

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

**FAO No.3896 of 2017 (O&M)
Decided on : 18.07.2018**

Lalita and others

... Appellants

Versus

Union of India

... Respondent

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

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

Ms. Kulwant Kaur Kahlon, Advocate
for the respondent-UI.

G.S. Sandhawalia, J. (Oral)

The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as, '1987 Act') by the appellants who are the dependents of the deceased-Rajnath, is directed against the order dated 12.04.2017 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal').

The Tribunal has declined to grant compensation on the ground that there was no ticket found in the personal search of the body of the deceased in the *jamatalashi*, who was allegedly travelling between Malout to Abohar and body had been found on 15.11.2013 besides the track. The DRM's inquiry report also stated that the deceased was not a bonafide passenger as he had no authority to travel in the train and merely because the dead body was found on or near the railway track, it did not prove that the person was a victim of an accidental fall from the train and, therefore,

there was no cogent evidence that he was travelling in the train as a bonafide passenger. The statement of AW-1 Dhanjay Kumar, his son has not been accepted as he was not accompanying the deceased during the travel. Resultantly, it has been held that he was not a sufferer of an untoward accident.

The said finding as such has been recorded by the Tribunal is not in consonance within the definition as such of an untoward accident under Section 123 (c) (2) of the Railways Act, 1989 (for short '1989 Act'), which provides that the accidental fall of an passenger from a train carrying passenger would come within the term of an untoward accident. The Section 2 (29) defines a “*passenger*” a person travelling with a valid pass or ticket, but on account of the provisions of under Section 124-A of the 1989 Act having been held in the form of beneficial piece of legislation and a no fault liability, the person who has valid ticket for travelling of any date or platform ticket and becomes a victim of an untoward accident would be entitled for the claim on account of his injuries or has suffered a loss to maintain an action and recover damages. The said provisions have been held to be a beneficial piece of legislation by the Apex Court in '**Union of India Vs. Prabhakaran Vijaya Kumar & others**', 2008 (9) SCC 527 and '**Jameela & others Vs. Union of India**', 2010 (12) SCC 443.

Keeping in view this aspect the evidence has to be examined as to whether the the finding recorded as such under issue No.2 whether the incident is covered within the ambit of Section 123 (c) (2) read with

Section 124-A was justified or not. The specific claim of the appellants who are the wife and children of the deceased are that the deceased was a fish merchant and had to visit various ponds in connection with his fish business at Malout from Abohar. On his way back on 14.11.2013 he had purchased a ticket from Malout to Abohar Railway Station and on account of heavy rush and due to a jerk, he had fallen from the running train and died on the spot. The dead body of the deceased had remained unattended on the railway tracks for long time and was discovered by the track man Lal Chand-RW2 on 15.11.2013 in the morning. A message had been sent to Station Master, Malout regarding the said incident and on search of the body a mobile phone had been recovered. The family had been contacted and the relatives reached on the spot and identified the dead body. It was claimed that the ticket had been lost in the incident.

The Railways in its normal defence took the plea that the person was not having a valid travelling ticket as no ticket was found in the *jamatalashi* and only a phone had been found. In normal circumstances, the ticket would have also been found. The dead body was found lying at KM No.45/1-2 outside the track and there was no eyewitness and the claim was denied on the ground that no number of train and timings of train had not been mentioned. Apart from the fact that the age of the deceased had been wrongly mentioned.

Admittedly, there is no eyewitness to the incident, but it is clear from Ex.A1/7, which is intimation sent by the Station Master to the Incharge, GRP regarding the reporting of the dead body lying outside the

track. The statement of Lal Chand had also been recorded in the proceedings under Sections 174 and 175 of Cr.P.C., wherein he had also stated that it seems that the death was caused on account of fall from the train. Similarly, the statement of HC-Devender Singh had also been recorded, in whose presence the family had been contacted on phone about the deceased. Thus, it is apparent that the body was recovered by the side of the railway track and even in the proceedings under Section 174 Cr.P.C., it has been recorded that it was due to a railway accident. Resultantly, the finding which has been recorded under issue No.2 that the deceased was not a sufferer of an untoward accident is without any basis and are, accordingly, reversed.

On issue No.1 whether the deceased was a bonafide passenger or not, the onus as such has been discharged by the son of the deceased who had stepped into the witness box. Admittedly, the deceased was travelling alone and there was no eyewitness to the incident. The claimants could only state in affirmative to the fact as to the normal activities of the deceased that he used to travel from Abohar to Malout and back to Abohar in pursuance of his professional avocation. It is also to be seen that no valuable was as such recovered from the body of the deceased and it is the case of the appellants that he was travelling a day earlier. In normal circumstances some money or purse would have been there, which apparently was lost or taken away as the body was discovered much later and only the mobile phone was available with the body.

The Apex Court in **Civil Appeal No.4945 of 2018 'Union of India Vs. Rina Devi'** decided on 09.05.2018 has held that the presence of the body on the railway track and circumstances have to be examined and then the onus would shift upon the Railways. The relevant portion reads as under:-

“16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar³⁴ laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.

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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.”

The distance between Malout to Abohar is 33 KMs and a

person normally travelling would not be travelling without a ticket and merely because the ticket was not found would not be a ground as such to deny the relief, which was done by the Tribunal. It is not a case where the petitioner was crossing the track and was run down and would not fall within the definition of an untoward accident as he would not be a passenger. The exceptions under Section 124-A are only to the extent provided as has been held by the judgments referred above and apparently the case does not fall in the definition of exceptions.

Resultantly, this Court is of the opinion that the findings which have been recorded by the Tribunal are not justified on issue No.1, which are reversed. The appeal is, accordingly, allowed. The appellants are held entitled for compensation of ₹4 lakhs along with interest @ 6% per annum from the date of accident, which shall be paid to them within a period of two months.

JULY 18, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No