

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7653-2015

Reserved on:08.10.2018

Date of pronouncement:31.10.2018

Mehar Chand & another

....Appellants

Versus

Union of India

....Respondent

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

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

Mr.Sanyam Malhotra, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987 (for short, the 'Act') on 07.10.2015, by the appellants who are parents of deceased-Krishan Kumar, is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 26.02.2015, whereby the claim petition filed for compensation on account of death of their son, has been dismissed.

The reasoning given by the Tribunal, as such, to disbelieve the case of the appellant-claimants was that when the body was found on 18.09.2013, it was found lying dead inside the track and in normal circumstances, the body would be lying outside the track on account of fall from a train. It was noticed that near the spot was a railway phatak No.126 and on both the sides, there were residential areas and therefore, it was not a case of fall from a moving train and the case would not come under the definition of untoward incident under Section 123(c)(2) and 124-A of the Act. Another factor which weighed with the Tribunal was that there was no journey ticket and cash recovered and items like driving licence had been found and therefore, the deceased was not a legal and *bona fide* passenger.

Under issue No.3, it was found that the deceased had a wife- Jaswanti who had not been arrayed as party and not made dependent and the claim by the appellants that there is a Panchayati decision that she would remain with her parents and therefore, she was also declared a dependent being the widow of the deceased.

Counsel for the appellants has vehemently argued that the deceased was resident of Village Badagaon, Tehsil Naraingarh and the accident took place between Ambala Cantt. and Ambala City, which is not close, as such, to the residence of the deceased. Therefore, the findings which have been recorded that on account of the injuries suffered on his head, it was a case of run-down, was not justified. It was submitted that the deceased was going from Ambala to Jammu Tavi and there was no dispute that the body was found on the tracks and therefore, merely on account of the ticket having not been found would not take out the case from the purview of compensation to the dependents of the deceased on account of the untoward incident.

Mr.Malhotra, on the other hand, justified the decision of the Tribunal that jamatalasi of the body of the deceased had not come out with a ticket, as such, and therefore, under Section 2(29) of the Act, the deceased was not a passenger and could not be given the benefits of compensation under Section 124-A.

A perusal of the record would go on to show that the claim was based on the pleadings that the deceased was 30 years of age in the year 2013. On 17.09.2013, the deceased went from his house by telling his father that he was going to Jammu Tavi for work and that he would

also go to Mata Vaishno Devi. His brother-in-law had taken him to the Amabla Cantt. Railway Station on a motorcycle and he had purchased his railway ticket and his brother-in-law had gone to his house and the train was boarded on 18.09.2013 in night. On account of heavy rush, he had fallen down from the running train at K.M. NO.269/15-17 in the Ambala City yard and on account of having entangled with the train, he died on the spot. Some passenger informed the Station Master at Ambala City and a memo was issued on 18.09.2013 at 1.18 hours and the postmortem was conducted on the same day. The ticket was alleged to have been lost in the incident and resultantly, the claim was preferred. He was married with Jaswanti Devi and after the death of Krishan Kumar, she gave in writing in the presence of the Panchayat on 22.09.2013 that she would live with her parents with her belongings and nothing was due towards his matrimonial house and she was no more dependent of the deceased.

The defence of the Railways was that the deceased was not a *bona fide* passenger and he was not travelling in the train on the date of the incident and there was no train ticket. The claim was filed just to extract money and the death had taken on account of self-negligence and criminal act.

The statement of Mehar Chand, appellant No.1, father of the deceased, is in consonance with the claim and in the cross-examination, it was elucidated that the deceased had gone to his brother-in-law, Balbir who had left him at the Ambala Cantt. Railway Station and had seen him purchase the ticket for Jammu. The wife of the deceased had left the house on account of the Panchayati decision and that she had further

married. The deceased had left the house in search of work to Jammu and also to visit Vaishno Devi. He had got information about the death on 19.09.2013 morning and he, alongwith 10-15 people, had gone to the spot. The brother-in-law-Balbir Singh stated that the deceased had left his shop and after closing the shop, they had gone to his house and after taking dinner, he had taken the deceased to the Railway Station where Krishan Kumar had purchased the journey ticket and he had boarded the train on 18.09.2013 in the night. On the next day, he had come to know that his brother-in-law had fallen down in the Railway Station at Ambala City and his body was lying in the Ambala City yard. In cross-examination, he stated that he had left the deceased at 8' clock and he had purchased the ticket in front of him but had had not seen and did not know the details of the ticket including the price and neither the number of the train. He had not seen his brother-in-law get on the train and he had come to know about the incident by the next day from his father-in-law, who is the claimant No.1. Thereafter, he had not gone to the spot but had gone to his in-laws house.

The Railways, in their defence, examined Jiwan Singh-SI, Railway Police Force, who investigated the case and submitted his affidavit that ASI-Joginder Singh and ASI-Sahib Singh had been deputed at the site for search and seizure of the body and no railway ticket or railway pass was found near the body to authenticate that he was a *bona fide* passenger. There was no eye-witness to confirm the dead body to be a legal passenger and the fact that a person had fallen and had got entangled. He also admitted that he did not visit the site in question, in

the cross-examination and that there was no evidence on record regarding the deceased crossing the railway track.

Kuldeep Singh, Head Constable was also examined, who was on duty on that day and submitted that the ASM Shri Sanjeev Kumar had issued the memo on 18.09.2013 at 1.35 hours that the dead body was lying at line No.4 Gate No.126A, which was searched by ASI-Joginder Singh and ASI-Sahib Singh and a driving licence was found on the person of the dead body which gave the identification but no other article, clothes or railway ticket/railway pass was found and the body was taken in custody. He, in cross-examination, submitted that jamatalasi was got conducted in his presence and he had left after 10 mts., after the memo was received. Sanjeev Kumar, Station Superintendent also submitted his affidavit to the same extent and in cross-examination, it was admitted that he had been informed by one person that some dead body was lying at line No.4 Gate No.126A.

A perusal of Ext.A-1 would go on to show that the memo was issued by Sanjeev Kumar regarding the body of the deceased lying on the track and for appropriate action which was in the wee hours of the morning of 18.09.2013. The proceedings under Section 174 Cr.P.C. would go on to show that the claimant-Mehar Chand had also reached at the spot on being informed and his presence, as such, is shown in the inquest proceedings (Ext.A-2). In the statement recorded on 18.09.2013, he had categorically stated that his son had informed that he was going to Jammu for work, in the statement recorded by the ASI. In the joint statement of 5 persons, who had also accompanied the father of the

deceased, the same facts have come up which was also recorded by the police officials on the same day that the deceased was travelling from Ambala Cantt. to Jammu. The presence of Mehar Chand was also there in the postmortem report (Ext.A-2) which shows that there was a crush injury on the right eye and the head. The body had been brought by the GRP officials and Head-Constable and there was also mention of a case of railway accident which was the opinion of the cause of death and the body had already been received by the police on the same day (Ext.A-3). The DRM report would also go on to show that the deceased was stated to have died on account of carelessness and negligence while crossing the railway lines and had become a prey to the accident.

The reasoning which has been adopted by the Tribunal while recording the finding under issue No.2 that whether it was an accident not covered under the provisions of Sections 123(c)(2) and 124-A of the Act, is without any such pleadings which have been raised by the Railway authorities, that the deceased was crossing the railway line from line No.4 Gate No.126A and there were residential areas, as such, on both the sides. The Tribunal had lost sight of the fact that the deceased was not a resident of the place and was the resident of Naraingarh, which was at a distance of 40 kms from Ambala and therefore, was not in a position to cross the railway line. The case of the police is very categorical that the deceased was on his way to Jammu after boarding at Ambala Cantt. His brother-in-law had come and deposed that the deceased boarded the train at Ambala Cantt, where he was dropped by the said witness who was based at Ambala Cantt and running a shop

there. The body, as such, had been found in the yard area of Ambala City Railway Station and merely because it was found on the track, was not a ground for discounting that it was a case of fall from a moving train. The Tribunal had gone into the arena of conjectures and surmises to notice the situs of injuries to come to the conclusion that it would be a case of person trying to lie flat on the track in an attempt to save himself and getting severe injuries on the back portion of his neck.

The issue of the non-production of ticket and the passenger having been termed as a ticket-less passenger has been subject matter of consideration before various High Courts. The Division Bench Judgment of the Karnataka High Court in **'Leelavathamma Vs. Union of India 2004 (2) RCR (Civil) 757**, followed by the Rajasthan High Court in **'Union of India Vs. Hari Narayan Gupta and another' 2008 ACJ 822**, and the Division Bench of the Allahabad High Court in **'Smt. Akhtari Vs. Union of India' 2008 (16) RCR (Civil) 284**, whereby while examining statutory provisions of the two Acts in question, came to the conclusion that a person who falls from the train and the body was badly crushed on account of being dragged for more than 100 meters and where no ticket was recovered from the possession of the body as such, the case should be treated as untoward incident.

It was held that a presumption has to be drawn that the deceased was a bonafide passenger and the dependents would be entitled for the compensation. The onus of rebuttal was, thus, to be on the Railways to give effect to the statutory provisions of the two Acts. In the said case a finding had been recorded by the Tribunal that the deceased

had fallen down because of his reckless and negligent act and since no ticket was recovered, he was not entitled for any compensation. The said findings, accordingly, were reversed.

This Court in '**Union of India Vs. Sarla and others**' 2010 (3) PLR 152, has also held to the same effect. Similar view was taken in '**Shahnaz Begum and others Vs. Union of India**' 2017 (4) ADJ 663 and by the Division Bench of the High Court of Kerala in '**Union of India Vs. Parameswaran Pillai and another**' 2013 ACJ 635 that the provisions of the Railways Claims Tribunal Act, 1987 were to be kept in mind that it was a social welfare legislation and cases had to be decided in a summary manner on production of the documents, affidavits and the strict rules of the Evidence Act were not to apply and the presumption was that the passenger had purchased a ticket, which was to be shown otherwise.

Therefore, sufficient material, a such, had been placed on record by the claimants to this extent that the deceased was travelling by train from Ambala to Jammu and in the process, fell down from a running train and died. On that account, he became a victim of a untoward incident and thus, would be covered by the judgment rendered by the Apex Court in CA-4945-2018 titled **Union of India Vs. Rina Devi**, decided on 09.05.2018, wherein it has been held that from the circumstances, the issue is to be decided once the body was found in the tracks.

In the present case, the preponderance of the facts would go on to show that the primary onus has been shifted by the claimants and it

was for the Railways to substantiate that it was a case of run down while crossing the track. In case the deceased was crossing the track and came under the train, it would have come to the notice of a Loco-Pilot/Driver of the train who would have reported the incident. The body of the victim lying on the track was also reported by a passenger and therefore, Railways have not been able to substantiate their case that it was a case of run down and no material has been brought on record to that extent. Therefore, the findings on issue No.2 are liable to be reversed and it is held that it was a case of untoward incident.

On issue No.1, regarding the non-recovery of ticket, as such, the stand of the Tribunal is also not justified, in as much as, a perusal of Ext.A-3, the statement of Krishan Lal, Chowkidar of GRP, Ambala Cantt, recorded under Section 175 Cr.P.C., would also go on to show that the body was found on the railway track with the injury on the back of the head and there was no suspicion qua the death. It was also noted from the statement of the said employee that the death was on account of fall or strong entanglement with the train. It is not disputed that on account of the slip which was found from the person of the deceased, the mobile number was recovered and the driving licence, as such, was also found, on the basis of which, the family members were contacted. No cash or valuables, as such, was found on the person of the deceased. The body lying on the track, as such, could always have been a factum of theft by the beggars which abound railway stations and the valuables could have been taken away by the persons at that point of time loitering around the station in the wee-hours in the morning. The ticket, as such,

being not recovered, would not, as such, make out a case that the deceased was not a *bona fide* passenger. The recovery of a LIC slip (Ext.A-17) also show that the deceased was paying a premium of Rs.667/- and Ext.A-16 was the driving licence, issued for a motor vehicle, scooter, car, jeep, in his favour and therefore, the purse or cash was never recovered which the deceased would have been carrying while travelling inter-state. The benefit, as such, has to go to the appellants that the ticket was not recovered in the above facts and circumstances from an inter-state traveller and there can be no such eye-witness willing to come forward that the person had fallen in front of them, to avoid the implications of appearing in Court proceedings at a subsequent stage. Resultantly, the finding on issue No.1 is also reversed and it is held that the deceased was a *bona fide* passenger travelling on the train who had fallen down and would be covered under the ambit of Section 123(c)(2) of the Act and the appellants would be entitled to the award of compensation, under Section 124-A.

On issue No.3, the Tribunal is correct to this extent that the appellants are not the only dependents and the widow also would be entitled for the benefit of the claim petition and she, as such, was not arrayed as party on account of a Panchayati decision. Merely because she got married and went away from her matrimonial home on account of the death of her husband could not, as such, be a factor to deny the relief to her and thus, she would also be entitled to her share of claim on account of the death of her husband due to which her life got disrupted and she had to leave her matrimonial home, on account of the death of

her husband, who was only 31 years of age.

Accordingly, the present appeal is allowed and the appellants are held entitled for the compensation on account of death of Krishan Kumar. The entitlement, however, would be divided to the extent that they would be entitled for Rs.1,50,000/- each, totalling to Rs.3,00,000/-, whereas the balance amount of Rs.1,00,000/- would go to Jaswanti, the wife of the deceased. The amount shall be disbursed to them along with interest @ 6% per annum, from the date of the incident, i.e., 18.09.2013, in view of **Rina Devi** (supra). However, the appellants shall furnish details of the address of Jaswanti, their daughter-in-law and the bank account details, before the amount is released to them and thereafter, the Tribunal shall ensure that the payment of Rs.1,00,000/- is made to Jaswanti, by way of RTGS transfer in her account.

31.10.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

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