

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3998 of 2001 (O&M)

Date of Decision: 16.01.2019

Meena Devi and others

.....Appellant

Vs.

Union of India

.....Respondent

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

Present:- Mr.D.N.Kaushal, Advocate, for the appellant.

Mr.Karaminder Singh, Advocate, for the respondent.

DR. RAVI RANJAN, J. (Oral Judgment)

This appeal was dismissed for want of prosecution by a Co-ordinate Bench of this Court on 29.09.2017. It appears from the record that CM No.23377-CII and 23378-CII of 2017 were filed for first condoning the delay for filing the CM No.23378 of 2017 and second for recall of the order dated 29.09.2017 and restore the appeal to its original file. However, application regarding condoning the delay was allowed vide order dated 28.09.2017 and the application for recall of the order and restore the appeal was dismissed. Thereafter, the appellant moved before the Apex Court and Hon'ble Supreme Court vide its order dated 17.09.2018 restored the appeal to its original file and without expressing any opinion on the merit of the matter, set aside the order dated 29.09.2017 passed by a Co-ordinate Bench of this Court.

FAO No.3998 of 2001 was restored to its original file, hence,

this appeal came before this Court for its consideration on merit.

This appeal has been preferred assailing the judgment dated 22.02.2001 passed in OA-II/72/1998 by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh. by which, the claim petition filed by the claimant/appellants for claim of Rs.4,04,000/- has been dismissed.

Brief facts which would be necessary for consideration of the *lis* stand enumerated as under:

According to the applicant/appellant, the deceased, who was 31 years old at the time of his death and was self employed Electrician was travelling on second class ticket from Palwal to New Delhi which was lost during the accident. It is claimed that accident has occurred due to accidental fall from the train No.GDP-3(EMU) on 29.09.1998 at KM1510/25-27 between Faridabad and Tughlakabad. The deceased died on the spot.

Written statement was filed on behalf of respondent/Railway Authority denying that there was any accidental fall of the deceased from the alleged train. On the contrary, it was stated that as per memo of station Manger, Faridabad, a dead body was found lying at Km 1510/5. It has been claimed in the written statement that deceased was not even a passenger in the train, much less, a *bona fide* passenger and thus, no compensation would be payable as his case cannot be covered under the definition of untoward incident given in Section 123 (c)(2) read with Section 124-A of the Railway Accident and Untoward Incident (Compensation) Rules, 1990 (herein after referred to as "the Act")

Upon pleading of the parties, the Tribunal framed the following issues?

1. Whether the deceased was a *bona fide* passenger?
2. Whether the applicants are the only dependants of the

deceased?

3. Whether the accident falls under/Section 124-A of Railway Act, 1989?
4. To what amount of compensation,if any, the applicant is entitled?
5. Relief.

It appears that an additional issue was also framed as Issue No.4-A which reads as under:

“As to what would be the monetary loss to the applicants on account of death in question.”

This issue was framed by the Tribunal in view of the decision of a learned Single Judge of this Court rendered in the case of **Union of India Vs. Urmil Gupta 2002(3) RCR 50**. Two affidavits were filed on behalf of applicant Udayvir and Mool Chand who tendered documents in support of the claimant. Subsequently, a supplementary affidavit of Mool Chand along with Final Report of SHO Ex.A1 and Verification Report Ex.A-2 were taken into evidence. Claimant-Meena Devi has also appeared as witness and deposed regarding the income of her husband. All the three witnesses were cross-examined by the learned counsel for the railway administration. The respondent examined the Railway Guard as Ex.RW-1 alongwith attested copy of Guard's Rough Journal Ex.R2.

The Tribunal, after consideration of the rival contention and in view of the fact that neither any ticket could be found from the body of the deceased nor was the ticket produced at the time of hearing of the matter coupled with the fact that, after a notice was published in news paper

appeared and has been examined as AW-1, has held that the claimant could not prove that deceased was a *bona fide* passenger. Issue No.3 was also decided in favour of Railways that no untoward incident took place within the meaning of Section 123(c) read with Section 124-A of the Railway Act, 1989 and the deceased did not die because of any fall from the train as alleged in the claim application.

In the background of aforesaid factual matrix and attending circumstances of the case, I have heard learned counsel for the parties and have perused the record of this case.

Learned counsel for the appellant has vehemently argued that once an affidavit has been filed by the brother of the deceased saying that he purchased ticket for him and boarded the train along with his brother but he got down at Faridabad, whereas, his brother continued his journey on the train and had died due to an accidental fall from the train between Faridabad station and Tuglaqabad, the onus would shift upon the Railways to explain as to what was the reason for the death. It is contended that merely not finding ticket from pocket would not be sufficient to hold that deceased was not a *bona fide* passenger.

Per contra, learned counsel appearing for the Railways submitted that the conduct of the claimant to publish notice in news paper shows that persons were being invited to depose before the Tribunal so that a false case could be pursued. Since no ticket could be found from the body of the deceased and there is no eye-witness to the accident. The version of the person namely Udai Vir Singh, who deposed after publication of notice in news paper, stands falsified by the testimony of Railway Guard who has

untoward incident involving the train on the fateful day. It is, thus, contended that the Tribunal has rightly dismissed the claim petition.

It appears from the affidavit of Mool Chand-brother of the deceased Vijender Pal, that he has categorically stated that on 29.09.1998, he alongwith his deceased-brother was travelling by GDP 3 EMU from Palwal to Faridabad/New Delhi. They were coming back from their home village i.e. Gailpur. At Palwal station, he purchased a ticket for himself upto Faridabad and one for his deceased-brother upto New Delhi. Both of them boarded the train together and while he got down from the train at Faridabad, the deceased came out to the gallery and stood inside holding the hand grip near the door way. He was fully inside the train. However, when he returned his home, he was informed by GRP personnel from Faridabad that his brother was killed at railway station. He made extensive survey of the areas where his brother had fallen and the train by which he had travelled to elicit an eye-witness to the tragedy. However, after having failed to locate any eye witness, on the advice of the Advocate, he gave an advertisement in the news paper alongwith the photograph of the deceased asking any witness to this accident to come forward. Accordingly, one person namely Udai Vir Singh, came forward and had been examined as witness. He has filed supplementary affidavit bringing on record the final report of the SHO and *Tasdik* of SHO. The statement of Mool Chand before the GRP, is also on record but the same has not been exhibited. However, I have gone through the same in which identical stand was taken by Mool Chand before the GRP also. He has not given number of train but has stated that he was travelling by EMU train. The police, in its final report submitted after investigation,

However, name and number of train has not been given in the police report. This has been highlighted by the learned counsel for the appellant that in the claim petition, in the affidavit before the Tribunal, Mool Chand has given train number and other details of the train whereas in his statement before the police, he has not given the train number and same does not find place in the final report of the police also. It appears from the impugned judgment also that this has been taken as one of the grounds to non-suit the claimants.

Another ground for rejection by the Tribunal is that ordinarily, after pulling chain, the train does not stop automatically rather when some information is received by the driver and guard then they take steps for stopping the train. Thus, the version of Udai Vir Singh has been disbelieved that after seeing that the deceased fell down, he tried to pull chain but the system did not work and train did not stop. It has also been noticed in the decision by the Tribunal that in verification report, which has been brought on record Ex.A-2, it has been stated that death has occurred while deceased was travelling in an unknown train by falling down. Thus, the version of the claimant that he fell down from the particular train, stands falsified. It is further stated that when it had been verified through witnesses that the death had occurred due to fall from the train and the names of the witnesses were also mentioned in the verification report, there was no necessity for requisitioning the services of an eye witness through a notice by publishing the same in the Newspaper. It is also noticed that if the brother of the deceased was travelling in the same train in which he had travelled, there was no question of mentioning in the verification report that it was an unknown train especially when, in the claim petition, the number of train has

verification report not only makes the testimony of Mool Chand unreliable but also shows that the witness introduced was not trust-worthy. The Tribunal has observed that even in the statement of Mool Chand recorded by the Police on 30.09.1998, it is nowhere stated that his brother had died due to fall from the train. On the basis of aforesaid findings and observations, the Tribunal has rejected the claim petition.

However, on going through the evidence and having considered the rival contentions, this Court finds difficulty in accepting the aforesaid findings and observations made by the Tribunal for the following reasons:

Key witness Mool Chand, who happens to be brother of the deceased Vijender Pal Singh, has given statement before the GRP and deposed before the Tribunal also. In both the statements, one thing is common that he was travelling along with his brother. His brother i.e. deceased Vijender Pal Singh, gave him money and he purchased the ticket and had returned the balance amount to his brother. They started journey together, however, he got down at Faridabad and his brother continued the journey on the train. Though at the time, when he got down at Faridabad, the deceased came at the gate of the compartment of the train. Mool Chand returned to home and got information from the GRP personnel that his brother met with an accident and his body was lying near the track. Much emphasis has been given by the Tribunal and also learned counsel appearing for the respondent that he did not disclosed in his statement before the police that his brother has died by falling from the train but such observation made by the Tribunal or submission on behalf of respondents is not tenable for the reasons that at that point of time, Mool Chand hardly knew as to in what

in the statement of Mool Chand recorded by the police on 13.09.2019, it is not stated that his brother had died due to accidental fall from the train. In the statement given before the GRP though it was disclosed that they were travelling by EMU but he did not give the number of the train whereas in the affidavit before the Tribunal he has given the train number also. However, in my view, on the basis of this minor discrepancy, it cannot be held that his statement was false as it was at least disclosed by him that they were travelling by EMU train. The Tribunal was not required to take such type of hyper technical view in assessing the testimony particularly when the police in his verification report also stated that deceased had died due to fall from the train and in the final report submitted under Section 173 Cr.P.C. also the police has taken the similar stand. The non-mentioning of number of EMU before the police in the present circumstances has to be considered as *bona fide* mistake rather than a fatal lacuna. It is well established that the proceeding before the Tribunal is in the nature of a summary proceedings in which the cases are not required to be proved beyond all reasonable doubt as are being done in criminal trials. Of course, there may not be any requirement of publishing a notice in the news paper inviting an eye-witness and there may be difficulty in accepting the version of such eye-witness also itself it was nowhere stated that there was a fall. Though, even if this action is presumed to be wrong, it would not be required to be condemned. When the police on the investigation has already found that the deceased died due to accidental fall from the train. Though number of train has not been given in the police report but that may be accepted as a prima facie evidence on behalf of the claimant along with affidavit which has been filed on behalf of

facie is discharged by the claimant, the duty is cast upon the railway authority to disprove the case by leading evidence and not only simply denying the claim of the application regarding falling from a train but also showing as to how and in what manner the victim died and under what circumstances, the dead body of the deceased was lying near the railway track. Merely not finding a ticket in the pocket of the dead body would not be sufficient to dislodge the case of the claimant. The Delhi High Court in the case of **Moola Ram Vs. Union of India 2014(37) R.C.R.(Civil) 606**, has held that minor discrepancy in testimony of eye-witnesses who travelled in the same train with the deceased cannot be discarded by adopting hyper technical approach. Had the deceased been run over by the train, his body must have been found there in mutilated condition or cut in various pieces. Since no report of any other train driver or a guard informing that a person had been run over by a train is available on record, it has to be understood that the victim died in untoward incident and railway would be liable to compensate the claimants.

In the present case also, though the evidence of Uday Vir Singh i.e. eye-witness is being denied on technical ground and it is stated that driver and guard of that particular train which have been stated in the claim petition have not informed regarding such an accident but at the same time nothing has been brought on record to show any other driver or guard had reported that a person was run over by his train. In such a situation, when the body was lying besides the track and not on the track, it has to be understood also in view of the postmortem report, that the person had died due to falling down from a train. A reference in this regard is also made to

Devi 2018 (3) R.C.R.(Civil) 40. The Apex Court, has come to the following conclusion after considering almost all the earlier judicial pronouncements in that regard:

“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 view of the Apex Court , it is crystal clear 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 also not negate the claim that he was a bona fide passenger. The initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts then burden will shift on the Railways and the issue can be decided on the facts shown or the attending circumstances.

examined as witness who has stated that he had purchased the ticket and gave to his brother and travelled with him up to Faridabad. He has proved the test of cross-examination and no suggestions were made by the railway authorities that he and his brother were not travelling on a particular train. Udai Vir Singh has stood as eye witness and the final police report also shows that the deceased died due to accidental fall from the train even though the name of train has not been mentioned therein. Thus, I am of the opinion that the initial burden has been discharged by the claimant. So far as the Railways are concerned, they have brought the Guard of the train as witness who has stated two things. First, that neither he nor had the driver reported regarding any untoward incident and second that chain was not pulled in any compartment. It would be very difficult to digest such type of statement and rely upon it as, in case of accidental fall from a running train, it would not necessary that the Driver who has always to look forward, must have seen the occurrence. So far as Guard is concerned, he may see it and he may skip also become because a person cannot keep on eye constantly on both sides of track as, if he looks one side of the train, he would be skipping the other side.

That apart, it is also not stated that any other driver or guard of any other train had reported regarding the dead body having lying besides railway track. In such a situation, it has to be accepted that death has occurred due to untoward incident and in view of the provisions contained under Section 123(c) read with 124 and the same 124(1) of the Railways Act, the claimant would be entitled for statutory compensation.

Before parting with the matter, this Court would have to deal

under:

“4-A What is the extent of monetary loss to the applicants on account of the death in question?”

This issue is no longer *res integra* as by now it is well settled by catena of judicial pronouncements that in case it is proved that the deceased was a *bona fide* passenger and the accident is within the meaning of 'untoward incident' as envisaged under Section 123(c)(2) of the Railway Act, 1989, then, in case of death of the passenger, the claimant would be entitled to the fixed statutory amount as provided under the schedule attached with the Railway Accident and Untoward Incidents (Compensation) Rules, 1990. Therefore, there would be no requirement to assess the quantum of monetary loss of the claimants. Even in the case of injury also, only extent of injury is to be assessed, not the monetary loss faced by the family or relatives due to the death. However, even if there are multiple injuries, the compensation amount would not be more than the maximum provided as per Rule 4 of the aforesaid rules.

In the aforesaid background of the matter, this Court would hold, that in view of the fixed statutory compensation amount of Rs.4 lacs as per schedule attached to Railway Accident Untoward Incident (Compensation) Rules 1990 amended w.e.f. 01.11.1997, it would be applicable in the present case as death had occurred on 29.09.1998, and there was no occasion to frame the Issue No.4A.

Before parting with the matter, this Court would uphold the finding recorded by the Tribunal with respect to issue No.2 holding that only widow and minors would be entitled for the compensation amount.

In the result, this appeal is allowed and impugned judgment is set aside save and except the findings with respect to issue No.2 and it is held that the claimant would be entitled for statutory compensation amount as provided under the Railway Accident and Untoward Incident (Compensation) Rules, 1990. That amount obviously would be Rs.4 Lacs as provided in Schedule attached with the aforesaid rules which has to be disbursed in favour of the widow and minors in equal shares. However, in the facts and circumstances, this Court would held that claimant would also be entitled for interest @ 9% per annum which is to be calculated from the date of accident till the date of realization of compensation amount.

However, parties are left to bear their own costs.

(DR. RAVI RANJAN)
JUDGE

16.01.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No