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

FAO No.7138 of 2016
Date of decision: 13.7.2018

Kanshi Ram and others

...Appellants

Versus

Union of India

...Respondent

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

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

Ms. Abha Rathore, Advocate for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present appeal under Section 23 of the Railways Claims Tribunal Act, 1987 is directed against the order dated 4.4.2016 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh.

The claim application has been filed by the grand parents and brother of the deceased Rajan regarding the incident which took place on 13.7.2013. The Tribunal came to the conclusion that neither any detail of the train number in which the deceased was travelling nor time of boarding was mentioned. The railway ticket had not been found and therefore, he was not a bonafide passenger and claimant-appellant no.1, grand father was not accompanying the deceased at the time of incident. The alleged journey which was supposedly undertaken from Patiala was to be proved by some other corroborative evidence and the dead body was found between the Ambala Cantt. and Ambala City and even the message was sent by the railway authorities was regarding a person found dead outside the track near

Dn line near level crossing gate no.124-A in the bushes which could show that it was a case of run-over/entanglement with some train. It was also noticed that the deceased was resident of MC Colony, Ram Bagh Road, Ambala Cantt. which was within the vicinity of the site of the incident and therefore as per DRM's enquiry report, the deceased was a victim of some train while crossing the railway lines unauthorisedly and there was no eye-witness who had seen him falling from some train. It was held that there was no untoward incident as defined under Section 123(c) (2) of the Railways Act, 1989 (hereinafter referred to as "the Act").

Under issue no.3 dependency of the claimants was also questioned in as much as being grand parents and brother while the wife having not been impleaded and there being no divorce decree. Resultantly, a sum of ₹ 8 lakhs which was claimed was not awarded.

Counsel for the appellants has vehemently submitted that the deceased was travelling from Patiala after visiting his sister and therefore he was victim of untoward incident and the claim was wrongly denied. It is submitted that at the time of 'Jamatalashi' nothing was found and there was presumption as such in favour of the person travelling as it is a beneficial piece of legislation. It is further submitted that it was a case of untoward incident and it was wrongly recorded that he might have been run over by the train while crossing the railway lines unauthorisedly.

Counsel for the respondent on the other hand has submitted that the impugned order is justified in the absence of any ticket as such and the Tribunal is justified in dismissing the claim petition as the deceased was not a passenger having a valid travel document.

A perusal of the record would go on to show that it was a case of claiming that the deceased Rajan had gone to meet his sister namely Goldi at Sanour at Patiala on 10.7.2013 and he was coming back by train on 13.7.2013 after purchasing the journey ticket to Ambala Cantt after boarding from Patiala Railway Station. On account of heavy rush in the train he had fallen down and Gateman Mr. Ashok Kumar on duty at Gate No.124-C had informed the Station Master, Ambala City that a dead body was lying outside the track near Dn line Km No.265/22-20. It was the own case of the claimant grand father that he came to know about the incident while watching news on the Television and identified the body on 16.7.2013 and the post-mortem of the deceased was conducted. The deceased was married but the marriage was broken after 1-2 years and no child was born out of the said wedlock. The deceased was living with his grand father and younger brother and was contributing to them out of his income for maintenance of the family. The ticket was allegedly lost in the incident along with all belongings.

The defence of the Railway was that it was not untoward incident within the meaning of Section 123(c) (2) read with 124-A of the Act and the deceased was not a bonafide passenger of any train and there was no ticket to show the bonafide of the claim being filed. The applicants were claiming to be grand parents and brother of the deceased and they had failed to show dependency on the deceased and Ration Card was not in the name of deceased and neither the claimant no.3 allegedly the brother of the deceased was covered as dependent under Section 123 of the 1989 Act. It was possible that the deceased had died while crossing the railway lines as

per DRM report. The dead body was not claimed till 3 days and resultantly, the claim was sought to be dismissed.

The claim as such under Section 124-A of the Act would be on account of a passenger who had been injured or the dependent of the passenger who had been killed as defined under Section 123(c) (2) due to the accidental falling of any passenger from a train carrying passengers. The passenger has been defined under Section 2(29) of the 1989 Act that “passenger” means a person travelling with a valid pass or ticket.

Though the dead body was found near the track but it has also come on record that the claimants themselves were residents of MC Colony, Ram Bagh Road, Ambala Cantt. which would be clear from the affidavit itself of appellant no.1. The possibility as such of the deceased crossing the track and being hit thus cannot be ruled out. The onus would shift only on the railway if it was proved that he was a passenger and if some material had been brought on record to show that he had boarded train at Patiala after visiting his sister. The sister was never examined as an eye-witness before the Tribunal to show that the brother had visited her on 10.7.2013 and left on 13.7.2013. Nothing has come on record that deceased had purchased a ticket at Patiala for Ambala Cantt. Once no material has come on record, the onus would not shift upon the Railway regarding the travelling of a passenger who was not having a valid ticket from Patiala to Ambala Cantt.

In such circumstances, it cannot be held that the appellants-claimants are entitled for compensation on account of untoward incident which was pertaining to falling of a passenger from the train. The definition does not provide any benefit to be granted to a person who was

hit by train. The 'sine qua non' thus has to be claimed only on the basis of being a passenger and in the absence of any such evidence having come on record and on account of statement of the grand father who also admitted that he had not lodged any report with the police that his grand son had disappeared and he only came to know about the death only on 16.7.2013 after three days. It is highly doubtful that he would not be informed by his grand daughter that the deceased has left Patiala on 13.7.2013 and why they had not enquired whether he had started for home and why he had not reached.

The cause of death as such may be on account of the injuries received in the railway accident as per postmortem report but the same would not bring the case in purview of the ambit of an untoward incident as per the definition. It is also strange that there is no eye witness though the claim is on the basis that train was crowded and the deceased was pushed and fell down from the train. The chain was not pulled by any of the co-passenger and the report of the Gateman Ashok Kumar on duty at Gate No.124-C as such on 13.7.2013 was that a dead body was lying outside the track near Dn line Km No.265/22-20.

The findings which were recorded on the dependency factor under issue no.3 are also justified in as much as even the Ration Card (Annexure A/6) would go on show that the deceased name was mentioned along with his father's name Jagan Nath who admittedly had died 8-9 months before the incident. The brother Pardeep Kumar's name also figures in the said Ration Card. Appellants No.1 and 2, grand father and grand mother had a separate Ration Card (Annexure P/7) and therefore, the story

coined that they were dependent as such upon the grand son does not seem to be probable. Even otherwise nothing was mentioned that what the deceased was doing. The brother also never stepped into the witness box to claim any benefit on account of dependency.

In similar circumstances in **Kammrunnissa Vs. Union of India** 2017 AIR (SC) 1436 the deceased was held not to be a passenger as he was not in possession of a ticket and there was an adverse First Information Report against the deceased.

In such circumstances the reasoning given by the Tribunal to deny the claim on the face of the record do not seem to be perverse in any manner and the findings which have been recorded do not suffer from any infirmity which warrants interference by this Court.

Accordingly, the present appeal is dismissed.

July 13, 2018
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No