

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

FAO No.1603 of 2014(O&M)
Decided on:05.02.2019

Jai Pal Pardhan

.....Appellant

versus

Union of India

....Respondent

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

Present: Mr.R.S.Malhotra, Advocate,
for the appellant.

Mr.Nitin Kumar, Advocate,
for the respondent-UI.

DR.RAVI RANJAN, J. (Oral)

This appeal has been preferred against the Judgment and Award dated 27.11.2012 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh in Case no.OA-II/39/2011, by which the claim application filed by the claimant/applicant has been dismissed after holding that the applicant has not been able to prove that he was a *bona fide* passenger.

1. Brief facts of this case stands enumerated as under:-

In the claim application it is stated that on 02.06.2010 at about 12.45 p.m. the deceased boarded train No.6 LF alongwith his other three companions from Railway Station Moga to Ludhiana. At about 1.45 p.m., the deceased accidentally fell down from the running train between Railway Station Chowkiman and Mulapur and sustained head injuries and died on the spot. It is further claimed that deceased was travelling as a *bonafide*

passenger after purchasing ticket alongwith his other three companions but it was lost during the accident.

2. The respondent-Railways filed written statement denying and disputing the averments made in the claim petition and raised an issue that, since the deceased was not having railway ticket, he cannot be held to be a *bonafide* passenger. Further, the accident would not be covered under the provision of Section 123-C and 124-A of the Railways Act, 1989.

3. The Tribunal, upon appreciation of rival pleadings, framed following issues:

1. Whether the deceased was a *bonafide* passenger at the time of accident?
2. Whether the incident is covered within ambit of Section 123 (C) (2) read with Section 124-A of the Railway Act?
3. Whether the applicant(s) is/are the sole dependents of the deceased?
- 4 Relief.

4. In order to establish his claim, the applicant filed affidavit of one Jaipal Pradhan, who is the father of the deceased and has been examined as AW-1. He has stated that his deceased son was staying at Moga, however, he was not accompanying him on the fateful day. He was informed telephonically regarding the occurrence.

AW-2 is Jagar Nath Pradhan who has also affirmed the details of the accident. He has stated that he reached at the railway station at about 1200 hours. He purchased ticket at about 1220 hours but he did not remember the train number which was coming from Ferozepur. He has further stated the he alongwith Jarakhu Pradhan, Suresh, Dayal and Bablu used to stay together and work together at Focal Point Moga. It is further stated that ticket was purchased by Bablu only. After the train started, he

came back, however, Dayal and Suresh came to him and informed that Jarakhu is not traceable and was not traceable even for 2-3 days. The deceased was the resident of a village in Bihar and was working at Moga for 1 ½ years.

5. The applicant filed certain documents such as Death report dated 02.06.2010 by GRP Ludhiana as Ex.A-1, brief facts of the case as Ex.A-2, Fard Jamatalashi by the GRP dated 02.06.201 recovering a pocket diary as Ex.A-3, Statement of Naresh Kumar of Bihar before GRP dated 02.06.2010 as Ex.A-4, statement of Surender Rai, Gateman, Gate no.C-23 made before the GRP and which has been brought on record as Ex.A-5, Ex.A-6 is the Verification by the Station House Officer, GRP dated 13.12.2010, *post mortem* record dated 05.06.2010, voter card of Jaipal Pradhan as Ex.A-7 and ration card as Ex.A-8.

The respondent-Railways filed DRM report as Ex.R-1 to impress upon the Tribunal that, as train ticket was not recovered from the person of the deceased in *Jamatalashi* by the GRP, the deceased was not a *bonafide* passenger of the train at the time of the incident.

6. The respondent contended that travelling on footsteps and door of the railway compartment is punishable offence under Section 156 of the Railways Act, and further that the compartments are so designed and built that the passengers sitting in the train cannot fall from a moving train as per the certification by SSE/Carriage Wagon/Ludhiana. In the nutshell, the case of the Railways was that the railway administration would not be responsible for the occurrence.

7. The Tribunal, after considering the rival contentions has come to

the conclusion that there is much variation in the statement made by the AWA coupled with the fact that none of the two passengers, who were accompanying the deceased, tried to pull the chain or informed either to the Railway Authorities or even to the father of the deceased who was staying at Moga, and finally, since the applicant has not been able to produce Naresh Kumar who is allegedly shown to have seen the deceased falling down from the moving train, came to the conclusion that the whole story seems to be unreliable. It has further been held that the applicant has failed to prove purchasing and possessing of ticket by the deceased. In the result, it had been held that the deceased was not a *bonafide* passenger and as such his claim petition was dismissed.

Learned counsel appearing for the appellant has taken this Court through the records of this case and various statements made by the witnesses to impress upon this Court that the Tribunal has come to a wrong conclusion as in the claim cases, the applicant was not required to prove everything beyond all reasonable doubt like a criminal trial. The affidavit filed on his behalf would be enough and once this is done the onus would shift upon the Railways to prove it otherwise.

8. *Per contra* learned counsel appearing for the respondent-Railways has submitted that, since no ticket could be recovered from the possession of the deceased, he cannot be held to be *bonafide* passenger as there is no eyewitness to the purchase of the ticket also. It is further contended that even if the concerned witness is taken to be the eyewitness there is contradiction as to who actually purchased the ticket, Bablu or the deceased.

9. On appreciation of rival contention this Court finds force in the

submissions made on behalf of the appellant. The appellant/applicant's case is that the deceased boarded the train from Moga to Ludhian, train number has also been given as 6 LF and he boarded the train alongwith his other three companions. The witnesses have stated that he reached at the Railway Station, Moga at about 1200 hours and purchased the ticket at about 1220 hours. The ticket were purchased by one Bablu only. However, in the train the deceased had gone missing and remained untraceable for 2-3 days and thereafter, information was received that he had died due to falling down from the train.

Of course, there are some variations/contradictions, such as, actually who had purchased the ticket, Bablu or the deceased himself or why no information was given by them to the father of the deceased regarding the death for 2-3 days, but one documentary evidence which is on record of the case has completely been given a go by by the Tribunal i.e. the version of the Gateman. He has given the statement before the GRP. The document has been brought on record as Ex.A-5. Admittedly, he is the employee of the Railways. He has stated that he was working as a Gateman on 02.06.2010 at Gate no.C-23. He has closed the gate so that train No.6 LF could pass safely. He saw that a person who was standing at the door of one of the compartments of the aforesaid train fell down and died. He has further stated that he had given the aforesaid information to the Station Master, Chowkiman and in the meantime the GRP also came there and removed the body of the deceased. His statement was again recorded by the police under Section 175 of the Cr.P.C., and he had again repeated the same thing. The DRM report, which has also been brought on record by the respondent, has

also noticed this statement of Surender Rai.

10. The inquiry officer of the Railways, i.e. one of the Inspector Incharge of the RPF has noticed everything but has discarded the version only on the basis that no railway ticket was found in the possession of the deceased, therefore, the version of Surender Rai, Gateman does not appear to be correct. In my view such statement can not be discarded on the ground that no train ticket could be found in possession of the deceased.

This is also not the case of the Railways that extensive search for finding out the belongings of the deceased was made at the spot of accident and nearby places so that the ticket could have been recovered. Of course, it would have been better if Gateman Surender Rai would have been produced as a witness by the claimant/applicant, but the question would be, whether for that any adverse inference can be drawn against the claimant? Answer to this has to be in negative for two reasons:- first is that the statement made by Surender Rai has been brought on record without any objection raised by the Railways at the relevant point of time; secondly, being a Gateman, he was employee of the Railway Authorities, in such a situation it would be very difficult for the applicant to produce him as witness. The question is, why the Railway Authorities did not produce him to contradict the stand taken by the claimant? Surender Rai was the employee of the Railways, he could have well been produced by the Railway Authorities. In such a situation, in my considered opinion, the Tribunal has made a serious error in discarding the claimant's version taking adverse inference for not producing Surender Rai, Gateman of the Railway Department as a witness.

10. Once such statement on affidavit was made and evidence was led

on behalf of the claimant/applicant alongwith the statement made by Surender Rai, the Gateman of the Railways who has categorically stated that he has seen the deceased falling down from the moving train, the onus would definitely shift upon the shoulders of the Railways to prove it otherwise, which they have been unable to discharge. They do not have any answer to the statement made by their own Gateman Surender Rai. His version has only been discarded for the reason that the train ticket was not found from the possession of the deceased which could not have been done by the Tribunal. A reference is made in this regard to a decision of the Hon'ble Supreme Court rendered in “**Union of India vs. Rina Devi**” AIR 2018 SC 2362. The Apex Court in paragraph no.17.4 of the aforesaid decision has held that mere presence of a body on the railway premises will not be conclusive to hold that the injured or deceased was a *bonafide* 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 *bonafide* passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will shift on the Railways and the issue can be decided on its own facts shown or the attending circumstances.

11. If the version or the stand of the Railways is taken to be the correct that the deceased was not travelling on the train and that the death was not due to accidentally fall from the train, then what is the explanation put up by the Railways regarding the occurrence? The death has admittedly occurred in the premises of the Railways. The Railways Authorities have not been able to explain as to why a person from Moga would travel 40

KMs and come to a place near a gate at Chowkiman, so that he could come under the impact of a running train while crossing a railway line? That apart, even if, for the time being, it is presumed that the deceased was crossing the railway line and he was run over by a train then whether the injuries found on the dead body supports it? If a person jumps before a running train or comes under impact of the running train at the time of crossing the railway line, then his body would set mutilated, whereas the *post mortem* report shows that he died due to head injury and blood was oozing out from his ears and nose, etc. which clearly indicates towards an accidental fall from the train. This aspect has also not at all been considered by the Tribunal.

12. Thus, in my view, the claimant/applicant has been able to discharge his initial burden or onus by stating and producing evidence that the train ticket was purchased, the deceased boarded the train and he fell down from it. The burden, thereafter, shifted upon the Railways which could not be discharged by it as already discussed above. Thus, considering the attending circumstances, it has to be held that the deceased was a *bonafide* passenger must have died accidentally due to fall from the moving train and, as such, the accident would come within the ambit of the definition of an untoward incident under Section 123(c)(2) of the Railways Act, and further, in the facts and circumstances of the case, the claimant would be entitled for compensation as per Section 124-A which could be assessed as per the Part-I of the Schedule of the Railways Act, 1989, which has been shown as Rs.4 Lakh.

Apart from the above, the applicant/appellant would also be

entitled for simple interest at the rate of 9% per annum to be calculated from the date of filing of the claim case till the payment of the compensation amount.

In the result, this appeal stands allowed, however, the parties would bear their own costs.

February 05, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned :Yes
Whether Reportable :Yes