

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4902 of 2008 (O&M)

Date of Decision: 14.02.2019

Pardeep Kumar and others

.....Appellants

Vs.

Union of India

.....Respondent

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

Present:- Mr.B.S.Sudan, Advocate, for the appellants.

Mr.Yogesh Saini, Advocate, for Union of India.

DR. RAVI RANJAN, J. (Oral Judgment)

CM No.3728-C of 2019

This application has been filed on behalf of the appellants No.2 and 3 for discharge of their guardian and to allow them to proceed with the appeal accordingly.

It is contended that at the time of preferring the appeal, appellants No.2 and 3 were minors but they have now attained majority during the pendency of the appeal in the year 2010 and 2011 respectively.

I have heard the parties, respondents have no objection to aforesaid prayer. Accordingly, this application is allowed. The guardians of the appellants No.2 and 3 are discharged. They have already filed power of attorney. Let that be taken in record. The amended memo of parties is also taken on record.

FAO No.4902 of 2008

respondent-Railways.

This appeal has been preferred by the appellants-claimants/applicants assailing the Order/Judgment dated 09.11.2007 passed by the Railway Claims Tribunal, Chandigarh, by which the claim of the appellants/applicants has been rejected on the ground that it is not established that he was a *bona fide* passenger of the train and any untoward accident had taken place in terms of Section 123 © read with Section 124 A of the Railway Act, 1989 (herein after referred to as “the Act”).

Briefly stating, facts of the case are as under:

The applicant-Pradeep Kumar, along with two minor brothers Manjeet Kumar and Sandeep Kumar, all sons of the deceased Manohar Lall, filed claim application under Section 16 of Railway Claims Tribunal Act, 1987, claiming a sum of Rs.4,00,000/- by way of compensation on account of death of their father, Manohar Lall in a railway untoward incident on 13.06.2000. It is claimed that the deceased Manohar Lall had an accidental fall at Km.1502/15-17 between Faridabad New Town and Ballabhgarh from train No.NP4. He was stated to be travelling on 2nd Class ticket EFT No.G088975 from New Delhi to Ballabhgarh. The deceased Manohar Lall received fatal injuries and died on the spot.

The Railways denied any untoward incident having been there within the meaning of Section 123(c) read with Section 124 A of the Act. The factum of deceased being travelling in the said train was also denied. A stand was taken that the dead body was found on the down track whereas, the ticket produced for journey in was of the UP direction i.e. Faridabad to Ballabhgarh. It is stated that in fact it is a case of run over by the train for

cross the railway line unauthorizedly. It was further alleged that the AW2 Daya Chand was a procured witness because he only came to lead evidence after he saw a poster appealing any eye-witness to come and appear as a witness. It was contended before the Tribunal that, no body could be expected to remember anything which he saw over 6 months back. It is also stated that Guard of the train has asserted the fact that train No.4NP, which passed through up main line on the alleged date of accident, no body had fallen down or run over by the train.

At the time of argument, it was also urged that Train No.4NP reached Ballabhgarh Railway Station at 09:53 hours whereas, dead body was noticed at 11:45 hours on the down track i.e. after about two hours.

The Tribunal, after considering the copy of memo issued by the Assistant Station Master, Railway Station, Faridabad, which says that an unknown person was run over and killed at KM. No.1502/15-16 near 'C' cabin Ballabhgarh and his dead body was lying near down main line track, ousted the claims on the further ground that the Smt.Surender Wati (who died during the pendency of the claim petition) was examined as AW-1 but has not uttered a single word regarding the journey by the deceased, such as to when the deceased departed from residence to undertake a journey to Delhi or when he purchased the ticket etc. Thus, she has been disbelieved. AW-2 has been disbelieved on the ground that he is stranger and he had come to depose only after posting of hand bills at the Railway Station and other conspicuous places. The recovery of EFT has been also explained saying that, after completing the journey, deceased might have been trying to cross the train and may have been run over by some other train because the deceased was inhabitant of the nearby area.

On the aforesaid background of factual matrix, I have heard the parties and perused the records of the case.

Upon consideration of rival contention, this Court is of the view that the Tribunal has misdirected itself on diverse count in reaching to the aforesaid conclusions. In my opinion, assumption and presumptions cannot be allowed to become a tool to dislodge the claimants and oust them from deriving any benefit from the beneficial piece of legislation. The Tribunal failed to notice a vital discrepancy on the part of the Railways related to the said incident. The railways actually has not held any inquiry at all regarding the death of a human being i.e. the deceased in the present case in terms of Section 113 to section 122 of the Act which falls under chapter under 12 of the Railway Act, 1989. It lays down that the moment any accident is reported with loss of human life or grievous hurt then Station Master of the nearest Railway Station shall give notice of the accident to the District Magistrate and Superintendent of Police within whose jurisdiction accident occurs and thereafter inquiry has to be conducted by the Commissioner under Section 114 and when no inquiry is held by the Commissioner then, under Section 115 there must be an inquiry by the Railway Administration. How the inquiry is to be conducted stands engrafted in two statutory rules first is Statutory Investigation Into Railway Incidents Rules, 1998 and the second one is the Railway (Notice of and Inquiry into accident) Rules 1998. It stands envisaged under Rule 5 of the Railway (Notice of and Inquiries into the Accident) Rules 1998 that every Railway servant shall report, with as little delay as possible, every accident in course of working with the railway which may come to his notice, to the Station Master of the nearest Railway

Administration under Rule 7 to report everything to the press and, thereafter provisions are there for inquiry to be made the Railway Administration and others. Ordinarily DRM Inquiry is held in such cases when human life is lost. However, in the present case nothing has been done. Merely a report has been received by the Station Master that dead body is lying and some body appears to have been run over by a train then the information was given to the GRP to hold investigation. On part of the Railway, there is no inquiry at all as to how a person had died and why and in what manner such accident took place. Without holding such inquiry, an adversarial stand has been taken by the Railway before the Tribunal disbelieving the Excess Fare Ticket, disbelieving the deposition of AW1 and AW2 and depicting a picture that in fact dead body was found near the DOWN railway track, therefore, there is no question of falling down of the deceased from the train which was moving on UP track and the worst part is that everything has been believed by the Tribunal and the claimants have been ousted.

At the time of hearing, learned counsel for the Railways has accepted that Excess Fare Ticket can only be procured by a person while he was travelling in a particular train. Thus, it is established that that the deceased was travelling on the NP4 train. However, a peculiar stand has been taken by the Tribunal that he might have got down from the train and then he may have tried to cross the railway line and then he might have been run over by the train completely overlooking another important fact that the injuries found in the post-mortem report suggest death due to fall from a train as, in case of a person having been run over by the train, his body would either be cut to pieces due to impact of the train and would have been

has a fall from a moving train then his body, under the impact of blowing wind and speed of the train may conserve such quantum of kinetic energy that the body may be thrown away near the DOWN track. The possibility of the aforesaid is there but, in facts and circumstances of the case, there is no material showing any possibility of the person having come under the impact of a running train. That apart, it is nowhere stated that any Engine Driver or Guard had informed the Station Master that a person has been run over by a particular train which was being driven by said engine driver. In ordinary circumstance, if a person comes under the impact of a running train or run over by a running train then this fact would be known to railway engine driver and it would be their bounden duty to inform the Station Master of the nearest railway station regarding such incident. In my opinion, the evidence led by AW2 Daya Chand should also not have been discarded in such a manner. Of Course he appeared to depose only after hand bills were posted in the railway station and other conspicuous places but the purpose of the hand bill was also only that. If, after perusal of such hand bill, some body comes out to lead evidence, he cannot be discarded on the ground that, since he came after 6 months, he might not be remembering the things correctly. His stand could have been demolished during cross-examination but that could not be done by the Railways. Thus, it appears from the aforesaid discussion that after filing the affidavit regarding the untoward incident and leading evidence by AW-2 and the fact that the Excess Fare Ticket was also recovered from the dead body of the deceased which shows that the person concerned was travelling in the train, coupled with the nature of injuries which have been found in the postmortem report, in my considered opinion,

Thereafter, the burden would shift upon the railways to prove it otherwise which they have miserably failed to do because there is no inquiry at all on their part regarding the incident what to say about DRM inquiry. A reference in this regard made to a decision of Hon'ble Apex Court rendered in **Union of India Vs. Rina devi 2018 (3) R.C.R.(Civil) 40**. In the present case, simply taking adversarial stand would not be enough and if any person had informed to the station master that the deceased was run over by a train then particulars of that train along with its timing etc. was required to be given and such person was required to be examined as a witnesses before the Tribunal. But but none of the aforesaid steps could be taken by Railway. In fact, there is no evidence at all that the deceased was run over by a particular train. Everything is created under some assumption and such assumptions and presumptions have unfortunately been accepted and approved by the Tribunal without any evidence on record.

Accordingly, I would have no hesitation in holding that the accident has to be taken as untoward incident within the meaning of section 123 (c) and claimants would be entitled for compensation as per provisions contained under Section 124A. As a consequence, the claimants are entitled for the statutory compensation amount as per the schedule attached with the Railway Accident and Untoward Incidents (Compensation) Rules 1990. Since the accident has taken place in the 2000, the appellants would be entitled compensation amount of Rs. 4 Lacs. However, in the peculiar facts and circumstances of the case, appellants would be entitled for simple interest @ 9% per annum on the aforesaid amount to be calculated from filing of claim application till the final claim.

assessed at Rs.50,000/-

14.02.2019
anil

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No