

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1677 of 1999(O&M)

Date of Decision:20.05.2019

Bharat Bhushan Aggarwal

.....APPELLANT

Vs.

Union of India

.....RESPONDENT

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

Present: Mr.Surinder Gandhi Advocate for
the appellant.

Mr.Yogesh Saini, Advocate for the
respondent-UOI.

DR. RAVI RANJAN, J.(Oral Judgment)

This appeal has been preferred by the claimant-appellant assailing the Judgment dated 23.02.1999 passed in Case No.OA-II/37/98 by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”), by virtue of which the claim application filed by the claimant-applicant-Bharat Bhushan Aggarwal (appellant herein) under Section 16 of the Railway Claims Tribunal Act, 1989 before the Tribunal has been dismissed.

The factual matrix, which would be necessary for consideration of the *lis*, stands enumerated as under:-

The applicant-appellant was travelling in train No.1-RKB Ex. on 29.05.1997. He boarded the train at Rohtak and was going to Bhiwani against a second class passenger ticket. At Bambla Railway Station, he fell down from the train, and as a result thereof, both of his legs were amputated. He suffered 100% disability. It is claimed that the ticket was also lost during incident. In above set

of facts and circumstances, he sought a compensation of Rs.4,00,000/-(Rupees Four Lacs) from the respondent-Railway Authorities as per the relevant provisions.

The respondent-Railways contested the claim application by filing written statement. A stand was taken that the accident is not covered within the meaning of '*Untoward Incident*', as defined in Section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as "the Act") and, as such, in view of the provisions of Section 124(A) of the Act, he would not be entitled for compensation and also for the second reason that being a ticket-less passenger, as no ticket could be found from his possession, he cannot be accepted as a *bona fide* passenger. After denial of the averments made in the claim application, a specific stand was taken that the injuries were self-inflicting one as the claimant applicant was crossing the railway track and, at that point of time, he was run over by the passenger train concerned.

On the basis of rival pleadings of the parties, the Tribunal framed following issues:-

“(1) Whether the alleged accident was a train accident under

Section 124-A read with Section 123 of the Railway Act? OPA

“(2) Whether the deceased was a *bona fide* passenger of the train in question ? OPA

(3) Relief.”

It appears from the records that, though the affidavits have been brought on record by way of evidence by both the sides, but the witnesses were not put to cross-examination. It doesn't appear from the order-sheet of the Tribunal that after filing of the affidavit, the claimant's witness was directed to appear for cross-examination but the same could not be done as he refused to come. Same situation is with the respondent also. Though, the witnesses have filed their affidavit but no date was fixed for their cross-examination.

Accordingly, it has to be held that no opportunity of cross-examination was given to either side by the Tribunal.

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

Learned counsel for the appellant has vehemently argued that there was no reason for the Tribunal to discard the claimant's case and hold that the alleged accident occurred while the injured was trying to cross the railway track and also that he was not a *bona fide* passenger.

Per contra, learned counsel appearing for the respondent-Railway Authority has submitted that no evidence is there for purchase of ticket and also that he was either trying to alight from the train or board the moving train at Bambla Railway Station. The injuries also do not suggest of accidental fall.

The Tribunal, accepting the stand of the Railways has non-suited the claimant-applicant on the ground that he was a ticket-less passenger and the nature of the injury suggests that it was the result of self-inflicting one.

However, on reading of the impugned decision of the Tribunal and the written notes of argument filed by the respondent-Railways Authorities which is available in the Lower Court Records, it appears that at the time of hearing, a case was tried to be made by the claimant-applicant that he alighted from the train at Bambla Railway Station to ease out and while he was trying to re-board the train, it started moving and he fell down and was dragged into the wheels.

This is also supported by the fact that from the impugned decision itself it appears that it was denied by the Railways Authorities on the ground of totally being unbelievable story as arrangement for urination etc. have been provided in the compartment itself and, as such, nobody is required to get down

from the train for that purpose particularly in a rainy day which stands admitted by the applicant itself.

In my considered opinion, more effort should have been made by the Tribunal to find out the truth. It could have directed the Railway Authorities also to do proper inquiry in the matter which was mandatorily required in terms of Section 115 of the Act. It is surprising that though such provision is there, no effort was made by the Railway Authority to conduct proper inquiry in the matter to find out the truth. Without doing that, a cryptic stand has been taken by them before the Tribunal that the injury is self-inflicted one as the injured was trying to cross the Railway Station. Had the proper inquiry been made, the Railway Authorities could have come to a conclusion and recorded finding on several vital points for example; which is the actual place where the dead body was found, whether there is any evidence that how the deceased reached at Bambla Railway Station from his place of residence and why he was trying to cross the railway line at the Railway Station?

At the time of hearing, learned counsel for the respondent has pointed out that there is no final evidence as to whether the body was found on the Railway Track at the Railway Station or outside the Railway Station. Actually, the mandatory inquiry to be conducted under Section 115 of the Act could have answered that but unfortunately the Railways have been very very negligent in not conducting such inquiry even after such grievous injury was caused upon a human being. Once such evidence is not there then the issue has to be decided on the basis of the materials which are available on record.

The claimant-applicant himself is the injured, who has lost both of his lower limbs in the accident. He has stated in the claim application that he was travelling from Rohtak to Bhiwani(Haryana) in the concerned train and he

had a fall from the train at Bambla Railway Station. He has lost the ticket in the accident because he became unconscious. In the affidavit filed before the Tribunal, he has stated the same thing. In the affidavit, one Suraj Bhan, the Points Man, Railway Station Bambla, District-Bhiwani (Haryana) has stated that a passers-by had informed that a body was lying between the track. The affidavit of Rajmal, Assistant Station Master discloses in paragraph No.3 of the affidavit that I-RKB train reached the Bamla Railway Station on 29.05.1997 at 7.05 P.M. and also that DN-3484-Malda Town Express was to cross which reached at 7.23 P.M. at the Railway Station Bambla. In paragraph No.4 thereof, he clearly states that I-RKB was cleared and started from the Railway Station at 7.28 P.M. At about 7.30 P.M., a passerby informed that a body was lying between the track.

From the aforesaid, one thing is clear that the accident took place at Railway Station itself and, in fact, the train had stopped at Bambla Railway Station. Unfortunately, this aspect of the matter has not at all been considered by the Tribunal.

Once it is found that the train stopped and again started moving then there can always be a possibility that a person may had got down from the train and tried to board it again. There would again be a possibility that while doing so, he might have slipped from the footstep especially when it is admitted by both the sides that it was raining at that point of time and due to that the foot steps might have become slippery also. However, since no opportunity of cross-examination was given by the Tribunal, the things which could have come up during such cross-examination, actually did not come out.

Strangely, in the written notes of argument, a stand has been taken by the Railway Authorities denying the stand of the claimant that he alighted from the train to ease out and was trying to re-board the train and, in the

meantime, train started moving and resulted in such accident, which was not at all required to be done. Not only that, at the time of hearing also, such stand was taken by the Railways, which has been noted down in the impugned order also. The appellant has filed an application under Order XLV Rule 27 of the Code of Civil Procedure, to bring on record the piece of statement of the injured which was recorded by the GRP after the accident in the hospital. Though, this could have been done by him at the stage of Tribunal also which was not done but at the same time, since the Tribunal did not proceed correctly, as noted above, and has not given any opportunity of cross-examination so that the truth could have emerged and also in view of the fact that no mandatory inquiry was conducted by the Railway Authorities in terms of the Section 115 of the Act, coupled with the fact that Railways took a stand in the written notes of argument as well as at the time of hearing before the Tribunal that the aforesaid claim of the claimant-applicant was also not correct that he had alighted from the train for ease out and again was trying to board the train when the alleged accident occurred, this Court allowed such application after hearing the parties as in view of lack of proper evidence led on behalf of both the parties and coupled with the aforesaid facts, it appears to this Court that, in the interest of justice, such document would be relevant and required for proper adjudication of the matter. Hence, the police authorities were directed to produce the original documents. However, it was informed by them that the documents have been destroyed as per the relevant provision being old documents. In such a situation, learned counsel for the appellant has put on record the xerox-copies of those documents in evidence. However, this Court has directed the author of the document, i.e., the police personnel, who had recorded the statement, to appear before the Court. He had appeared and had stated before this Court that he had recorded the

statement and the xerox copies are the true copies of the original documents. In such a situation, those documents were taken in record as additional documents.

Those documents reveal that the claimant had stated before the police that he had alighted from the train to ease out when it is stopped at Bamla Railway Station and was trying to re-board the train when the train started moving resulting in the accident.

In such a situation, this Court is not left with any other option than to accept that the accident was a result of an untoward incident.

The second issue which has been raised on behalf of the respondent is that there is no evidence that the injured purchased a ticket. However, from the claim application and the affidavit filed by the injured, it appears that he has described him as a passenger of the train which would definitely mean a *bona fide* passenger and not a ticket-less passenger. That apart, in paragraph No.4 of the claim application, he has categorically stated that his ticket was lost during the accident.

This issue is no longer *res integra* as the same has been considered by the Hon'ble Supreme Court 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.”

In the above passage, the Hon'ble Apex Court has observed that merely not finding a ticket would not be enough ground to dislodge the claim application depicting the deceased or the injured not to be a *bona fide* passenger rather the matter has to be dealt with and decided on the basis of attending circumstances. Hon'ble Apex Court has also taken in notice that at the time of accident there would be every possibility of losing a ticket.

However, since there was no inquiry held by the Railway Authorities and there is nothing on record to show that the Railway Authority or even the GRP had made any effort to find out or recover the belongings of the injured by making extensive search of the spot of accident or the nearby area, in such a situation, in my considered view, it would be very harsh upon the claimant, if such stand is taken without any proper evidence that the injured was a ticket-less passenger as there is no presumption that a person is a ticket-less passenger unless after the death or grievous injury, his ticket is found from his possession.

Having regards to the aforesaid discussions as above, I do not have any hesitation in holding that injured is a *bona fide* passenger and he is a victim of an untoward incident in terms of Section 123(c) read with Section 124-A of the Act. As such, I am of the view that, the Tribunal was not correct in non-suiting the claimant-applicant on both the grounds.

Accordingly, the claimant-appellant would be entitled for compensation in terms of the Schedule attached to the *Railway Accidents and Untoward Incidents (Compensation) Rules, 1990*, which in view of the existing schedule would come to the tune of Rs.4,00,000/-. However, I also deem it appropriate in the interest of justice to award interest @ 9% per annum to the claimant-appellant to be calculated from the date of presenting the claim

application till the date of payment of the compensation amount.

In the result, this appeal stands allowed and the impugned Judgment of the Tribunal is quashed and set aside. The claim application filed by the applicant-Bharat Bhushan Aggarwal is allowed. However, the parties will bear their own costs.

Before parting with the matter, I must record that no other point or ground was raised by any of the parties, save and accept those which have been discussed above.

**(DR. RAVI RANJAN)
JUDGE**

20.05.2019

Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No