

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

FAO No. 1953 of 2019 (O&M)

Decided on: 13.03.2019.

Union of India

.....Appellant

versus

Neha Sharma and others

....Respondents

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

Present: Mr.Parveen Chander Goyal, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral Judgment)

CM-5933-CII-2019

This application has been filed condonation of delay of 58 days
which has occurred in preferring this appeal

For the reasons mentioned in this application, this Court is of
the opinion that the appellant was prevented from sufficient cause in
preferring this appeal within the period of limitation.

In the result, this application is allowed and the delay of 58
days is hereby condoned.

FAO-1953-2019

This appeal has been preferred by the Railway authority
assailing the Judgment and Award dated 20.09.2018, passed by the Railway
Claims Tribunal, Chandigarh Bench, Chandigarh in case no.OA-II/25/2017.

1. Brief facts of the case are narrated as under:

The claim application was filed by the claimants/applicants/
respondents being widow, minor son and daughter of the deceased Satish

Kumar under Section 16 of the Railways Claims Tribunal Act, 1987, seeking compensation for death of husband of claimant/applicant no.1 in a railway untoward incident. It was claimed that the deceased was going Amritsar to Delhi by train after purchasing train ticket. When the train reached near Km. No.350/2-4 between Doraha-Chawa Payal Stations, the deceased accidentally fell down from the running train and died at the spot.

2. The respondent-Railways contested the claim application by filing the written statement denying and disputing the version of the claimants. Grounds were taken in the written statement that since no ticket could be found from the search of the person of the deceased he can not be held to be a *bona fide* passenger and there was no evidence on record to suggest that he died in an untoward incident as per Section 123(c)(2) read with Section 124-A of the Railways Act, 1989 and the alleged incident is a forged and concocted story of the claimants. It was further alleged in the written statement that if the events are summed up together it would point towards *lacuna* in the story put forward by the claimants as the date of journey of the deceased being 11.08.2015, dead body was located on 21.08.2015. The claimants miserably failed to explain the time gap and further that what effective steps were taken by them to locate the deceased.

3. The Tribunal on the basis of the pleadings of the rival parties framed the following issues:

1. Whether the deceased was a bonafide 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 applicants are the sole dependents of the deceased?
4. Relief

4. The Tribunal has recorded a finding that the deceased was the *bona fide* passenger and accident was an untoward incident. It has awarded Rs.8 Lakhs as statutory compensation and also simple interest at the rate of 9% per annum from the date of Award till the date of payment.

Learned counsel for the appellant submits that there was a time gap of 10 days in between the date of journey and locating the body of the deceased and the claimants have miserably failed to explain the time gap and also as to what effective steps were taken by them to locate the deceased. It is urged that if somebody has died in a Railway accident, why the relatives or the dependent would lodge a complaint before the District Police rather than approaching the Government Railway Police (GRP)?

It is also submitted that GRP has not conducted impartial inquiry in the incident as it is not clear as to how a dead body would remain lying on the side of the track for so many days without being noticed by anyone.

However, the answer to the aforesaid question raised by the appellant lies in the stand taken by the Railways itself before the Tribunal as it is stated by the Railways that the body was first located by the Key man and then by the Gang Man who also reached on the spot and both of them have given a statement before that the GRP that a person had fallen down from the train. If a person has met with an accident with the moving train and his body could not be found out by anybody for ten days, who would have to explain the delay or the time gap? Answer would be the Railway Authority. The dead body was within the premises of the Railways, and Railways cannot take a stand that there was no constant vigilance and patrolling along the railway lines for maintenance of the track, then why the

Railway personnels found the dead body after 10 days, is to be answered by them. In place of giving answer to that they are questioning the claimants first. It is not the case of the claimants that some of the relatives were travelling with the deceased on the fateful day rather he was travelling alone. How would the relatives or the dependents know that what has happened to him, whether he died in a railway accident or otherwise? Thus, the natural conduct would be that they would approach the District Police and lodge a complaint so that atleast search operation would start. In my considered opinion the conduct of the claimants cannot be faulted with rather the negligence appears to be writ large on the Railway authorities itself whose employees miserably failed to detect or find the dead body which was lying beside the tracks.

5. Second point which is being raised by the appellant-Railways is that since no ticket could be found out it has to be considered that the deceased was not a *bona fide* passenger. This issue is no longer *res integra* having been considered and decided by the Hon'ble Apex Court in one of its celebrated decisions rendered in **Union of India vs. Rina Devi, 2018 (3) RCR(Civil) 40**. Their Lordships have held that though mere presence of body on the railway premises will not be conclusive to hold that injured or deceased was a *bona fide* passenger, however, mere absence of ticket with such injured or deceased will also not negative the claim that he was *bona fide* passenger. Initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and then the burden will shift upon the Railways and the issue can be decided on the facts so narrated in the attending circumstances.

6. The GRP has recorded the statement of one Gagandeep Thakur

who travelled with the deceased one day before the date of accident to Delhi in connection of papers of passport. It has been stated that he has produced train tickets of two adults from Delhi to Amritsar. He has stated that he was working abroad and had come to India for a short period and would again go back. The deceased also wanted to go abroad to find some work so he was helping him for submitting his passport etc. Both of them visited Delhi on 10.08.2015 and submitted the papers. However, since more documents were required, the deceased went back with the assurance that he would come up on next day i.e. 11.08.2015, but on that day he met with an accident. It is clear from the aforesaid statement that there was some explanation that why the deceased was coming to Delhi from Amritsar on 11.08.2015 and he covered considerable distance in reaching from Amritsar to the place of occurrence as it is admitted by learned counsel that the distance would be more than 100 Kms. The Tribunal has opined that respondents-Railways has all the sources to check him without ticket within that period but nothing has been brought on record by the Railways to show that he was ticket-less passenger.

7. Admittedly, the dead body of the deceased was found far from the place of working and from place of residence and there is no other explanation of the dead body lying there save and except that he could have fallen from the running train and the ticket might have been lost in the incident. In case the ticket was planted by Gagandeep Thakur and if he was capable of doing that he could well have procured the ticket of 11.08.2015, i.e. the date of accident, in place of producing ticket of one day before the occurrence. Thus, findings have been recorded that he was a *bona fide* passenger and obviously once it is held as such, it has to be held, in view of

no possibility of the dead body of the deceased being found at the place more than 100 Kms away from his place of residence for any other reason, that he died falling down from a moving train as reported by Keyman of the Railways.

8. Accordingly, the findings of the Tribunal that the incident was within the ambit of Section 123(c)(2) read with Section 124-A of the Railways Act, 1989 and, thus, was an untoward incident is upheld.

As a consequence, the awarding the amount of compensation of Rs.8 Lakhs with 9% interest per annum simple interest to be calculated from the date of Award till the date of payment is also upheld.

This Court finds no reason for interference in the Judgement and Award impugned in view of the discussion made as above.

In the result, this appeal fails, and, is accordingly, dismissed, however, there would no order as to costs.

March 13, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes