

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

FAO No.1339 of 2012 (O&M)

Date of Decision: 30.01.2019

Barkhi Marandi 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.G.S.Bajwa, Advocate, for the respondent/Union of India.

DR. RAVI RANJAN, J.

I have heard learned counsel for the appellant and respondent.

The judgement and Award dated 25.11.2011 passed in case No.OA-II 84/2010 by the Railway Claims Tribunal, Chandigarh Bench, is under challenge in this appeal by which, though it has been held by the Tribunal that the deceased died in untoward incidents as per Railway Accident and Untoward Incident (Compensation) Rules, 1999 (herein after referred to as “the Act”), however, it has been further held that he cannot be treated as *bona fide* passenger and as such, he would not be entitled for any compensation amount.

Short facts which would be necessary for consideration of *lis* stand enumerated as under:

A claim application was filed by the claimants claiming that the deceased Shikar Murmu died in an untoward incident as he fell from the train and as a result of which he received fatal injuries and died and as

such, the claimants were entitled for statutory compensation provided in terms of Section 124(A) of the Railway Act read with provisions contained in the Act. It is stated in the application that the deceased informed his family member that he was going in search of work to earn livelihood and on the same day i.e. on 06.12.2009 at about 21:31 hours he, after purchasing a second class ticket for a journey to Kalka, boarded the train. However, it appears that since the journey was too long i.e. from Asansol to Kalka, and further, as he has to change train from Ambala Cantt. but he slept on his seat and when the train reached Ambala Cantt, he could not change the train and continued his journey. When the train reached at Km No.342/11-13 near Chawapayal railway station, the deceased accidentally fell down from the train and received fatal injuries. On information given by a passerby, the Station Master concerned issued a memo to the GRP, Chawapayal and, thereafter, GRP reached on the spot, however, the injured was already admitted in Civil Hospital, Khanna by Police where he succumbed to the fatal injuries. It is also claimed that the GRP personnel, on *jamatalashi*, recovered a railway ticket, one slip containing phone numbers and one voter card. The applicants were informed and they reached the Civil Hospital, Khanna and identified the body. The respondent-railway has contested the claim petition by filing the written statement questioning the claim that the deceased had died due to any negligence on the part of the railway or it can be termed as any Untoward incident in view of the Section 121 and 123(c) of the Act. It stands further stated in the written statement that deceased was not *bona fide* passenger.

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

- (1) Whether the deceased was *bona fide* passenger, as alleged?
- (2) Whether the alleged incident is covered within the ambit of Section 123(c) read with Section 124-A of the Railway Act?
- (3) Whether the applicants are the only dependents of the deceased?
- (4) Relief.

It is noticed that applicants have brought on record several documents also including the death certificate, inquest report, postmortem report etc. and also the statement of Constable Tejinder Singh recorded by the GRP, copy of railway station memo issued by Assistant Station Master, Chawa Payal to GRP as well as the post-mortem report of deceased and voter identity card and a copy of railway ticket. The railways submitted the DRM inquiry report along with certain documents.

The Tribunal, though has held that the deceased was having a railway ticket which was recovered in the *jamatalashi*, but the ticket was from Asansol to Kalka whereas his body has been found on different route towards Ludhiana, therefore, he cannot be claimed to be a *bona fide* passenger as he was not having a ticket for that route. At the same time it has categorically been held that it is borne out from the materials available on record that the deceased died in an accident which is squarely covered within the parameters of the untoward incident as defined under

Section 123(C) of the Act. However, in view of the fact that the Tribunal

has already held that the deceased was not a *bona fide* passenger, it came to the conclusion that claimants would not be entitled for any statutory compensation and has dismissed the claim petition.

Learned counsel appearing for the appellants has vehemently argued that the Tribunal has committed serious error in not considering the actual case of the claimants that due to some reason, as deceased might have slept at relevant point of time, he could not de-board the train and continued his journey in the same train and thereafter, his body was recovered. Thus, in the background of the aforesaid facts and circumstance, no prudent man can come to a conclusion that he did not die in an untoward incident and as such, that has been held also by the Tribunal. Even if he continued a journey in the same train there could be no explanation other than that due to same reason he forgot to get down the train and continued his journey in the same train in place of changing the train for Kalka. Since, he was having valid ticket he could not be held that he was not a *bona fide* passenger.

On the other hand, learned counsel appearing for the respondent-Railways has submitted that he was not having a ticket of the Ludhiana line.

On consideration of rival contention this Court finds force in the submission raised on behalf of the appellant for the following reasons:-

It is admitted position that the deceased was having a valid ticket from Asansol to Kalka. At Ambala Cantt. junction he was required to change the train and board a train for Kalka but the fact is that he continued his journey in the same train. The explanation of that given by

the claimant that he might have slept and forgot to get down, has to be accepted as there can be no reason for continuing in the same train towards Ludhiana. It is also admitted position even in DRM report that it was railway accident. Once the claimants discharged their onus by filing affidavit and leading evidence regarding the aforesaid fact, the onus would shift upon the railways to demonstrate as to what could be other reason for continuing in the same train and what may be the reason of the accident. The Railway could not come up any explanation or any evidence to rebut the aforesaid claim. In fact, it is admitted case that it was railway accident. In such situation, it is a plausible explanation that the deceased continued to board the train inadvertently and by mistake because there can be no other explanation for that. In such a situation, since the finding is already there by the Tribunal that accident was an untoward incidents in view of Section 123(c), in my considered opinion, claimants cannot be ousted on the ground that deceased was not a *bona fide* passenger despite the fact that he was holding a valid ticket from Asansol to Kalka. A reference is made in this regard to a decision of the Hon'ble Supreme Court rendered in **Union of India Vs. Rina devi 2018 (3) R.C.R.(Civil) 40**. The Apex Court has held that merely the fact that the deceased was having a ticket or not having a ticket would not be enough either to accept the claim or oust the claimants. Every thing would depend upon the situation and the attending circumstances. In the present case, In my considered opinion, there cannot any other explanation save and except what has been given by the claimant as to why a person who was going from Asansol to Kalka will not change the

train at Ambala and continue his journey towards Ludhiana.

Accordingly, I hold that the deceased has to be considered within the parameters of the definition of *bona fide* passenger and the claimants would be entitled for the statutory compensation as provided under the Schedule of Railway Accident and Untoward Incident (Compensation) Rules, 1990 which is a lump sum amount of Rs. 4 lacs. The claimants would also be entitled for interest @ 9% per annum from the date of filing of the claim application till the date of realization of the compensation amount.

In the result, the appeal is allowed. However, parties would bear their own costs.

(DR. RAVI RANJAN)
JUDGE

30.01.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No