

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4058 of 2006 (O&M)

Date of Decision: 03.04.2019

Gurbaksh Kaur and Others

.....Appellants

Vs.

Union of India

.....Respondent

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

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

Mr.Karminder Singh, Advocate, for the respondent.

DR. RAVI RANJAN, J. (Oral Judgment)

CM No.6613-CII of 2019

This application has been filed for placing on record english translation version of the relevant documents, originals of which are in Punjabi. Since, these are part of lower Court record, no objection has been raised by the learned counsel for the respondent.

Accordingly, the translated copies Annexure A-1 and A-2 are taken on record.

FAO No.4058 of 2006

This appeal has been preferred, assailing the decision dated 23.01.2006 rendered by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, in Case No.OA-II/51/2003, by which the claim application filed by the claimants/appellants under Section 16 of the Railway Claims Tribunal Act, 1987, has been dismissed.

As per the claim application, the deceased Saudagar Chand,

aged about 45 years, was going from Hoshiarpur to Shamchorasi on 08.01.2003 by Train No.11JH DMU. While alighting from the train, he slipped and fell down on the platform. As a result of this, his one leg was caught in wheels and consequentially, he died on the spot succumbing to the injuries. According to the claimant, train did not stop even after raising hue and cry by the persons standing nearby. The claimant No.1 is widow of the deceased whereas, the claimants No.2 and 3 are minor son and daughter respectively of the deceased.

The respondent-railway contested the claim by filing the written statement taking a stand that accidental death was not within the meaning of “untoward incident” as defined under Section 123(c)(2) of the Railways Act, 1989 (hereinafter to be referred to as 'an Act'). A stand was also taken that, since no ticket was recovered from the body of the deceased, therefore, it has to be assumed that he was a ticket less passenger and not a *bona fide* passenger and, thus, was not entitled for any compensation amount.

Upon consideration of rival pleadings, the Tribunal framed following issues:

- (1) Whether the deceased was a *bona fide* passenger on the date of alleged incident?
- (2) Whether the alleged incident falls within the ambit of Section 123(c) of the Railways Act, 1989?
- (3) Whether the applicants are the sole dependants of the deceased.
- (4) To what amount of compensation, if any, the applicants are entitled.
- (5) Relief.

Applicant/appellant No.1 Smt.Gurbaksh Kaur, widow of the deceased, initially tendered her evidence on affidavit but she did not appear

for cross-examination by the other side. Since she was not even willing to do so, the Tribunal ordered that affidavit of the said witness should not be considered as evidence. Accordingly, it has been held that it is a case of no evidence from the side of the applicants.

The respondent railways filed affidavit of Sh.Darshan Singh and Sh.Atma Singh, Guard and Driver respectively of the train in question who were cross-examined also. However, it is nowhere stated that any inquiry was conducted by the Divisional Railway Manager. That apart, this also does not appear to be a case of no evidence as certain documentary evidences are available on record which are police records, for example, death report prepared by the police, the statements of the driver and the Guard recorded by GRP under Section 175 of Cr.P.C and other statements etc. Section 18 of the Railway Claims Tribunal Act, 1987 mandates that the claim Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by Principle of Natural Justice and it would decide the cases expeditiously on perusal of the document, written representations and affidavits after hearing oral arguments as may be advanced. Therefore, the intricacies of the procedures laid down in the CPC or even the provisions of evidence Act would not be applicable in its totality in cases which are of summary nature. Accordingly, even the reports prepared by the police or the statements recorded under Section 175 of Cr.P.C. would well be a piece of evidence. Even the FIR or the police reports have also been taken into account by all the Courts. Reason behind this is, that in the present nature of summary proceedings, it is well settled that the claimants are not required to prove the case beyond all reasonable

even in the absence of cross-examination of the claimants, though the affidavit as examination-in-chief may be discarded but the documentary evidences can be considered even if they could not be brought on record in accordance with the provisions of the Evidence Act.

The trial Court has considered the issue No.1 and 2, being intertwined, together and has held that the deceased was not a *bona fide* passenger because no ticket was found from the body upon search by the competent authority and also that it is not proved that he was victim of accidental fall rather it is proved that he was trying to board a moving train and due to that the accident had taken place which can be considered to be a self inflicting injury.

Learned counsel for the appellant has submitted that even in the absence of any ticket having been recovered from the dead body, the deceased cannot be branded as ticket-less passenger. The contradiction in the statements of driver and guard of the train in one recorded by the Police under Section 175 Cr.P.C. and that recorded before the Tribunal, gives a fatal blow to the stand of the railways that the deceased died while trying to board the train.

Per contra, learned counsel for the respondent has supported the judgment on the ground that there is no iota of evidence that the deceased was a *bona fide* passenger and the incident can be covered within the definition of Untoward Incidents as envisaged under Section 123(c)(2) of the Act.

However, upon careful consideration of the rival submissions, this Court finds force in the submissions made on behalf of the claimants for

It is true that, after filing affidavit, the claimant No.1 did not appear for cross-examination and in affidavits she has supporting the version of the claim application. However, the stand taken in the claim petition stands supported by the police records including the statement of the railway driver and the guard of the concerned train which has been recorded under section 175 Cr.P.C. The Tribunal has discarded the statement of Guard on the basis of his statement in cross-examination that his signature was taken by the GRP on a blank paper. In my considered opinion, this statement would not be acceptable at all as a government personnel is not supposed to sign any blank document. However, he has admitted that he had put his signature thereupon. In such a situation, it has to be taken that the statement was signed by him and the statement was given by him only. In the said statement, it has clearly stated that the deceased was trying to alight from the moving train and accident has occurred due to this reason. Even if it is assumed that he was trying to board the train and, in such process, he was hit and entangled with the moving train, that would also come into the meaning of the untoward incident under Section 123(c) of the Act. Hon'ble Supreme Court in **Union of India Vs. Parbhakaran Vijaya Kumar & Ors. 2008(4) PLJR 40** has held that in case of death of passenger in railway accident, compensation amount would have to be paid even if there was no fault on the part of the railways as Section 124 (A) incorporates principle of strict liability. It was a case in which a passenger was trying to board a moving train and fell down and died. The Apex Court has held that railway authorities were liable to pay compensation even if there was no fault on the part of the railway or even if assuming that there was contributory

such cases. It has been held if the situation arising out of a case under a beneficial or welfare statutes, are capable of two constructions, the one which is more in consonance with the object of the Act or for benefit of the person for whom the Act was made, should be preferred in place of the narrower meaning which may also be available. Thus, it is held, that even if it is assumed that the deceased was trying to board the train, the accident would be covered under the definition of untoward incident within the meaning Section 123 (c)(2), if, he is held to be a *bona fide* passenger.

Now coming to the next issue as to whether he was a *bona fide* passenger or not, it is admitted that no ticket was recovered from the dead body of the concerned passenger but whether that would be sufficient to hold that he was a ticketless passenger? The answer lies in the observation of the Hon'ble Apex Court in one of its landmark decisions rendered in **Union of India Vs. Rina devi 2018 (3) R.C.R.(Civil) 40**. The Apex Court in paragraph 17.4 of the aforesaid decision has held as under:

“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 present case, the question would be as to whether there is anything on record to show that an intensive search was made either by police or by the railway authorities to recover or find out the belongings of the deceased from the train or from the nearby area of the spot where his dead body was found? In fact, there is no such report of police and, from the impugned decision, it does not appear that any DRM inquiry was conducted with respect to the incident. In such a situation, it would be very difficult to hold that if a ticket is not found from the body of the deceased, he would have to be considered a ticket less passenger as it is not expected from a law abiding citizen that he will travel ticketless. In fact, there would be every possibility in such type of accident of losing the ticket.

In such a situation, since admittedly he was either trying to board or alight from the moving train and no such search has been made for finding out his belongings coupled with the fact that there is no DRM inquiry was also conducted, the law would have to tilt in favour of the claimant as the concerned statute is beneficial and welfare statute. Accordingly, it is held, in the attending facts and circumstances of the case, that the deceased would have to be taken as a *bona fide* passenger. Having held so, there would be no difficulty in holding that the impugned order suffers from several errors and is required to be quashed and set aside.

Ordered accordingly.

It is held that claimants, being widow and one son and one daughter, would be entitled to received statutory compensation amount in equal shares. At the time of accident, such statutory amount in terms of the

schedule attached to the Railway Accident and Untoward Incident (Compensation) Rules, 1990, would be Rs.4 Lacs. Accordingly, the claim-applicants would be entitled for the statutory amount of Rs.4 Lacs along with the interest @9% per annum to be calculated from the date of filing of claim application till the date of payment of the compensation amount. However, the parties will bear their own costs. It is expected that such amount would be paid by the respondent within a period of three months.

(DR. RAVI RANJAN)
JUDGE

03.04.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No