

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

**FAO No.5633 of 2017  
Decided on : 19.07.2018**

Shamshida & others

... Appellants

Versus

Union of India

... Respondent

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

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

Mr.Karminder Singh, Advocate, for the respondent-UI.

**G.S. Sandhawal, J. (Oral)**

The present appeal, under Section 23 of the Railways Claims Tribunal Act, 1987, has been preferred by the appellants who are the widow and minor children of the deceased-Sahid, who is stated to have been involved in an untoward incident, while deboarding the train at Railway Station, Ambala on 31.08.2013.

The relief has been declined by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, vide order dated 02.03.2017 on the ground that no ticket was found on the person of the deceased and therefore, there was presumption that he was travelling without any valid authority or permission and the alleged witness, AW-2, Mohd.Asgar, the employer who had given money to the deceased to purchase the ticket had stated in his cross-examination that he was not travelling with the deceased on the fateful day and it had not been mentioned that by which train the deceased was travelling from Jammu Tawi to Ambala. Therefore, in the absence of these facts, it was held that there was no evidence that he had fallen from the train and merely because information, which was given by the passengers to the

Station Master, regarding the deceased lying on the railway platform No.2 in injured condition, the same did not convince the Tribunal to record a finding that it was a case of untoward incident. Resultantly, issues No.1 & 2 as to the fact whether he was a *bona fide* passenger and whether the incident would be covered under Section 123(c)(2) read with Section 124-A of the Railways Act, 1989 (for short, '1989 Act'), were held against the appellants. No finding was recorded on issue No.3, regarding the dependency of the claimant/appellants.

The findings, as such, of the Tribunal, do not seem to be justified in any manner and the Tribunal seems to have lost sight of the fact that it was dealing with a socially beneficial legislation where passengers are travelling overnight journeys on inter-state routes. There cannot be any specific eye-witness to such incidents especially and the dependents are not expected to be travelling with such daily wagers which is apparent from the facts of the present case which have not been examined in proper perspective.

In the claim petition, the claimants, who belong to Uttar Pradesh, specifically averred that the deceased along with his son Sadakat had gone to Yaari Kalyan town in Kashmir for brick-kiln labour work and upon feeling pain in his neck, he wanted to go to his native village Nirdhna, District Muzaffarnagar. He had boarded the train along with help of the contractor-Mohd. Asgar, on 30.08.2013 at 10 pm at Jammu Tawi Railway Station. The contractor had given him Rs.200/- for purchasing the railway ticket and it was the case that at Ambala Cantt, the

deceased, while deboarding the train on 31.08.2013, fell down from the train due to push and pull of the passengers and due to heavy rush in the train. The Station Master issued memo to Chief Medical Officer, Ambala Cantt and he was brought to General Hospital, Ambala Cantt. and he was shifted to General Hospital, Ambala City and then, referred to PGI, Chandigarh and during the journey, he died. Postmortem was conducted at General Hospital, Ambala City on 31.08.2013 and accordingly, he was stated to be a *bona fide* passenger, as such who had died in a untoward incident and the ticket was lost at the station.

The defence of the Railways was that the deceased was not a *bona fide* passenger as defined under Section 2(29) of the 1989 Act as admittedly, no ticket was recovered from him and neither the deceased was holding a platform ticket or pass. It was stated that the deceased died due to his own criminal act and therefore, he would not be covered under the definition of untoward incident as specified in Section 123(c)(2) of the 1989 Act and the Railways was neither negligent nor at fault. The factum of having purchased ticket on 30.08.2013 at 10 pm and boarding the train from Jammu was denied as was the fact that the deceased had fallen down from the train while deboarding the train at Ambala Cantt. Railway Station.

The widow/appellant No.1 had put in appearance before the Tribunal and submitted her affidavit regarding the said facts and in cross-examination, it came forth that they were permanent residents of Muzaffarnagar, Uttar Pradesh and the husband was coming from Kashmir

to Muzaffarnagar. The affidavit of the Contractor, Mohd. Asgar was also brought on record by way of affidavit, who is resident of District Haridwar, Uttarakhand and he stood by the averments made in the claim petition that he had accompanied the deceased upto Jammu Tawi Railway Station and gave him Rs.200/- for purchasing railway ticket. The deceased had purchased the railway ticket and offered the deponent to return the balance amount, but he told the deceased to keep that money. He received a call on 31.08.2013 about the incident from the Railways and the deponent told the same to the son of the deceased. In the cross-examination, it has come forth that the deceased had to change the train at Ambala and he was not related to him and the witness was a Contractor. He further stated that the ticket had been bought in front of him which was computerized and which was purchased between 9-9.45 pm. He also admitted that the train did not come in his presence and neither he had seen the deceased boarding the train. He further admitted that his statement was also recorded by the Police after 1 ½ months.

It is, thus, apparent that sufficient material was brought on record that the deceased, a labourer was not a resident of Ambala and was travelling *en route* on the train from Jammu and while deboarding the train, lost his balance and suffered injuries. The said fact was also informed by the passengers to the Railway authorities that a person was lying at platform No.2 in Ambala Cantt. Railway Station in a injured condition. Ext.A-4 would go on to show that a communication was addressed to the CMO, Civil Hospital, Ambala Cantt. by the Station

Master that an injured person was lying at platform No.2, as informed by the passengers at about 6 am on 31.08.2013. Medico-legal opinion (Ext.A-6) would go on to show that the deceased had been sent to hospital from Railway Station at about 6 am and had been brought by an ambulance. It has also come on record that he was referred further to the PGI, Chandigarh, but was brought dead and was sent back to the Civil Hospital, Ambala City and eventually, the postmortem was conducted on 31.08.2013.

Counsel for the appellants has also pointed out from the statement recorded on 31.08.2013 of the wife by the Railways that information had been received by the wife of the deceased and they had reached at Ambala where her husband was lying in a injured condition.

The postmortem report (Ext.A-15) would also go on to show that the body was brought by the GRP at 4.30 pm on the said date and the cause of death was due to hemorrhage internally and shock due to injuries which were mentioned in the postmortem report. The report also mentions that the possibility of injuries caused by Railway accident could not be ruled out.

The argument of counsel for the Railways that in the proceedings, as such, conducted by the Railways that the deceased had died while crossing the railway line, as per the report and the other report that deceased himself was responsible, cannot be accepted. Even the statement of Gurbinder Singh, Station Master, Ambala Cantt, would go on to show that he had received an intimation that a person was lying at

platform No.2 and he had sent him in ambulance. The said witness stated that he did not see the injured person coming in contact with the train. The above circumstances would go on to show that the deceased was involved in an untoward incident as defined under Section 123 (c)(2) of the 1989 Act and the injuries were on account of the deceased falling down while deboarding the train on 31.08.2013, due to push and pull of the passengers due to heavy rush in the train. He cannot be said to come within the exceptions as defined under Section 124-A and it cannot be said that it was a case of suicide or attempted suicide by him; self-inflicted injury; his own criminal act; any act committed by him in a state of intoxication or insanity and neither the natural cause of deceased was due to medical and surgical treatment.

The mere factum that he did not have on his physical body a ticket and would not be covered under Section 2(29) that he was a person travelling without a valid pass/ticket on the basis of which the claim had been denied, is not justified, in the facts and circumstances and neither it can be, as such, held that he died while crossing the track. The deceased is not a resident of Ambala and there was no such occasion for him for crossing the track. Sufficient material was placed before the Tribunal that he was working at Jammu & Kashmir on daily wages at Yaari Kalyan and was *en route* to his house in Uttar Pradesh. During the process of deboarding the train at Ambala Cantt., the incident had happened. The Station Master had sent him to the Hospital at Ambala. The said factors have not been taken into consideration while wrongly deciding issue

No.2. Resultantly, the findings are reversed.

Regarding the issue of *bona fide* passenger, as noticed, under Section 53 of the 1989 Act, there is a prohibition against transfer of tickets and under Section 54, every passenger shall, on demand by any railway servant authorised in this behalf, present his pass or ticket to such railway servant for examination during the journey or at the end of the journey. It is hard to believe that a person who had boarded a train at 11 pm, a night earlier at Jammu would remain ticket-less and would not be checked by the Railway authorities. The onus, thus, shifted to the Railways to prove that the deceased was not a Railway passenger.

The issue of the non-production of ticket and the passenger being termed as a ticket-less passenger has been subject matter of consideration before various High Courts. Reference can be firstly made to the Division Bench Judgment of the Karnataka High Court in '**Leelavathamma Vs. Union of India**' 2004 (2) RCR (Civil) 757. In the said case the Tribunal had dismissed the claim petition on the ground that the deceased was not proved a bonafide passenger on the train as the ticket was not produced in support of the claim. The Division Bench noticed that the deceased while travelling on the train had gone missing and his body was found and recovered in an injured condition and transported to a railway station and, therefore, the loss of the ticket in the course of the recovery from the site, transportation and postmortem and other procedures can well be explained and understood. Similarly, the aspect of the injuries on the person of the deceased were also noticed to

hold that he was involved in an untoward accident.

This aspect is important in as much as the persons who are travelling alone and falling out during the travel would be covered by the definition of sub-clause 2 of Section 123 (c) of Railways Act, 1989 (for short '1989 Act'), which says that accidental falling of any passenger from the train, which would be an untoward accident.

In '**Union of India Vs. Hari Narayan Gupta and another**' **2008 ACJ 822**, the compensation awarded was upheld and the plea taken by the Railways was that the deceased was not a bonafide passenger was rejected while noticing Section 137 of the 1989 Act by the Rajasthan High Court. It was further noticed that the claimants would find it extremely difficult, if not impossible, to prove certain facts, which are beyond their reach and control and Railways has a mechanism for finding out whether the deceased was a bonafide passenger, as it is the duty of the Ticket Collector to check whether the passengers are travelling with valid ticket or not. The Act being a social beneficial piece of legislation and burden of proof upon the Railways was also kept in mind to hold that whether the deceased was a bonafide passenger or not the onus lies on the Railways Administration and they had to discharge the same. The relevant portion reads as under:-

*“13. There is yet another aspect of the matter, prior to travelling, a passenger neither records, nor leaves any information with the family members about the valid ticket bought by him. During the course of travelling and specially after he meets with an accident, the body of the deceased is transported and is transferred on various occasions. During the period of alleged accident and the discovery of the body, many things may*

*transpire and the ticket may be lost but unknown to others. Therefore, in case, the ticket is lost, it would be almost impossible for the claimants, who are the members of the bereaved family, to establish that the deceased was travelling with a valid ticket. Considering the fact that Section 124 and Section 124A of the Act are social beneficial piece of legislation, by placing the burden of proof on the claimants the benefit of these two beneficiary provisions would be denied to the claimants. An interpretation of the law, which dilutes the very purpose of a provision should be shunned. Therefore, examined from any angle, it is clear that the burden of proving the fact that the deceased was a bona fide passenger or not lies on the Railway Administration and not on the claimants.”*

In '**Smt. Akhtari Vs. Union of India' 2008 (16) RCR (Civil) 284**, a Division Bench of the Allahabad High Court 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**, while dismissing an appeal of the Railways, whereby a sum

of Rs.4 lakhs had been awarded, held that the body of the deceased Om Parkash had been found on the railway track, which information was issued to the GRP, whereby other proceedings were conducted. The body had been cut into many pieces and clothes were torn, the possibility of having lost the ticket would arise. It was, accordingly, held that there is a presumption that he was a bonafide passenger and no evidence had been led by Railways to discharge the burden that he was travelling without ticket.

**In 'Shahnaz Begum and others Vs. Union of India' 2017**

**(4) ADJ 663**, wherein the ticket had not been found on the spot and a finding had been recorded by the Tribunal that he was not a bonafide passenger, the Division Bench of the Allahabad High Court, accordingly, held that in such circumstances non recovery of the ticket from the dead body are natural sequences and an adverse inference could not be drawn. Rather it would be unfair to hold that the person was not a bonafide passenger, once the Railways had failed to produce any material that the deceased had died while crossing the railway line. Accordingly, it was further held that it was the duty of the Railways to check an unauthorized traveller and, therefore, the presumption the person travelling was having a valid ticket, which was a rebuttable presumption.

The same view has been taken 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.

In '**Krishna Ram Vs. Union of India**' 2017 ACJ 1595, the Jharkhand High Court also took a similar view that the presumption is in the favour of the deceased and it was for the Railways Administration to prove to the contrary that the person was a ticket less traveller.

Keeping in view the fact that the legislation in question has been held to be a social and beneficial piece of legislation, this Court is also of the opinion that once the claimants have discharged their onus as such as to their mode of travel and brought material on record to show that the deceased was a bonafide passenger with a valid pass or ticket, the onus thus would shift upon the Railways. To take a contrary view as such would frustrate the purpose of the Act itself as it is not possible for the claimants to produce specific evidence as to the purchase of the ticket and to give the details of the train on which the deceased was travelling, specially when there is no eye witness, as to how the deceased even met his maker at the time of death while falling of the train.

The Apex Court in CA-4945-2018 titled **Union of India Vs. Rina Devi**, decided on 09.05.2018, has held that from the facts and circumstances, the Tribunal has to decide, if a person is found lying next to the Railway tracks, whether he is a passenger as defined under Section 2(29). In the present case, the onus, as noticed, has shifted to the

**FAO-5633-2017**

Railways, to prove that how the deceased was lying at platform No.2 and how he was not a passenger. Accordingly, the Railways have failed to dispel this issue and neither they have examined any witness to contradict the story, as such and therefore, the Tribunal was in error by holding that he was not a passenger. It would be but obvious that in the melee when the person has received injuries, he would have lost the luggage as he was travelling alone. The first effort which is to be made is to save his life and to take him to the hospital. Mere absence of the ticket from the body and the luggage which was not traced, would not disentitle the claimant-appellants. The findings on issue No.1 is also reversed, accordingly.

Resultantly, the present appeal is allowed, the appellants shall be entitled for a sum of Rs.4 lakhs along with interest @ 6% per annum, from the date of the accident, i.e., 31.08.2013, keeping in view of the law laid down by the Apex Court in **Rina Devi (supra)**. The amount will, however, be paid equally to all the four dependents, in instalments of Rs.1 lakh each alongwith interest, they being the wife and minor children and thus, being dependents of the deceased. The amount of the two minors/appellants No.3 & 4, however, will be kept in Fixed Deposit Receipt, to earn the highest rate of interest till they attain the age of majority. The appellant-mother will, however, be entitled to use the interest for the purpose of their welfare.

**JULY 19<sup>th</sup>, 2018**  
*sailesh*

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

*Whether speaking/reasoned:*

*Yes/No*

*Whether Reportable:*

*Yes/No*