

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

FAO No.3153 of 2007(O&M)

Date of Decision:13.03.2019

Anita Rani and others

.....APPELLANTS

Vs.

Union of India

.....RESPONDENT

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

Present: Mr.Somesh Gupta, Advocate for
the appellants.

Ms.Kriti Sharma, Advocate for
Mr.Sandeep Suri, Advocate for the the
respondent-UOI.

DR. RAVI RANJAN, J.(Oral Judgment)

This appeal has been preferred by the claimants-appellants assailing the Judgment dated 12.04.2007 passed in Case No.OA-II/31/2003 by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”).

The claim application has been filed by the claimants-applicants (appellants herein), who are the widow, one minor daughter and one minor son of the deceased, under Section 16 of the Railway Claims Tribunal Act, 1987, seeking a compensation of Rs.4,00,000/- on account of death of husband of claimant-appellant No.1, viz., Pawan Kumar Arora in an untoward incident.

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

The claimants-appellants have made a statement in the claim application that Pawan Kumar Arora (since deceased) was a fruit and Vegetable seller. He was living alone with his family in Bhatinda but carrying on his vegetable business in Mandi Guniana. He used to go in the morning from Bhatinda to Guniana and come back in the evening everyday.

It stands stated in the claim application that on the fateful day, i.e., on 31.12.2002, deceased-Pawan Kumar Arora was returning from his work from Guniana to Bhatinda and, while he was in process of boarding the train, the train started moving and the deceased fell down on the track and received fatal crush injuries causing his immediate death.

On such stand having been taken by the claimants-appellants, the railway administration contested it by filing written statement denying the averments made by the claimants-applicants. It was denied that the accident would come under the ambit of the definition of railway untoward incident as contained in Section 123(c) of the Railways Act, 1989 (hereinafter referred to as “the Act”). His being a *bona fide* passenger was also challenged as no journey ticket could be recovered from the body of the deceased during search made by the police and, thus, a stand was taken that the claimants-appellants are not entitled for any statutory compensation in terms of Section 124-A of “the Act”.

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

- “(1) Whether the deceased was a *bona fide* passenger on the date of incident?
- (2) Whether the alleged incident falls within the ambit of Section 123(c) of the Railways Act, 1989?
- (3) Whether the applicant is the sole dependent of the deceased?
- (4) Relief.”

In order to establish their case, the widow of the deceased-Anita Rani Produced herself as witness and was cross-examined by the respondent-Railway Authority.

The respondent-Railway Authority has produced Gurdev Singh, who is the Engine Driver of the concerned train, Shri Banwari Lal, who is Assistant Station Master, Guniana and Shri Kartar Singh, who is the Guard of the concerned train as witnesses.

The claimants-applicants have also produced certain documents such attested copies of Inquest Report, Fard-Jama-Talashi, Witnesses Statement Report (all the documents of the GRP), Assistant Station Master's Memo, Postmortem Report and statements of Guard, Driver and one Shri Gurbachan Lal said to be elder brother of the deceased.

However, it has been noticed by the Tribunal that the documents were produced at very late stage, i.e., at the stage of argument, therefore, the opportunity of its rebuttal could not be given to the respondent-Railway Authority. The Tribunal has also noticed certain discrepancies in the translated copies and the original documents written in '*Punjabi*' language. For example, name of brother of the deceased has been stated in Punjabi as '*Gurbachan Lal*' but in the Hindi translation, it is written as '*Gurbaksh Lal*' and in the postmortem report, his signature reads as '*Gurvachan Lal*'. Moreover, the copy of the postmortem report bears the signature of Medical Officer, Civil Hospital, Bathinda, but in the attested copies submitted at that point of time, such signature and seal stood completely obliterated. It is also noticed that as per the railway record, the incident took place on 31.12.2002 at about 19.55 hours whereas in the Government Railway Police's papers, the time of the accident shown to be as 06.10 A.M. on 01.01.2003. Thus, in view of the aforesaid

variations, the Tribunal has come to the conclusion that it would not be possible to co-relate the Postmortem Report and GRP Inquest report with the respondent's evidence indicating that incident had taken place on 31.12.2002.

It is also noticed that journey ticket was not found from the search of the body of the deceased though the clothes etc. were not found in much torned condition. The same stands established in the Fard-Jama-Talashi report which is available on record which clearly shows that nothing was recovered during search on the person of the deceased. It is also stands noticed by the Tribunal in the impugned Judgment that the claimants-appellants have nowhere averred in their case that the ticket was bought by the deceased in their presence or in presence of any person.

On the basis of aforesaid discussion, the Tribunal has come to the conclusion that deceased cannot be considered to be a *bona fide* passenger and the accident doesn't fall within the ambit of Section 123(c) or read with Section 124-A of the Railways Act.

So far as issue No.3 is concerned, the copy of the Ration Card has been discarded on the ground that it was prepared on 21.02.2003 whereas the accident had taken place one month back and it cannot be inferred as to whether the father-in-law of claimant-appellant No.1 is dead or alive because the claim application is silent on that aspect.

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

Learned counsel appearing for the appellants has vehemently argued that the claim application cannot be dislodged on the basis of hypertechnical grounds which stand mentioned in the Judgment whereas learned

counsel representing the respondent-railway has supported the judgment by saying that it doesn't stand established that the deceased was a *bona fide* passenger and the accident would come within the ambit of the definition of untoward incident as envisaged under the provisions contained in Section 123 (c) of the Railways Act.

On consideration of rival contentions, this Court finds force in the submission raised on behalf of learned counsel for the appellants for following reasons:-

The variations as shown in the original document and translated document, as noted down by the Tribunal in its impugned Judgment, would not be of much value inasmuch as the identity of the deceased or his brother or his widow has not been questioned by anybody. So far as the documents which have produced at a belated stage by the claim applicants are concerned, most of them are documents of the Government Railway Police and if the Tribunal was of the opinion that it was produced at very late stage then it had two options. First, either not to take those documents on record and refuse to consider it or secondly, if it has taken the documents on record then it could have granted opportunity to the other side to rebut it. One major issue which has been stated by the Tribunal is regarding the date and time of the accident. As per the GRP report, date of the accident was 6.10 A.M. on 01.01.2003 whereas according to the railways, the accident took place in the evening at about 7.55 P.M. On 31.12.2002. However, the Tribunal completely forgot to consider this aspect of the matter that in the claim application, the case of the claimants is also that the accident took place on 31.12.2002 in the evening. Supposing that entry in the GRP documents being wrong, it would be of no consequence when the railways have admitted the accident to have taken place at about 7.55 P.M. In the evening

which completely matches with the case of the claimants-appellants.

In view of such admitted position, there was no requirement at all to non-suit the claimants on such on the aforesaid ground.

The second issue which has been raised by the railways and considered by the Tribunal is regarding the deceased being a *bona fide* passenger. It has vehemently been argued and has also been recorded in the impugned Judgment that there is no evidence that the deceased purchase journey ticket and further that no ticket was found in the *jamatalashi*, i.e., search of the person of the deceased by the GRP. The Tribunal has discarded the documents of the GRP produced by the claimants-appellants belatedly also on the ground of certain discrepancies by saying and it is quoted as under:-

“Therefore, considering the above-mentioned discussions arising out of the set of papers provided by the applicant at the time of arguments, it is not possible to correlate the Postmortem Report and GRP's Inquest Report papers vis-a-vis with respondent's evidence indicating incident as taken place on 31.12.2002.”

Now the question would be, in view of aforesaid stand taken, how the Tribunal, after saying so many words, has placed reliance upon the *fard-jamatalashi* done by the GRP which was also produced belatedly? That apart, the claim application has disclosed that the deceased purchased second class ticket but no evidence could be produced by them because nobody was accompanying the deceased at the railway station or up to the train. But at the same time, it has come on record that it was the daily routine of the deceased to come in the morning at Mandi Guniana and returned back in the evening. In such a situation, can it be presumed that a person who was everyday boarding the train for coming to Guniana and going back from Guniana to Bhatinda, was travelling without purchasing ticket and not even on a single occasion he was questioned or found without ticket by the railway personnel?

Second question is whether the ticket could not have been lost during the accident? Though, it is stated in the police reports that the clothes were not much torned and ticket was not found, from the aforesaid fact, it cannot be inferred that he was a ticket-less passenger.

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

In my opinion, the initial burden was discharged by the appellants by saying on affidavit that a ticket was purchased and he was regularly, as a routine, used to travel everyday from Bhatinda to Guniana and back from Guniana to Bhatinda, but there is nothing in rebuttal on part of the Railway save and except the stand that no ticket was found from the body of the deceased.

That apart, the biggest lacuna which remained unnoticed by the Tribunal is as to whether any inquiry was held by the Railways Authority in terms of Section 115 of the Railways Act, 1989? The answer has to be negative.

It is mandatorily required in terms of Section 115 of the Act that the Railways-Authority hold inquiry. Usually DRM inquiries are being done but, in

the present case, nothing has been done. Therefore railways, without such inquiry, cannot come and take a stand that the accident was not untoward incident and the deceased was not a *bona fide* passenger. Even if the testimony of the railway driver and guard is taken into consideration, the driver has clearly stated that according to the version of the guard, the passenger was trying to board a moving train which was moving at a low speed of 7-8 kms per hour. He has further stated that on such speed, one can easily board and de-board the train whereas the case of the claimants-appellants is that when he was trying to board the stationary train, the train started moving and he slipped from the train and came under the wheels of the train. Since no inquiry has been done by the railways, it can also not be considered and held that the railways or even the GRP made extensive search of the adjoining area where the accident occurred to find out the belongings of the deceased. Only the person of the deceased was searched by the GRP.

Another question which will arise in this case and which has been raised by the learned counsel for the appellant is that the railway guard has said that the deceased was running towards the train as if he wanted to commit suicide. Now the question would be whether that can be relied upon by a Court of law? There is no inquiry or investigation with regard to that either by the police or by the Railway Authorities. There is nothing on record which may suggest that there were certain reasons for the deceased to commit suicide. Merely a perception or personal idea disclosed by the witness cannot be considered to be correct and taken as a piece of evidence. The statement of witness with regard to the facts of the accident or the incident discloses the facts regarding manner of the accident or the incident can be considered by a Court of law but no idea expressed by him or his personal opinion regarding particular

thing can be accepted as evidence. That apart, plain reading of Section 124-A of the Railways Act, 1989 reveals that the compensation on account of untoward incident is granted irrespective of the fact whether or not there has been any wrongful act, neglect or default on part of the Railway Administration. So this provision discloses that compensation is to be granted on 'no fault theory'. This aspect has also been considered by Hon'ble Apex Court in **Rina Devi (supra)**.

For better appreciation, the relevant passages from the aforesaid Judgment are extracted and quoted as under:-

“Re: (ii) Application of Principle of Strict Liability –Concept of Self Inflicted Injury

16.1 From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an ‘untoward incident’. Only exceptions are those provided under proviso to Section 124A. In **Prabhakaran Vijaya Kumar** (supra) it was held that Section 124A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in **Jameela** (supra).

16.2 Coming to the proviso to Section 124A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression ‘self inflicted injury’ in the proviso. In some decisions it has been held that injury or death because of negligence of the victim was at par with self inflicted injury. We may refer to the decisions of High Courts of Kerala in **Joseph PT** (supra), Bombay in **Pushpa** (supra) and Delhi in **Shayam Narayan** (supra) on this point.

16.3. In **Joseph PT** (supra), the victim received injuries in the course of entering a train which started moving. Question was whether his claim that he had suffered injuries in an ‘untoward incident’ as defined under Section 123(c) could be upheld or whether he was covered by proviso to Section 124A clause (b). The High Court held that while in the case of

suicide or attempt to commit suicide, intentional act is essential. Since the concept of 'self inflicted injury' is distinct from an attempted suicide, such intention is not required and even without such intention if a person acts negligently, injuries suffered in such an accident will amount to 'self inflicted injury'. Relevant observations are :

“Therefore, the two limbs of the Proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term "self-inflicted injury" not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term "self-inflicted injury" used in the statute can be deduced as one which a person suffers on account of one's own action, which is something more than a rash or negligent act But it shall not be an intentional act of attempted suicide. While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc. act to his detriment. Facts of this case show that the appellant attempted to board a moving train from the off side unmindful of his age and fully aware of the positional disadvantageous and dangers of boarding a train from a level lower than the footboard of the train. It is common knowledge that the footboard and handrails at the doors of the compartment are designed to suit the convenience of the passengers for boarding from and alighting to the platform. And at the same time, when a person is trying to board the train from the non platform side, he will be standing on the heap of rubbles kept beneath the track and that too in a lower level. Further more, he will have to stretch himself to catch the handrails and struggle to climb up through the footboard hanging beneath the bogie. The probability of danger is increased in arithmetic progression when the train is moving. Visualising all these things in mind, it can only be held that the act of the appellant was the height of carelessness, imprudence and foolhardiness. It is indisputable that the purpose of Section 124A of the Act is to provide a speedy remedy to an injured passenger or to the dependants of a deceased passenger involved in an untoward incident. Section 124A of the Act provides for compensation to a passenger or his dependants who suffers injury or death, as the case may be, in an untoward incident even where the untoward incident is not the consequence of any wrongful act, neglect or default on the part of the Railway Administration. To this extent, it can be said to be a no-fault liability. Even though the provisions relating to payment of compensation in the Act can be said to be a piece of beneficial legislation, it cannot be stretched too much to reward a person who acts callously, unwisely or imprudently. There is no provision of law brought to our notice permitting the passengers to entrain from the non-platform side of the railway track. However, the counsel for the respondent did not show any provision of law prohibiting the same. The question whether an act by which a passenger sustains injury while boarding a train through the off side, is a self inflicted injury or not depends on the

facts of each case. Merely because a person suffered injury in the process of getting into the train through the off side, it may not be sufficient to term it as a self inflicted injury, unless the facts and circumstances show that his act was totally imprudent, irrational, callous and unmindful of the consequences. All the facts and circumstances established in this case would show that the act of the appellant was with full knowledge of the imminent possibility of endangering his life or limb and therefore, it squarely comes within the term "self-inflicted injury" defined in Section 124A Proviso (b) of the Act."

16.4 In **Pushpa** (supra) a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of 'self inflicted injury'. The relevant observations are :

"Such an attempt by a hawker has been viewed by the trial Court as something amounting to criminal negligence on his part and also an effort to inflict injuries to himself. The trial Court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed."

16.5 In **Shyam Narayan** (supra), same view was taken

which is as follows :

"6(ii) I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity."

16.6 We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in **United India Insurance Co. Ltd. versus Sunil Kumar** laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an

‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.”

It would be evident from the aforesaid that the concept of '*self-inflicted injury*' requires intention to inflict such injury and not mere negligence of any particular degree as doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on '*no fault theory*.' In the present case, though it has been stated by the driver as his idea that the deceased was coming towards the train as if he was trying to commit suicide but due to lack of any material on record indicating such intention of the deceased coupled with further fact that if somebody would try to commit suicide, he will run and come in front of the railway engine and not between the railway coaches, it cannot be held that it was self-inflicted injury.

Having discussed and held as above, I do not have any hesitation in holding that the deceased was a *bona fide* passenger and he was a victim of an untoward incident in terms of Section 123(c) read with Section 124-A of the Railways Act, 1989.

So far Issue No.3 is concerned, the Tribunal has held that the claimants are not the only dependents of the deceased. Question is that the claimants-appellants have declared themselves to be only dependents and if the Railways have not raised such issue specifically in its written statement or at the time of leading evidence then it is not understandable why the Tribunal will consider it in the aforesaid manner and make out a third case when there is nothing on record to show that there are other dependents of deceased also alive on date?

In my opinion, there was sufficient material to hold that the claimants-appellants are dependents of the deceased. There was nothing wrong in considering the ration card, even if prepared after the accident, for the

relevant purpose.

As such, the claimants-appellants would be entitled for compensation in equal share 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 claimants-appellants to be calculated from the date of filing of the claim application till the date of payment of the awarded amount.

In the result, this appeal stands allowed and the impugned Judgment is quashed and set aside. However, the parties will bear their own costs.

**(DR. RAVI RANJAN)
JUDGE**

13.03.2019

Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No