

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

**FAO No.8432 of 2014
Decided on : 11.09.2018**

Meera Devi & others

... Appellants

Versus

Union of India

... Respondent

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

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

Mr.Neeraj Madan, Advocate, for the respondent-UIO.

G.S. Sandhawalia, J. (Oral)

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 30.07.2013, whereby the Tribunal has dismissed the claim application of the appellants who are the legal representatives of the deceased-Baliram Thakur, namely, the wife and children, who died on 13.07.2011.

The reasoning given by the Tribunal is that only ticket No. 72582548 from Chandimandir to Ambala Cantt. had been recovered from the person of the deceased. The tickets which have been brought on record from Chandimandir to Chandigarh and Chandigarh to Bapudham Motihari were dated 13.07.2011 and had a different running number and showing different time of issue. The testimony of the minor applicant was also contradictory at many stages as during his deposition, he stated that his father had got the tickets and that the tickets from Chandimandir to Chandigarh were with him. It was also noticed that the relatives, Shri Ram Thakur, Banarsi Das, Hira Lal and Ram Kishore, his uncles were stated to be present at his native village

when he had finished his journey. However, it was noticed that on fard jamatalasi on 14.07.2011, the presence of Ram Thakur, Banarsi Das, Hira Lal and Ram Kishore was there and therefore, it was not possible for the uncles to be present, starting their journey from Bihar on 14.07.2011. Resultantly, it was held that there was contradiction and the said witness was not travelling on train with the deceased. The incidence had taken place after Ambala Cantt towards Saharanpur Railway Station and the Railways had filed affidavits of the employee including the Driver and the Guard of train No.15212 that no incident had taken place and nobody had fallen from the train. It was, in such circumstances, it was held that the deceased was not a *bona fide* passenger, under Section 2(29) of the Act and therefore, the Railways was absolved from the responsibility.

Counsel for the appellants, while placing reliance upon tickets No.J72592045, J72592046, J72592052 and J72592055 which are on record as Exts.A-5 & A-6, has argued that they were issued from Chandimandir to Chandigarh and from Chandigarh to Bapudham Motihari on 13.07.2011 and therefore, the deceased was a *bona fide* passenger travelling, as such, on the train and the findings recorded by the Tribunal are not justified.

On the other hand, counsel for the Railways has submitted that the presence of the alleged witness who was a co-passenger, is highly doubtful as the tickets were produced on 24.07.2011 (Ext.A-4) before the GRP personnel, on the basis of which, the claim petition has been filed.

The claim petition filed under Section 124 of the Act is very specific qua the very fact that the deceased along with his son, Vikas

Kumar had boarded the train from Chandimandir Railway Station and purchased 4 computerized tickets on 13.07.2011. They had changed the train at Ambala Cantt Railway Station and boarded the Chandigarh Express Train. The deceased had sat near the gate of the coach and Vikas had taken a seat. The deceased had fallen down near Markanda bridge accidentally and his body was lying outside the down-lines and the Keyman had given the message to the Ambala Cantt Railway Station. But the son of the deceased had proceeded and reached Bareilly Railway Station and on not finding his father, he had gone to his village. In the jamatalasi which was done of the deceased on 14.07.2011, Rs.3500/- was recovered in cash, a mobile, a diary and ticket from Chandimandir to Ambala Cantt. The stand of the Railways was that the deceased was not a *bona fide* passenger and the incident, as such, could not be brought within the ambit of an untoward incident.

The cross-examination of appellant No.2-Vikas Kumar would reveal that the said witness cannot be relied upon, as has rightly been observed by the Tribunal also. There are various contradictions and therefore, his presence is highly doubtful. Though the four tickets have been issued on the same day, i.e., on 13.07.2011 but the fact remains that the witness himself had stated that the tickets were with the father and he had the ticket from Chandimandir to Chandigarh. From Chandigarh onwards, his ticket was with the father and the son had his own ticket. He had never come to know when his father had fallen down. He also admitted that his uncles were present when his journey had been completed on 15.07.2011. As has been already noticed, his uncles' presence was

noted in the jamatalasi, which was conducted on 14.07.2011 in which ticket No.72582548, which was valid till Ambala Cantt. had been found. The said ticket, as per the jamatalasi, is only valid till Ambala Cantt. The deceased was found at a place beyond Ambala Cantt and therefore, had no valid travel ticket beyond the said area. The tickets which are now been relied upon had been produced subsequently on 24.07.2011. Even the serial numbers would go on to show that the deceased was having a Sr.No.7258 series whereas the tickets which have been produced were having Sr.No.7259 and thus, would be issued much later. It is also not been clarified that in what circumstances, the fifth ticket from Chandimandir to Ambala, which was recovered was required once the tickets from Chandigarh to Bapudham were already available with the deceased and there was no requirement of the fifth ticket, as such.

All these factors would go on to show that the story which has been coined does not inspire any confidence and the Tribunal has been right in holding that the deceased was not a *bona fide* passenger, in view of Section 2 (29) of the Act and would not be covered under the definition of Section 123 (c) (2) of the Act, regarding the accidental falling of any passenger from the train carrying passengers. Section 124-A and exception (ii) also provide for the definition of a passenger, which reads as under:

“124A. Compensation on account of untoward incident.—
When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the

dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purposes of this section, “passenger” includes—

- (i) xxxx
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

Once the deceased was not having a valid ticket for travelling in the train on the date of the journey, the claim, as such, has rightly been rejected.

Accordingly, finding no infirmity or arbitrariness in the order passed by the Tribunal, which would require interference by this Court, the present appeal is dismissed.

SEPTEMBER 11th, 2018
sailesh

Whether speaking/reasoned:
Whether Reportable:

(G.S. SANDHAWALIA)
JUDGE

Yes/No
Yes/No