

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

FAO No.2208 of 2012(O&M)

Date of Decision: 20.08.2019

Rakesh Kumar 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.Sandeep Suri, Advocate for the
respondent-Union of India.

DR. RAVI RANJAN, J.(Oral Judgment)

The applicants-appellants (applicants in the claim application) have preferred this appeal assailing the Judgment dated 13.01.2012 passed in Case No. OA-II 182/2010 by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh(hereinafter referred to as 'the Tribunal), by which their claim application under Section 16 of the Railway Claims Tribunal Act, 1987 has been dismissed by the Tribunal.

Short facts necessary for consideration of the *lis* stand enumerated as under:-

The claim-applicants filed a petition under the under Section 16 of the Railway Claims Tribunal Act, 1987 seeking compensation of Rs.6,00,000/- (Rs.Six Lacs only) along with interest @15% per annum as compensation amount from the Railway Authorities on account of death of one Somnath @ Somparkash in a 'Railway Untoward Incident'. The applicants claimed

themselves to be the sons of the deceased-Somnath @ Somparkash.

It is stated in the claim application that the deceased-Somnath @ Somparkash, who was a resident of village Mandhaur in Ambala District, had gone to meet his daughter in village Jhanjheri. On return journey after meeting his daughter, the deceased reached at Jagadhri Railway Station and purchased a ticket from Jagadhri to Ambala Cantt Railway Station. He boarded the train. When the train reached at KM No.228/7-9 near Mustafabad Railway Station, he had an accidental fall from the concerned train causing immediate death. The SM/JUD gave information to the Station Master, Jagadhri that one man has fallen down from Train No.2053-Up, whereupon, he issued memo to the GRP, Jagadhri. Thereafter, the GRP personnel reached at the spot and prepared the inquest. It is claimed that the GRP had recovered Rs.110 as cash, one wrist watch, one health card and a voter identity card on search of body of the deceased but the journey ticket and one bag of the deceased, which was lost in the incident, could not be found out. The GRP contacted the persons on the address written on the card. The claimants-applicants then reached at the spot and identified the dead body. It is also averred in the claim application that the deceased has four daughters and three sons, however, parents and wife of the deceased have already pre-deceased him.

The respondent-Railways contested the claim application by filing written statement taking preliminary objections that the alleged incident is not covered under the ambit of an 'Untoward Railway Incident' as defined in Section 123(c) of the Railway Act, 1989 (hereinafter referred as to 'the Act'). The stand of the Railway in the written statement was that the injuries received by the deceased were either self-inflicted or on account of his own negligence and, as such, he would not be entitled for any compensation also for the reason that any

railway ticket not having been recovered from the dead body, the deceased cannot be held to be a *bona fide* passenger.

The Tribunal, on appreciation of rival pleadings, framed following issues:-

- “1. Whether the deceased was a bona fide passenger?
2. Whether the alleged incident in which deceased died is covered within ambit of Section 123(c) (2) of the Act?
3. Whether the applicants are the only dependents of the deceased?
4. Relief.”

The Tribunal, while considering issue Nos. 1 & 2 together being intertwined, has come to the conclusion that the deceased was not a *bona fide* passenger as he had boarded a train which was fully reserved not having any general compartment. Thus, he was not entitled to travel on unreserved general class ticket. It has also been noticed that Pardeep Kumar, TTE, who has been examined as RW-4, has clearly stated that on 23.06.2010, he had gone to Haridwar on duty on the train No.2054 and came back on train No.2053. On that day, no Excess Fare Ticket (EFT) was issued from Jagadhri to Ambala by him. Since the concerned train was fully reserved, if any unreserved passenger boards on said train, then EFT would have to be issued. The deceased was not having any reservation, thus, it has to be understood that he had only purchased a general class ticket without any reservation and no EFT having been issued by the TTE (RW-4), it has to be held that he was not a *bona fide* passenger. It has further been held that since he was not a bona fide passenger, the incident would not be covered under Section 123 (c) of the Act, as the same cannot be held to be an 'Untoward Railway Incident' and, as such, the claim-applicants would not be entitled for any compensation under Section 124-A of the Act.

While deciding the issue No.3, it has been held that since the

daughters are also covered under the definition of the dependent under Section 123(b) of the Act, the applicants cannot be held to be the only dependents of the deceased.

In the background of the factual matrix discussed hereinabove, this Court has heard both the parties and have perused the records of this case.

There are certain facts which are admitted. For example, the deceased was travelling on train No.2053-Up and he had an accidental fall from the train near Mustafabad Railway Station, and as such, information was given by the SM/JUD to the Station Master, Jagadhri, who had issued memo to the GRP which had recovered the dead body and prepared the inquest. This is also admitted fact that no ticket could be found out from the search of dead body of the deceased.

Rakesh Kumar, Deputy Chief Inspector of Tickets, who has been examined as RW-3, has stated that, on 23.06.2010, he was on duty in train No.2053-Up from Haridwar to Amritsar. The said train was a reserved one having no general compartment. On that day, no ticket was issued in the name of Somnath @ Somparkash on that route. RW-4, Pardeep Kumar, TTE, who was on duty on the train on the fateful day, has also stated in his evidence that no Excess Fare Ticket(EFT) was issued in favour of the deceased on the concerned route.

Now, in the aforesaid background of the matter, the issue to be decided would be, as to whether, under such circumstances, the deceased can be held to be a *bona fide* passenger?

So far not finding ticket during search of the dead body is concerned, that cannot be a conclusive proof of the fact that the deceased was a ticket-less passenger because in such type of accidents as there would always

be a possibility of losing ticket. It has been claimed by the claim-applicants that the bag being carried by the deceased containing the ticket was lost. There is no evidence on record to show that either the GRP or the Railway Authorities had made an extensive search on the spot or of the nearby area for the purpose of recovery of the belongings of the deceased. In the absence of that, it cannot be held on that count that the deceased was definitely a ticket-less passenger.

In this regard, I am tempted to quote a passage from the decision of the Hon'ble Apex Court rendered in '**Union of India Vs. Rina Devi 2018 (3) R.C.R.(Civil) 40**' as under:-

xxxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

“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.”

It is apparent from the above that merely not finding a ticket from the dead body would not be sufficient to prove that the deceased was a ticket-less passenger.

Now, the second question would be as to whether a person having unreserved ticket (General Class Ticket) could have boarded the train concerned? The Answer lies in Section 138(2) of the Act, which is quoted as under:-

“(a) travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased

a ticket; or

(b) travels in or on a carriage beyond the place authorized by his pass or ticket.

he shall be liable to pay, on the demand of any railway servant authorized in this behalf, any difference between the fare paid by him and the fare payable in respect of the journey he has made and the excess charge referred to in sub-section(3)”

Assuming that the deceased was having a ticket of second class compartment (unreserved category) but he was travelling in the first class compartment (reserved category) then in view of the provisions contained in Section 138 (2) of the Act, he would be liable to pay on demand of any railway servant, only the difference between fare paid by him and the fare payable in respect of the journey, he has made.

A reference in this regard is made to a decision of Patna High Court rendered in '**The Union of India, through the General Manager, East Central Railway, Hazipur Vs. Rani Devi and others**', 2016(4) PLSR 177, wherein in the aforesaid circumstances, it has been held that on that basis that the person was not travelling in the class for which he was having the ticket, it cannot be construed that in such a situation, claimants would not be entitled for compensation as excess fare amount could have easily been recovered by the railway authorities. Similar view has been taken by a Ld. Single Judge of this Court in '**Roji Jaggi and another Vs. Union of India**' passed in FAO No.1399 of 2012, decided on 27.07.2016.

Though it has been categorically stated by RW-3 Rakesh Kumar and RW-4 Pardeep Kumar, being the Deputy Chief Inspector of Tickets and TTE respectively that no Excess Fare Ticket(EFT) was issued from Jagadhri to Ambala by them, it would not be the end of the matter. Admittedly, they never met the deceased in the train. They could only have issued Extra Fare Ticket

(EFT) when they could have found the deceased not having proper ticket and travelling in the reserved compartment. However, in the present case, admittedly there was no meeting between them and the deceased and it is also proven fact that the deceased was travelling in the train. In such a situation, it has to be construed that even if the deceased was not having a proper ticket, the balance amount could have been recovered by the aforesaid railway authorities had they met the deceased in the train. Thus, on such circumstance that they did not issue the EFT, it cannot be held that the deceased was a ticket-less passenger and, therefore, the claim-applicants would not be entitled for the compensation amount.

A Division Bench of Patna High Court in '**Smt. Kaushalaya Devi and Others Vs. Union of India through General Manager, North Eastern Railway, 2008 (3) PLJR 711**' has held that in view of the provisions contained in Railways Act providing prosecution of persons entering Railway Station without valid journey/platform ticket, as nobody is entitled within the precinct of railway station without having a valid ticket and the fact that the concerned person was in the precinct of railway station, the logical presumption would be that he had a valid ticket.

Accordingly, in view of the aforesaid discussion, it has to be held that the deceased was a *bona fide* passenger. Once it is held, it has further been held in catena of decision by this Court and even the Hon'ble Apex Court that deceased passenger, either alighting from the train or trying to board a moving train, if any accident occurs at that point of time then both would come under the purview of an 'Untoward Railway Incident' as defined in Section 123 (c) of the Act.

In the result, this appeal has to succeed. However, another question would be as to what would be the just and proper compensation amount. Ordinarily, the amount which would have been available as per the schedule attached with the *Railway Accident and Untoward Incidents (Compensation) Rules, 1990* effective from the date of the accident would be such amount. However, the Hon'ble Apex Court in **Rina Devi(supra)** has held that if on the date of Award, there has been amendment in the aforesaid provision enhancing the compensation amount and if the amount under the earlier provision alongwith interest would be lesser than the enhanced amount on the date of Award, then the higher of the two would be the just and proper compensation. However, in the case in hand, the Tribunal has rejected the claim application of the applicants-claimants, therefore, there is no Award pronounced by the Tribunal but their claim is being allowed by the present order of this Court and the compensation amount is being granted to them. Thus, I am of the opinion that the date of present order would be relevant. As such, in my view, the higher amount which would be available on the date of the present order would be just and proper compensation amount. The date of accident being 23.06.2010, even if earlier payable compensation amount of Rs.4,00,000/- is added with 9% per annum of simple interest, that would be much less than the enhanced amount of Rs.8,00,000/- which has been made effective from 01.01.2017.

Under the aforesaid circumstance, in my considered view, the claimants-appellants would be entitled for the enhanced amount of Rs.8,00,000/- as compensation alongwith interest @ 9% per annum to be calculated from the date of passing of the present order till the date of its realization. However, so far the finding recorded by the Tribunal with respect to issue No.3 is concerned, that is not required to interfere as according to Section

123(b) of the Act, the daughters are also to be considered as dependents and, as such, they would also be entitled for their share in the compensation amount. Accordingly, the Tribunal would have to distribute aforesaid amount in equal shares in favour of all the sons and daughters of the deceased on their proper verification and identification.

In the result, this appeal stands allowed to the extent as indicated above and the impugned decision of the Tribunal, save and except the finding recorded with respect to issue No.3, is quashed and set aside.

However, the parties will bear their own costs.

**(DR. RAVI RANJAN)
JUDGE**

20.08.2019
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No