station Master, Samalkha, the GRP ASI Tara Chand had also been informed and he had gone upto the PGI Rohtak to record the statement under Section 174 Cr.P.C and also conducted *Jamatalshi* at that point of time. It is, thus, apparent that the Railways Authorities were well aware of the factum of some person having been lying between the station yard who had been attended to and necessary information had been given. The

necessary follow up had also been there and, thus, findings recorded under issue No.2 that it was not a case of untoward accident, are not justified and liable to be reversed. Even the injuries as such would go on to show that the body was badly fractured at various portions, which would go on to show it was on account of a fall from a train, which has not even been adverted to by the Tribunal while deciding the said issue.

Regarding issue No.1 that whether the deceased was a bona fide passenger at the time of the incident, findings recorded by the Tribunal are also without any basis and are liable to be reversed on account of the fact that it was a specific claim of the appellants that ticket No.32624073 which was issued from Samalkha to New Delhi on 20.01.2014 at 7:52AM. The said ticket had been attempted to be handed over to ASI Tara Chand of GRP but the said fact had not been incorporated. The Railways in its written statement have not clarified how the ticket is procured to raise a false claim. Once the ticket was issued prior to the boarding from the station which would be clear from the perusal of the ticket and the time endorsed on it and in view of the record of the Railways itself and the stand of its employees that the train was on time and had left the Railway Station, Samalkha after its one minute scheduled halt at 8:10 AM. No witness has been examined from the ticketing section that the ticket was purchased subsequently after the incident prior to filing of the claim petition and a back entry was made regarding the time of its purchase.

Once the Railways had taken the plea that it was a procured

ticket, the onus shifted upon them and it was for them as such to prove this fact. Merely because the ticket was not recovered by the police authorities and had not been mentioned would not be a basis to deny the claim.

The deceased had been handled at various stages and taken from Samalkha to PGI Rohtak keeping in view the nature of injuries suffered upon him and the fact that he had needed medical help and was in serious condition. Merely because the factum of recovery of ticket at that point of time had not been mentioned would be no such ground to discard the plea taken by the claimants. It is for the Railways to prove that in what circumstances the ticket was not a valid one. Once it is the categorical claim of the appellants that the deceased was travelling from Samalkha to Delhi and he had paid ₹20/- for purchase of ticket and which was his normal routine. The onus was never discharged by the Railways and, therefore, the findings that have been recorded by the Tribunal that the deceased was not having a valid authority to travel, is without any basis.

Resultantly, it is held that the deceased was having a valid ticket as defined under Section 2 (29) of the 1989 Act and the appellants would be entitled to stake a claim by way of an appeal, on account of death of the deceased in an untoward accident as defined under Section 124-A of the 1989 Act. The case as such does not fall within the exceptions provided under Section 124 that it was case of suicide or attempted suicide or self inflicted injuries or his own criminal act.

Neither it is the case of the Railways that the deceased was attempting to jump on the running train and in the process had fallen down, which would fall within the exceptions clause and the claimants would not be entitled for the benefits. It was neither denied that he was not a passenger of the train and neither had fallen down from any train. Resultantly, the findings on issue No.1 are reversed and it is held that he was a bona fide passenger at the time of the incident.

Keeping in view the above, once it has been found that the appellants are the parents of the deceased and even the Tribunal as such held that the claim on their part as such would lie as per the Ration Card also and there was nothing to controvert the dependency, the appellants would be entitled for the amount of ₹4 lakhs, which would liable to be paid under Schedule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, on account of the death of the deceased in an untoward accident.

Accordingly, the appeal is allowed and the appellants are held entitled for a sum of ₹4 lakhs alongwith interest from the date of incident i.e. 20.01.2014 @ 6% per annum, in view of the law laid down by the Apex Court in **CA-4945-2018** titled '**Union of India Vs. Rina Devi**', decided on 09.05.2018.

**JULY 11, 2018**  
*Naveen*

**(G.S. SANDHAWALIA)**  
**JUDGE**

*Whether speaking/reasoned:*  
*Whether Reportable:*

*Yes/No*  
*Yes/No*