

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

FAO NO.2943 of 2013

Date of Decision: 11.02.2019

Anglesh Kumari and another

....Appellants

Versus

Union of India through the General Manager, Northern Railway, Baroda
House, New Delhi

...Respondents

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

Present: Mr.Somesh Gupta, Advocate for the appellants.
 Mr.R.S.Mamli, Advocate for the respondent-UOI.

DR.RAVI RANJAN, J.(ORAL)

I have heard learned counsel for the appellant as well as the respondents and have perused the records of this case.

1. This appeal is directed against the decision dated 03.05.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh i.e. by which the claim appeal filed by the claimant-appellant has been dismissed.

2. The appellants-applicants, i.e., the widow and the son of deceased Kushpal, filed the claim application under section 16 of the Railway Claim Tribunal Act, 1987 on account of the death of the aforesaid Kushalpal in a railway untoward incident on 18.5.2011.

3. The case of the claimants/applicants is that the deceased, who was working as a property advisor, use to visit different stations in connection with the sale and purchase of property. On 18.05.2011, he went

to Tandwal from his home by train to do his official work in the morning and after completing his work, he was returning back to Jagadhri from Tandwal. He had purchased a ticket bearing No.47182. It is further averred in the claim application that there was huge rush in train and when the train reached at KM No.233/2-3, due to jerk, he has accidentally fell down from the running train and died on the spot. Some passengers gave message to the Station Master, Jagadhri who has issued memo to GRP/Jagadhri. On this issue there is difference between the version of the claimant and the Railways as the case of the respondent- Railways is that the information was given by the Key Man Heera Lal. Thereafter, GRP persons reached at the place of occurrence and prepared the reports, Jama Talashi was done in which ticket was found. Subsequently the dead body was identified. In fact GRP/Jagadhri recovered two railway tickets from the purse and Rs.50/- cash amount from the deceased.

4. The respondent-Railways contested the claim by filing written statement taking a stand that deceased was neither a *bonafide* passenger of any train nor was he a victim of the untoward incident as contemplated under Section 123(c)(2) read with Section 124-A of the Railway Act, 1989 (hereinafter referred to as the 'Act' for the sake of brevity). It is also noted in the judgment passed by the Tribunal that the case of the Railway is that the train ticket is planted one, as two tickets were recovered on search of the dead body. It is further stated that it would not be possible that a person falls down from a running train and his body would be recovered at a distance 10

feet away from the railway track and one of his hands would be between on the track itself.

5. The Tribunal has non-suited the claimants on the two grounds. First is, on falling down from the train, a limb cannot be severed from the body and the body will not be thrown at a distance of about 10 feet whereas the severed limb remains between the track itself. Secondly, it has accepted the claim of the Railways that tickets appears to be planted one.

6. In the aforesaid background of factual matrix, I have heard parties and have perused the records of this case. Learned counsel for the railways had forcefully supported the impugned decision on the ground mentioned above whereas it has been urged on behalf of the appellant that the Tribunal has erred in not considering the fact that railway ticket was found from the dead body and there cannot be any explanation of finding the dead body besides the railway track other than that the deceased was victim of an untoward railway incident.

7. Though *prima facie*, such limb of argument advanced on behalf of the railways supporting the dismissal of claim application on aforesaid two grounds appears to be attractive but on deeper scrutiny, in my considered opinion that they may not be the clinching the issue in their favour. It is apparent from the record that two tickets were recovered from the body of the deceased. One was from Thana Bhawan Town to Delhi and second is from Tandwal to Jagadhri on the date of the accident. It is the case of the claimants that deceased used to travel frequently in connection with

the purchase and sale of property etc. Therefore, there may be a possibility that the old ticket was thrown away by him. To accept the case of the Railways that the ticket was implanted one, a specific case would have to be made out by it that some fraud has been played in connivance with somebody. Even in accordance with the stand of Railways, the body was first found by the Key Man, Hira Lal who informed the Station Master and Station Master issued memo to GRP and then GRP came and recovered the tickets from the dead body. Thus, it can be safely presumed that the claimants did not have any access over the dead body till the time when *Jama Talashi* was done by the Police. Thus, if the stand of the Railways is taken to be correct then either the ticket was implanted by some Railway personnel or by the police itself, but none of the above has been pleaded by the Railways in its written statement. What is being urged before this Court at the time of hearing is beyond the pleading and beyond the evidence which has been led before the Tribunal. In such a situation, this Court is totally amazed that such type of stand is being taken by the learned counsel for the Railways which cannot be accepted at all.

Once having held so, since a ticket from Tandwal to Jagadhri was recovered from the dead body of the deceased it has to be understood that he was travelling on the train because there is no explanation at all by the Railways to counter this pleading of the claimants save and except in form of general denial without any reason or evidence. Otherwise also, had it been a case that he was run over by a train, in that situation, it was bounden duty of the engine driver as well as the guard of the concerned train

to immediately inform the Railways regarding such incidents having taken place by their train in which a human life was lost so that any action could have been taken immediately under Section 113 of the Act by the concerned Station Master. But it does not appear that any inquiry was made in this regard by the DRM or any competent authority and a simpliciter stand has been taken that a ticket was implanted. Now another pertinent question would be as to how the body could have been found 10 feet away from the track and how the severed limb was found on the track. This is a difficult question to be answered in the facts and circumstances of the case. The body may fall and even go upto 10 feet from the track depending upon the speed of the train and the angle or the velocity of the wind which might have been blowing at that point of time, but there is no explanation as to how the hand was severed and how it remained in the track itself. However, this leads to another question as to whether, in such a situation, on this count itself the claimants can be ousted? To answer the same, the case has to be appreciated from another angle. If it is presumed that the deceased died due to coming under the impact of a running train while crossing the railway line even then how a limb could be found in between the track but entire body would be thrown 10 feet away. If the limb was within the ambit of the wheels of the engine of the train, then entire body would have been dragged inside and it could have been cut in to pieces and then scattered which is not the case. The head injury and another injury found on the dead body does not suggest the death due to coming under the impact of a running train because in such case, crush injuries are likely to be found and the entire body would have been in mutilated condition.

8. Thus, in the present situation when no cogent evidence from either side is available, no final opinion can be formed regarding the aforesaid. However, in view of the fact that tickets were found with the dead body and no case of implanting it later on could be made out as there is no *iota* of evidence in that regard, in my considered opinion, benefit under law should tilt towards the claimants because the provisions under which these proceedings have been drawn and decided are beneficial provisions and it is well settled that claimants do not have to prove, in such type of summary proceedings, their case beyond all any reasonable doubt as is required to be proved by the prosecution in a criminal trial.

9. In view of the above, the appeal is allowed and it is held from the material available on the record that there is no option other than to hold that the deceased was a *bonafide* passenger and was a victim of untoward incident. As a consequence to that, the claimants, would be entitled for statutory compensation amount.

So far the compensation amount is concerned, it is true that on the date of accident, as per Schedule attached with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the statutory compensation would be Rs.4 Lakh in case of death. However, the same was revised by bringing an amendment by notification published on 26.12.2016 which was enforced from 1.1.2017. The amount has been raised to Rs.8 Lakh. The question would be what amount, in such a situation, the claimants would be entitled? The issue is no longer *res integra* having been considered and decided by the Hon'ble Supreme Court in **Union of India**

Vs. Reena Devi, AIR 2018 SC 2362. In paragraph No.15.4 of the aforesaid the Apex Court has held as under:-

15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

10. However, in the present case Award is not there as the case of the claimants was dismissed by the Tribunal. Thus, in my view, since the amount is being awarded by present decision by this Court, the date of this order would be relevant. Since the date of accident i.e.18.05.2011 and the interest charged is taken as 9% per annum, the total would be much less than

Rs.8 lakh, on the date of present decision, the claimants would be entitled for the compensation as per the amended provision which would be Rs.8 lakh. Accordingly, it is held that the claimants are entitled for Rs.8 Lakhs as compensation alongwith interest @ 9% to be calculated from the date of the present decision till the realisation of the amount.

In the result, the appeal, accordingly, stands allowed and the impugned decision of the Tribunal is set aside. However, parties will bear their own costs.

(DR.RAVI RANJAN)
JUDGE

11.02.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No