

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

**FAO No.5445 of 2016 (O&M)
Decided on : 24.07.2018**

Anju & others

... 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-UOI.

G.S. Sandhawalia, J. (Oral)

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987, is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 02.02.2016, whereby the claim for compensation on account of death of Anil Kumar @ Mochi, has been rejected.

The reasoning arrived at by the Tribunal is that the ticket was not found in his Jamatalasi and the applicants have not been able to prove that the deceased was travelling on the date of incident and he had a valid authority to travel. The loss of the ticket which was projected, was rejected and accordingly, it was held that he was not a *bona fide* passenger at the time of the incident, as defined under Section 2 (29) of the Railways Act, 1989 (for short, '1989 Act').

While deciding issue No.2, regarding whether the incident was covered under Section 123 (c)(2) read with Section 124-A of the 1989 Act, the factum that the deceased was living with the applicants in Colony

FAO-5445-2016 (O&M)

Rangia Mandi, which was situated just near the railway track between Ambala Cantt. and Dukheri railway stations and since the body of the deceased was cut into two pieces, it was, accordingly, held that the cutting of body of the passenger into two pieces was normally not possible when a person falls down from a train in block section and it only happens when a train runs over a person on a railway track. It was, resultantly, held under issues No.1 & 2 that he was not a *bona fide* passenger and therefore, the benefit of compensation, as per the schedule under the Railway Accident and Untoward Incidents (Compensation) Rules, 1990, was not liable to be paid.

Counsel for the appellants has vehemently argued, by placing reliance upon the proceedings under Section 174 Cr.P.C. that the incident happened on 19.07.2011 and the deceased was to visit his sister at Saharanpur in a passenger train and had fallen down from the train and was a *bona fide* passenger. He relied upon the statement recorded under Section 175 Cr.P.C., of brothers of the deceased, Lal Chand and Narender Kumar dated 19.07.2017 and Dalip Kumar, the Gangman (Exts.A-5 to A-7), to submit that at the initial stage, material had come that the deceased was travelling on a train and therefore, the Tribunal was in error in dismissing the claim petition. It is, accordingly, submitted that it would come within the ambit of an untoward incident, as defined under Section 123 (c)(2) of the Railways Act and even in the enquiry, as such, nothing had come that the deceased had died while crossing the railway track.

Counsel for the respondent, on the other hand, argued that it

is a case where the deceased was crossing the railway lines and staying in the the close vicinity and therefore, was not a passenger having a valid pass or ticket and therefore, the Tribunal had rightly denied the relief.

After perusing the record, this Court is of the opinion that the findings recorded by the Tribunal are liable to be upheld. Admittedly, the deceased was staying in the close vicinity of the Railway Station where the death had occurred. The said fact would be clear from the affidavit also of Smt.Anju, who is the wife of the deceased, wherein the address given is H.No.12, Rangia Mandi, Ambala Cantt. A suggestion was also put to her in cross-examination that Rangia Colony was very close to the place of incident, to which she had admitted. She had, however, denied the suggestion that people used to cross over the railway tracks and the suggestion that there was a railway crossing close by where the body was found, was accepted and pointed out that it was 1 km away. She, however, admitted that the body had been cut into two pieces and one portion was lying within the lines. The alleged witness, who was put-forth is one Bakshi Ram, who is a vendor, stated to have seen the deceased and talked when he had boarded the train. In the cross-examination, it has come that he was working in the Railway Station and the deceased, at one point of time, was working as vendor in the Railway Station also.

These facts would go on to show that even Rajinder Kumar, examined as RW-1, who is a Sub-Inspector of RPF, has stated that the deceased was residing in Rangia Colony in the nearby area and the dead

body was found having been cut into two pieces from middle. In the cross-examination also by the claimants, it has come that people usually cross the track from Rangia side to reach Ambala Cantt. Railway Station and the site of incident was about ½ km from Rangia Mohalla. It is, thus, apparent that the findings which have been recorded and which are clear from the inquest proceedings are that the body was cut into two parts and the lower portion of the body was lying in the middle of the track and the upper portion was lying outside the track. The lower portion was also in between the two tracks and the head was outside the track with one shoe and part of the body. It is, thus, apparent that the deceased was hit by some train while the deceased was crossing the railway tracks in the wee hours of the morning and as the deceased had not seen the train coming and the body was badly cut into two pieces.

Section 123 (c)(2) provides regarding the accidental falling of any passenger from a train carrying passengers. The deceased, in the present circumstances, apparently, who was a resident of the Colony resides around the railway track, had died on account of multiple amputations, which has led to his death which had unusually occurred on account of the train accident and he cannot be said to be a passenger in any manner. The story which has been coined, as such, that he was going to visit his sister on his own and had boarded the train and thus, was a *bona fide* passenger, does not cut much ice with this Court. The deceased was employed in and around the Railway Station, which would be clear from the evidence and the version which has come forth in Section 175

FAO-5445-2016 (O&M)

Cr.P.C. proceedings, being recorded at the initial stage, at the instance of his brothers. They were well aware as to the benefits which might accrue to them on account of the death while boarding the train and the story seems to have been coined at the threshold itself, which is the factual findings recorded by the Tribunal and do not warrant interference.

In similar circumstances, the Apex Court in ***Kamrunnissa Vs. Union of India 2017 AIR (SCW) 1436***, while taking into account the position of the passenger also and the fact that he was lying next to the railway tracks and was cut into two pieces, came to the conclusion that it was not possible that such an accident would have taken place while boarding the train. Relevant portion reads as under:

“7. The aforesaid report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train.”

Accordingly, in view of the above discussion, no case is made out for interference in the well reasoned order passed by the Tribunal. Resultantly, the present appeal is dismissed.

JULY 24th, 2018

sailesh

Whether speaking/reasoned:

Whether Reportable:

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

Yes/No

Yes/No