

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1338 of 2012

Date of Decision: 24.05.2019

Sheela Kaur

.....Appellant

Vs.

Union of India

.....Respondent

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

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

Mr.Sanyam Malhotra, Advocate, for the respondent.

DR. RAVI RANJAN, J. (Oral Judgment)

This appeal is directed against the decision dated 17.11.2011 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh in case No.OA-II/121/2010 by virtue of which the claim application filed by the claimant under Section 16 of the Railway Claims Tribunal Act, 1987 has been dismissed.

The case of the claimant is that applicant-Sheela Kaur mother of the deceased was working as House-Help at Mumbai. She was returning from Mumbai and was going to Udham Singh Nagar of Uttarakhand to which she belonged. She reached Delhi along with her children (one of which since deceased). She was to board another train for reaching the destination but inadvertently she boarded a different train as it was dark night due to which she could not identify the correct train and reached Dhuri Railway Station. She alighted from the train, however, since she was not having any money for the return journey, she reached Ram Bagh Committee, Dhuri, where she was provided some food and with the help of members of the Committee she

Thereafter, she boarded train along with her children but when the train reached at Achal Railway Station, she accidentally fell down along with her two children and got seriously injured. It is further case of the claimant that two villagers, v.i.z., Harnek Singh and Dalwara Singh put the injured persons in another train No.4711 UP and handed over them to RPF at Dhuri Railway Station. The RPF got them admitted in Civil Hospital. The daughter of the claimant-appellant succumbed to her injury but doctors could save the applicant and her son. The GRP reached there and prepared inquest report. The claimant-appellant has further stated that she lost both the tickets at the time of accident. The members of Ram Bagh Committee called the relatives of the applicants and thereafter, last rites of the deceased was performed at Dhuri.

The respondent railways contested the case by filing written statement taking a stand that alleged accidental fall of the appellant along with her children would not come within the ambit and meaning of “untoward incident” as envisaged under Section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as “an Act”) and as such, the claimant would not be entitled to receive compensation in terms of the provisions contained under Section 124(A) of the act as the injuries would have to be categorized as self inflicting one due to her own negligence as also that the deceased was not a *bonafide* passenger.

The Tribunal, on consideration of rival pleadings, framed the following issues:

- (1) Whether the deceased was a *bonafide* passenger, as alleged?
- (2) Whether the alleged incident is covered within the ambit of Section 123(c) of the Railway Act.

(3) Whether the applicant is the only dependent of the deceased?

(4) Relief?

In order to prove her case, the applicant-Sheela Kaur examined herself as AW-1 and was cross-examined by the railways. She also brought on record death report prepared by the GRP, *fard jamatalashi* recovering nothing from the deceased, the statement of RPF constable Amritpal Singh recorded by the GRP, Postmortem Report, a certificate issued by the Gram Panchayat Barhaini showing four children of the claimant and other documents as Ex.A-1 to Ex.A-6.

The respondent railways did not examine any witness but it brought on record the DRM report to substantiate the case of the Railway that the deceased was not a *bonafide* passenger and railway administration was not responsible for the accident. The issues No.1 and 2 being intertwined were taken together for consideration by the Tribunal. The Tribunal has held that, in the absence of any ticket having been found during the *Jamatalashi* coupled with the fact that the story of the applicant that she came from Mumbai to Delhi and thereafter took a wrong train and reached Dhuri Station where she was provided tickets by members of the Ram Bagh Committee as she was not having any money and then having boarded a train and from which she fell down and alongwith her children and got seriously injured, appears to be incredible and unbelievable. The Tribunal has questioned the credibility of such story on the ground that a person who was earning at Mumbai and was returning back to her village home, it would be surprising if she was not having any money. That apart, it has also been noticed by the Tribunal that actually there is no Achal Railway Station,

opined by the Tribunal that even if it is assumed that she boarded a wrong train, there were many stations in between New Delhi up to Dhuri where she could have de-boarded but there is no answer why she could not de-board to any other station. Apart from the above, absence of any station memo issued by the Station Master or other document involving Station Authority, it would be difficult to hold that the alleged accident would be covered within the definition of untoward incident. The applicant had stated that train No.4711 was stopped and the deceased and applicant were taken in the train but the Driver and Guard of that train has denied this by stating that the train did not stop anywhere between Chintawala and Nabha. On the basis of above, claimant was non-suited by the Tribunal.

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

Learned counsel for the appellant has submitted before this Court that it is apparent from DRM report itself that the story of accidental fall from the train is accepted. It is also submitted that the same is also apparent from the pleading of the railways in paragraph No.1 of the written statement which is extracted and quoted as under:

1. *That the alleged incident does not fall under the provisions of section 123A IPC read with Section 124-A of the Railway Act and as such, the present claim application is not maintainable and is liable to be dismissed. Moreover, the alleged deceased fell down from that train due to his own negligence and amount to self inflicted injury and also mentioned in the proviso of Section 124A & B of the Act.*

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Per contra, learned counsel for the respondent has supported the impugned decision on the ground of absence of any ticket found in the *fard Jamatalashi* and even the injured-claimant could not produce the ticket and further that the Driver and Guard has stated that their train did not stop at the place of accident and also the story indicates that accident was result of negligence and would come within the ambit of “self inflicted injury”.

However, having given anxious consideration to the rival submission, this Court finds force in the submission made on behalf of appellant for the following reasons :

The claimant has brought on record the identity card issued by Maharashtra Rajya Mulkarni Sangh to show that she was working as House-Help as Mumbai. It is also a fact that she boarded a train and got down at Dhuri Railway Station. She has further stated that this journey was taken by mistakenly by her as she had to go to Uttarakhand but she boarded a train towards Dhuri. She has stated that she did not have any money for a return journey therefrom as such she approached Ram Bagh Committee where she was provided with food and help in purchasing ticket. The Tribunal has questioned and disbelieved the aforesaid statements chiefly on two grounds. First is since she was returning to her village home from the place of work, she must have saved some money, therefore, it is unbelievable that she would not be having any money with her completely forgetting that she has stated categorically that as House-Help she was merely getting Rs.800/- per month as salary. Now it is intriguing as to how the Tribunal could have taken this as a ground to non-suit the poor person on the ground she was making a false statement even though she was earning only a meagre

so meagre that there would not be any possibility to save much out of that.

Secondly, it is noticed by the Tribunal that there is contradiction in her stand before the GRP and before the Tribunal as at one place she has stated that committee members purchased the ticket for her whereas at the other place she has stated that they provided money and she purchased the ticket. The question would be, whether this minor discrepancy would be enough to dislodge the claimant? The answer has to be in negative. This is well settled that proceedings under the beneficial piece of legislation are summary in nature and are in nature of inquiry and as such, the claimant cannot be put to such a strict proof of that which would be required in criminal trial where the prosecution would be required to prove the case beyond all the reasonable doubt.

It has further been the stand of the railway that the train No.4711 UP did not stop at the place of accident as informed by the Engine Driver and the Guard but at the same time it is stated in the DRM report itself that the statements of two villagers were recorded during inquiry and who have categorically stated that deceased fell down near village Achal from the train and thereafter, they stopped the train No.4711 UP and took the injured to railway station Dhuri where they handed them admitted at the Civil Hospital. If the train was not stopped and it is also admitted fact that the deceased alongwith her children fell down at near Achal Village and the two villagers found them and brought them to Dhuri then there is no explanation available as to how they reached Dhuri. There is no inquiry in that regard. It is admitted fact that they fell down at Achal railway station and both the villagers took them to railway station Dhuri and handed over to

irrelevant in the matter because other things are almost admitted by the both the sides.

The Next question raised in this case is that no ticket could be recovered from the *Jamatalashi* of the deceased. However, one should not forget that the deceased was merely a 10 years old child and it cannot be assumed or believed that her ticket was handed over to her by her mother in place of keeping with it herself. *Jamatalashi* is always done of the dead body and not of the injured therefore, the injured-appellant was never searched for ticket. However, at the same time it was her duty to produce the ticket either before the police or before the Tribunal but she has categorically stated that she lost everything her bag-baggage etc. along with the ticket at the time of accident. It is not the case either of the GRP or the Railway Authority that after coming to the knowledge of accident, any extensive search was made by any of the aforesaid authorities to find out or recover the belongings of the injured persons. In the absence of that, it cannot be denied that there would always be a possibility of losing the tickets at the time of accident when the applicant says in her claim-petition that she became unconscious and and re-gained consciousness only at the hospital. Therefore, she cannot say as to what had happened in between. In such a situation, in view of the attending circumstances, coupled with the fact that no such search was made either by Railway or by the GRP Authority as discussed above, in my considered view, the claimants cannot be non-suited. A reference in this regard is made to a decision of Apex court in **Union of India Vs. Rina devi 2018 (3) R.C.R.(Civil) 40**, in which the Hon'ble Supreme Court has opined in a clear terms that merely finding a

conclusive proof that such person was *bonafide* passenger but at the same time, not finding a ticket either with the injured or dead body of the deceased would also not be a conclusive proof of fact that the said injured or the dead person was a ticketless passenger. The matter has to be decided by the Courts on the basis of the attending circumstances. In my considered view, the attending circumstances, as discussed hereinabove, are of the nature that it has to be believed that the claimant along with her children were *bonafide* passengers and they met with an accident which would definitely come within the ambit of “untoward incident” in terms of the provisions contained under Section 123(c) (2) of the Act. As a sequel to the aforesaid discussion, it has also to be held that the claimant would be entitled for statutory compensation in terms of Section 124(A) of the Act being *bonafide* passenger.

Now this will lead this Court to another question as to what should be the just and proper compensation to be paid in this case. Ordinarily, the compensation amount which would be available on the date of accident as per schedule attached with the Railway Accidents and Untoward Incident (Compensation) Rules, 1990, would have to be allowed which would be a sum of Rs.4 Lacs in the present case. However, learned counsel for the appellant has submitted that the Apex Court in **Rina Devi (Supra)**, has observed that in case the amount admissible on the date of accident added with reasonable interest is lower than the amount which would be available on the date of Award by the Tribunal after amendment in the schedule brought and made effective w.e.f. 01.01.2017 then the higher of the two amounts should be awarded to the claimant as such proceedings is

In the present case, there is no Award of the Tribunal rather the Tribunal has dismissed the claim case. The compensation amount is being awarded in favour of the claimant appellant by the present decision of this Court. Thus, in my view the date of passing of the present decision would be relevant in such a situation. Admittedly the concerned schedule has been amended w.e.f. 01.01.2017 by which the compensation amount has been raised to Rs.8 Lacs. Since the amount available on the date of accident, i.e.,Rs.4 Lacs, even if added with interest @ 9% per annum, the sum total would be less than the compensation amount available after amendment, the higher of the two, i.e., Rs.8 Lacs would be payable to the claimant/appellant. Such amount would also carry interest @ 9% per annum to be calculated from the date of this decision till the date of payment of the same in favour of claimants.

In the result, this appeal is allowed. The impugned judgment of the Tribunal is quashed and set aside save and except the findings recorded with respect to issue No.3 holding that the appellant being mother would be entitled to receive compensation.

The appeal stands allowed with costs which is assessed at Rs.5,000/-

(DR. RAVI RANJAN)
JUDGE

24.05.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No