

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1079 of 2019

Date of Decision:07.03.2019

Union of India

.....APPELLANT

Vs.

Manohar Kanwar and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Amit Kumar, Advocate
for the appellant.

DR. RAVI RANJAN, J.(Oral)

I have heard learned counsel for the appellant-Union of India and perused the records of this case.

This appeal has been preferred by the appellant-Union of India (Northern Railway) assailing the Judgment and Award dated 10.10.2018 passed in *O.A. No.OA-Ilu/CDG/2016/54* by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”).

Brief facts which are necessary to be discussed for consideration of this appeal stand enumerated as under:-

Widow of Kiran Singh (since deceased), namely, Manohar Kanwar filed a claim petition under Section 16 of the Railways Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989 seeking statutory compensation along with interest on account of death of her husband-Kiran Singh in an alleged untoward incident which had taken place on 15.07.2014 while the deceased was travelling by train from Kathua to Rewari.

It stands stated in the claim petition that on the fateful day, i.e., on 15.07.2014, deceased-Kiran Singh apprised his wife(applicant-claimant before the Tribunal) on telephone that he would visit village Kohla to meet his uncle.

Thereafter, having reached Kathua railway station, the deceased boarded the train for going to Rewari. When the train reached near KM No.93/1 (between Mirthal and Kandrori railway stations), the deceased accidentally fell down from the train due to impact of jerk as well as pull and push of the passengers which had led to sustaining grievous injuries on his person resulting in his death on the spot. It is claimed that during the physical search of dead body of the deceased, one leather wallet containing cash of Rs.3,000/-, Election IF card, ID card of the factory in which he was employed, one cell phone and one watch were recovered but the bag containing clothes and journey ticket was lost in the said incident.

Responding to the aforesaid claim, the railways filed written statement wherein objections were raised that the occurrence cannot be held to be an untoward incident within the meaning of Section 123(c)(2) of the Railways Act. A further stand was taken that the deceased was not a bonafide passenger of the train at the relevant point of time as no journey ticket was recovered from his possession by the GRP and, thus, the applicant-claimant is not entitled for any statutory compensation.

On appreciation of rival contentions of the parties, the Tribunal framed the following issues:-

- “(1) Whether the deceased was a bona fide passenger of train at the time of incident?*
- (2) Whether the alleged incident is covered within the ambit of Section 123(c) (2) read with Section 124-A of the Railways Act?*
- (3) Whether the applicant is the sole dependent of the deceased?*
- (4) Relief.”*

In order to support her version, applicant-Manohar Kanwar (widow of the deceased) produced her as a witness by tendering affidavit and also brought on record certain documents, viz., Ex.AW-1/1 to Ex.AW-1/22.

From the side of the respondent, DRM inquiry report has been brought on record.

Issue Nos. 1 & 2, being intertwined, the Tribunal has considered both of them together and has come to the conclusion that in view of the attending circumstances, it has to be held that the deceased was a bonafide passenger and the occurrence was untoward incident within the meaning of Section 123(c) of the Railways Act.

Issue Nos. 3 & 4 were also taken up together by the Tribunal and in view of the aforesaid findings recorded by the Tribunal, it has been held that the claimant-applicant would be entitled for statutory compensation of Rs.8,00,000/- along with interest @ 9% per annum from the date of the Award till the date of payment.

Learned counsel representing the appellant-Railways has assailed the impugned Judgment of the Tribunal on diverse grounds.

First and foremost is that the deceased has erroneously been held to be a bonafide passenger. It is contended by him that apart from the fact that no ticket was recovered from the possession of the deceased, there is no eye-witness to the purchase of the ticket and also supporting his accidental fall from the train. The widow of the deceased, while being examined, though has supported the case but has also accepted that she was neither an eye-witness to the purchase of ticket nor was she travelling with the deceased.

The second issue being raised by the learned counsel for the appellant is obviously that in view of the aforesaid facts and circumstances, it cannot be held that the deceased had an accidental fall from the train in the absence of any positive evidence. This issue was taken up by the Tribunal also as the same was raised before it by the Railways. The applicant-claimant has

answered the issue by saying that non-production of railway ticket cannot necessarily lead to the conclusion that the deceased was intending to travel in the train without a valid ticket.

The issue is no longer *res-integra* as the same has been considered and decided by Hon'ble Apex Court in one of its well celebrated judgment rendered in **Union of India vs. Rina Devi**, 2018 AIR (SC) 2362.

For better appreciation, the relevant passage from the aforesaid decision, i.e., paragraph No.17.4 is extracted and quoted as under:-

“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.”

From perusal of the aforesaid passage, it is apparent that the view of the Hon'ble Apex Court is that mere presence of a dead body on the railway premises will not be conclusive to hold that the injured or the deceased was a bona fide passenger. However, mere absence of ticket with such injured or deceased will not negative the claim either that the deceased was a bona fide passenger. Initial burden would 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.

In the present case, no direct evidence is available on record that the deceased purchased the ticket and the deceased was travelling in the train

and he had an accidental fall. However, this much is on record, as per the testimony of the applicant-claimant, that the deceased informed her regarding the journey for which he had boarded the train.

At the time of hearing, learned counsel for the appellant-Union of India has produced a site plan prepared by the GRP which is also part of the DRM report.

The DRM report also suggests that the dead body was lying besides the railway line between Mirthal and Kandrori railway station at KM No.93/01. However, neither any ticket was found by the GRP from the search of body of the deceased nor was any information given by the driver or guard of any train regarding fall of the person from the particular train. Thus, it has been presumed by the railway that he himself is responsible for his death and there is no fault on the part of the railway.

In my opinion, such DRM report can only be termed as a formality as no proper inquiry appears to have been done. Untoward incident doesn't mean that there is some fault on part of the railways. This necessarily means the incident which has taken place in terms of Section 123(c) of the Railways Act. Whether there is fault of the deceased or fault of the railway, would not be of relevance in the matter. Whether actually it can be termed as untoward incident or not that would be relevant.

The railways have stated in the DRM report that none of the driver or guard has informed regarding any fall of a person from the train but what is the explanation of finding a dead body besides a railway line on the same track? What is the explanation for the death? On such question being asked, it is submitted by learned counsel for the appellant-Union of India that he might be crossing the railway line unauthorizedly and could have been run over by the train.

Aforesaid submission itself raises two pertinent questions.

First is as to whether any driver or guard of a particular train had informed the Station Master of the nearest railway station regarding the fact that some person has been run over by that train as loss of a human life is a very serious matter and it would be the bounden duty of the engine driver and the guard to immediately inform such incident to the Station Master of nearest railway station. Section 113 of the Railways Act, 1989 lays down in clear terms that whenever any accident takes place resulting in loss of a human life or grievous hurt, the Station Master of the station nearest to the place at which the accident occurs shall, without delay, give notice of the accident to the District Magistrate or the Superintendent of Police, within whose jurisdiction the accident occurs but he cannot act in aforesaid manner if the loco-driver or the guard of such train does not inform him regarding the occurrence. Though, information was given to the Station Master that a dead body is lying besides the track but whether it was not a bounden duty of the engine driver concerned or the guard of the train concerned to inform the Station Master regarding the loss of a human life by running over by the train driven by such driver? The answer has to be in affirmative. But the factual position is that no such information was given to any Station Master.

The second question would be as to whether the injuries shown in the postmortem report matches with the explanation given that the accident might have happened due to run over by train while the deceased trying to cross the railway line? The answer has to be in negative for the reason that the injuries shown in the postmortem report having been extracted and engrafted in paragraph No.10.1 of the impugned Judgment, shows that there is a fracture in neck on the direction of cervical spine, a reddish abrasion on the right side of fore-head and reddish abrasion on the left cheek. The opinion of doctor is that

the cause of death is due to injuries on the vital organs resulting in shock and haemorrhage, which are sufficient to cause death in ordinary course of nature whereas opinion of SHO is that death of Kiran Singh is due to falling down from the train and railway accident.

If a person comes under the impact of a moving train then his body would ordinarily be cut into pieces and would be dragged in between the lines but the body was found lying besides the railway line with the aforesaid injury which suggests that it could have happened due to fall from a running train.

Since there is no direct evidence, the Tribunal has correctly stated that, in the absence of any direct evidence, it has to take benefit of visualizing the happening of incident from the available facts and attending circumstances.

In my considered opinion, when the affidavit has been filed by the applicant-claimant regarding the untoward incident which stands supported by her testimony also that information was given by the deceased/husband regarding the travel on telephone and the body was found besides the track, it cannot be assumed that he was run over by the train specially in view of the nature of the concerned injuries which have been found in the postmortem report coupled with the fact that there is nothing on record to show that extensive search was made either by the railway-authority or by the police of the area nearby the place of occurrence to find out the baggage of the deceased. Only physical search of the dead body was conducted. Further, there is no information by any railway driver or guard that somebody has come under the impact of his running train. Thus, in my opinion, in view of the attending circumstances, the Tribunal has made no error in coming to the conclusion that the deceased has to be held as a bonafide passenger as there cannot any presumption that a law abiding citizen would be intending to travel without

purchasing any railway ticket and it has to be accepted that the occurrence is an untoward incident in terms of Section 123(c) of the Railways Act. Accordingly, under Section 124-A Railways Act, the applicant-claimant would be entitled for statutory compensation.

On the point of compensation, an issue has been raised by learned counsel for the appellant-Union of India that on the date of accident, the statutory amount of compensation as provided under the *Railway Accidents and Untoward Incidents (Compensation) Rules, 1990*, was only Rs.4 lacs which was later on amended and increased to Rs.8 lacs. Therefore, only Rs.4 lacs could have been awarded by the Tribunal whereas the Tribunal has awarded Rs.8 lacs.

The aforesaid submission raised on behalf of the appellant is noted only to be rejected for the reason that this issue is also no longer *res-integra* as has been considered and decided by the Hon'ble Supreme Court in its decision rendered in **Rina Devi's case (supra)** observing that the relevant statute being a piece of beneficial legislation, if the amount of compensation so calculated along with interest is less than the amount prescribed as on the date of Award of the Tribunal, the claimant will be entitled to get the higher of the two amounts. The accident having taken place in the month of July, 2014, even if 9% per annum interest is added to the statutory amount of Rs.4,00,000/- that would be less than amended statutory amount of Rs.8,00,000/- effective from 01.01.2017.

As such, the decision of the Tribunal to hold the claimant-applicant entitled for compensation of Rs.8 lacs cannot be faulted with.

In the result, this appeal, being devoid of any merit, is dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

07.03.2019

Anjal

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No