

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

-:-

FAO No. 3993 of 2016

Date of decision: 04.07.2018

Aam Narbad & Anr.

... Appellants

Vs.

Union of India

...Respondents

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

Present: Mr. Atul Bhatia, Advocate, for the appellants.

Ms. K.K. Kahlon, 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 award dated 12.10.2015 passed by Railway Claims Tribunal, Chandigarh Bench (for short, 'the Tribunal') by parents of the deceased. The claim for compensation was denied solely on the ground that the claimants had been incapable to prove that the deceased was a bonafide passenger and he had become a victim of the untoward incident according to the Railway provisions, while deciding issue Nos. 1 and 2.

The claimants - appellants (herein) are the father and the blind mother of the deceased. The specific claim of the claimants in the petition filed is that the death of their son Deen Dyal, who was 25 years old had occurred when the deceased had gone to visit his sister Seema, who was living with her husband Hanumat @ Rajesh at Ludhiana. He had purchased a journey ticket from Ludhiana Railway Station to go to Jaipur, which was his work place on 10.03.2013 at 9:30 PM. His body was found lying 8 kms

down at 339/18 downline between Khanna and Chawa Railway Station around the tracks and information was received on 11.03.2013. The Gateman, namely, Iqbal Singh, of Gate No. 159/C had informed the Station Superintendent, Chawapail. Resultantly, it was held out that he was travelling as a valid passenger in the train and the ticket was lost in the incident and then he was a bonafide passenger. His brother-in-law (jija) had been informed by telephone on the number of his mobile, which was found from the deceased in Jamatalashi and, accordingly, his parents have filed the claim petition.

The defence of the Railways was that he was not a bonafide passenger and neither he was holding a valid ticket nor a platform ticket or pass of the alleged journey, therefore he was not entitled for the claim under Section 124-A of the Railways Act and he was not covered under the definition of untoward accident. It was further stated that he had died on his own mistake/negligence and, therefore, the respondents are not liable to claim compensation and claim petition is liable to be dismissed. The deceased was found in the wheat fields and he had come before the train and he had been run over by the train.

The brother-in-law, namely, Hanumat, who was based at Ludhiana filed his affidavit in support of his claim deposing regarding the said facts. In cross-examination it came on record and it was specifically mentioned that the deceased had purchased a ticket in his presence. The witness had stood by for the safety of luggage and he also stood by the statement recorded by the police mark A to B, Ex. A/6. The said statement Ex. A/6 is the statement of Hanumat brother-in-law on 11.03.2013 recorded under Section 174 Cr.P.C at Police Payal, Sirhind is of utmost importance.

He accordingly stated that the train as such had proceeded from Ludhiana to Jaipur which is also as per the claimant's case and in consonance of the statement of Hanumat which was recorded immediately on the next day. He had been informed on phone regarding the incident and he identified the body of his brother-in-law Deen Dayal. At that point of time also it was specifically stated that his brother-in-law went to Jaipur for work on 10.03.2013 on the night train 9:30 P.M. He had stated that he made him sit in the train and come back and the deceased had bought the ticket after standing in queue and the witness had been sitting for the safety of the luggage. At the time he had no suspicion of his death and the death of Deen Dayal had occurred due to the falling down from the running train and he did not want to take any action against anyone.

The said statement thus depicts the true picture immediately on the very next day after the incident had taken place during the night of 10th and 11th March 2013. Similar is the statement of Seema Devi sister of the deceased that her brother was doing labour work at Jaipur and had come to see them four days back at Ludhiana. He had departed for Jaipur on 10th which was yesterday since the statement was recorded on 11th. She also verified the fact that she was told on her phone regarding the death of the brother and she had no suspicion and his death had occurred due to fall from the running train. She has specified her telephone number as 09815195118. A perusal of fard jamatalashi done on 11.03.2013 would go to show that from the slip recovered from the body of deceased the said telephone number was also written on the basis of which the police officials got in touch with the brother-in-law and the sister of the deceased.

It is, thus, apparent that the deceased who did not belong to

Ludhiana as such was travelling on the train as bonafide passenger for a long distance travel and the presumption as such is of bonafide passenger having a valid ticket. The onus had thus shifted upon the Railways that he was not a bonafide passenger not having a valid pass or ticket and was a trespasser. The circumstances in which the body has been found would also go to show it was an untoward incident and it was covered under the provisions of Railway Act 1989 and even the post-mortum report would go on to show that it has been recorded that it was a fall from the train.

The site plan which was part of the inquest report Ex. A/2 show's that the body was lying next to the downline of the train track which is the specific case of the appellant that he was proceeding from Ludhiana to Jaipur. Therefore, the reasoning of the Tribunal as such by holding that the appellants could not prove that the death was on account of an untoward incident, which fell under Section 124-A is not tenable and it would not fall as such under the exceptions provided therein. The inquest report also shows that there were the marks of deep injury on the left side of the forehead above the eye and mark of deep wound near right arm elbow and there were bruises on the whole body and the marks were blackish.

The argument as such for counsel for the respondent -Railways that the body was lying in the wheat fields of Village Gamduda and he was not a passenger and therefore it was not part of the untoward incident thus would be no consequence, in such circumstances. As it is noticed, the appellants as such do not belong to the State of Punjab and belong to the State of Madya Pradesh. The deceased was a labourer and similarly his reletives were doing labour work in Ludhiana and, therefore, the argument raised that he came in front of the train as such is also without any

substance.

It has been amply prove that he had come to visit his sister and his brother-in-law and while going back to his place of work the incident had happened. Therefore, the Tribunal was in error in not examining the statement which was recorded on 11.03.2013 under Section 174 Cr.P.C immediately thereafter, which would complete the sequence of events to show that the deceased was as such travelling on the train for a long distance travel and, therefore, in all circumstances he would have purchased the ticket. Therefore, only on account of the fact that the same was not found at the time of jamatalashi would in the circumstances would not dis-entitle the claimants.

The Apex Court in Civil Appeal No. 4945 of 2018, decided on 09.05.2018 **Union of India Vs. Rina Devi** as held that the onus shift to the Railways and it has to be seen in the facts and circumstances of the case and in view of the above discussion the onus has been validly discharged.

Relevant para of the judgment reads as under:-

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial 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 the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case

on the basis of facts found. The legal position in this regard will stand explained accordingly.”

A perusal of the panchnama (Annexure A/4) which was done on 11.03.2013 also would go to show the presence of sister Seema and brother-in-law Hanumat, wherein also the same facts having been repeated i.e. that the deceased had come to visit sister and brother-in-law and was doing labour work at Jaipur. The claim petition was filed almost 8 months later from the incident whereas these above recordings in the inquest proceedings and the statement before Railway Authorities would go to show on the very next day, the sequence of events had been recorded which is a specific case of the claimants that the deceased had purchased a ticket. In such circumstances, the Tribunal has erred in not allowing the application.

Accordingly the appeal is allowed. Findings on issue Nos. 1 and 2 are reversed. It is held that the deceased died in an untoward incident involving the railways and was a bonafide passenger under Section 2(29) therefore, the appellants are entitled to compensation of Rs.4 lakhs with interest @6% from the date of the accident i.e. 10.03.2013, which shall be paid to the appellants within two months.

July 04, 2018
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(G.S. SANDHAWALIA)
JUDGE

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