

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

FAO No.1707 of 2014

Decided on:04.04.2019

Mehar Chand

.....Appellant

versus

Union of India and others

....Respondents

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

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

Mr.Yogesh K.Saini, Advocate,
for the respondent-UOI.

DR.RAVI RANJAN, J. (Oral Judgment)

This appeal has been preferred assailing the decision dated 19.11.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by which the Tribunal has dismissed the claim application filed by the claimants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 for the death of Smt. Khajani wife of Mehar Chand (claimant no.1) in the railway untoward incident.

1. As per the case of the claimants, the deceased Khajani Devi was returning from Kurukshetra to Kaithal by boarding train No. 4/3 JNK on 03.09.2010 but she fell down from the moving train due to rush and jerk at KM 155/29-27 Up line No.1 at Railway Station Kurukshetra at about 12.30 p.m. and died on the spot. The dead body was shifted to LNJP hospital, Kurukshetra, where *post mortem* was conducted. It is claimed that she was travelling from Kurukshetra to Kaithal on a valid

railway ticket.

2. The respondent-Railways contested the case by filing written statement and disputing the averments made in the claim petition. The Railways took a stand that there is no proof that the deceased was travelling by the aforesaid train on 03.09.2010 and was the victim of any untoward incident due any negligence on the part of the respondent-Railways. It was also claimed that she was not a *bona fide* passenger as no ticket was recovered from her person during the search of the dead body, thus, she would not be entitled for any compensation in terms of the provisions contained under Section 124-A of the Railways Act, 1989 (hereinafter to be referred to as 'the Act').

3. On consideration of the rival pleadings the Tribunal framed following issues:

1. *Whether the deceased was a bona fide passenger of train at the time of incident?*
2. *Whether the alleged incident is covered within the ambit of Sec.123(c)(2) read with Section 124-A of the Railways Act?*
3. *Whether the applicant(s) is/are the sole dependent(s) of the deceased?*
4. *Relief.*

4. The claimants/applicants, in order to substantiate their claim, examined claimant/applicant no.1-Mehar Chand as AW1. The claimants have also examined Gurinder Kaur as AW2. They also brought on record several documents such as *post mortem* report, station memo, *fard jamatalashi*, *fard havalgi jamatalashi* by GRP, final report of the GRP, death report as well as copies of ration card.

The respondent-Railways also examined the Guard of the aforesaid train Ramesh Kumar as RW1 who claimed that he was on duty

as Guard on the aforesaid train from Kurukshetra to Jind on the fateful day. The Railways Authorities have also brought on record the DRM report to substitute their claim that the deceased entered the railway premises unauthorisedly due to which she was run over by the train and died due to self-inflicted injury.

5. The issue no.1 and 2, being intertwined, have been taken up together for consideration by the Tribunal.

The Tribunal has come to the conclusion that the claimants could not prove that the deceased was either *bona fide* passenger or had accidentally fallen from the concerned train. Whereas in view of the DRM report and the testimony of the Guard of the train it stands established that she came from the other side of the train which was already moving on platform no.1 at Kurukshetra Railway Station and had dashed it from off side. Issue no.3 has been decided in favour of the claimants holding that the claimants are the dependents of the deceased. Issue no.4 has been decided against the applicants holding that the death was not due to any untoward incident within the meaning of the provisions of Section 123(c)(2) of the Act, thus, the applicants would not be entitled to receive any compensation from the Railway Authorities.

6. In aforesaid background of factual matrix and the findings recorded by the Tribunal, I have heard learned counsel for the parties and perused the records of this case.

AW1 namely Mehar Chand, i.e. the husband of the deceased, in his testimony, has stated that the deceased was returning from Kurukshetra to Kaithal by boarding the train No.4/3 JNK and fell down

from the train due to rush and jerk. AW2 has stated that the deceased had met her in Kurukshetra. She accompanied her till the Railway Station i.e. platform no.1 where the deceased purchased a ticket of Rs.9 upto Kaithal. Since Chandigarh train was late, she returned back and boarded a bus to reach Chandigarh, however, the deceased continued her journey. The Tribunal has discarded the aforesaid averment on the ground of contradiction. It is stated that it does not appear from the testimony of AW1 that it was known to him as to which place the deceased had actually gone and from where she was coming back, as such, the story appeared to be an afterthought. He further has stated in his cross-examination that none of his relatives resides at Kurukshetra whereas the AW2 has stated that *Nandoi* (husband of the *Nanand* i.e. sister of the husband of the deceased) is residing there and is doing some dairy business. In view of such marked variation, it has been observed that the testimony does not inspire confidence also due to the fact that no ticket could be recovered from the dead body. However, on the basis of the story propounded by the Railway Authorities and after considering the DRM's report, the Tribunal has come to the conclusion that deceased got entangled with the aforesaid train and was run over from the off side, i.e. from the side of platform no.2 to 3, meaning thereby that she had not yet come to the platform no.1 but in that process, she met with the accident. Thus, it has been assumed that she might not have purchased the ticket from ticket widow at platform no.1. It is also stated that though there is foot over-bridge pass coming from platform no.3 to 1 but it is generally seen that the people mostly avoid to use foot over-bridge and cross the

railway line from platforms no.2 and 3 to reach platform no.1 and they use the place where platforms no.2 and 3 end. Thus, the Tribunal has assumed that it seems that the deceased might have come from platform no.2 and 3 crossing railway line to come to platform no.1 and got entangled with the train No.3 JNK which had just started moving. This, coupled with the fact that it can also be seen from the pleadings and evidence of the applicants that they were not sure as to which place actually the deceased had gone from her house on 03.09.2010 and there is contradiction between the version of AW1 and AW2, the aforesaid story has to be accepted and finally it has been held that deceased was not even a passenger much less a *bona fide* passenger at the time of incident and the injury was also not an untoward incident as defined under Section 123(c)(2) of the Act and as such the claimants would not be entitled for the compensation.

7. The Tribunal is correct to some extent that there is some contradiction in the version of AW1 and AW2 and it also appears that the claimants were not sure as to which place actually the deceased had gone, therefore, they had made a search everywhere i.e. Jind, Narwana and Kurukshetra, which will definitely create a doubt regarding their knowledge of the fact that the deceased was boarding a particular train from Kurukshetra to Kaithal. However, the AW2 has stated in clear terms that the deceased purchased the ticket in her presence at platform no.1. The question would be, as to whether at the time of consideration of matter for grant of compensation under the provisions which are beneficial legislation, the claimants are to be put to strict proof like a

criminal trial and whether the assumption and presumption should be allowed to be applied in favour of the respondent-Railways? The answer has to be in negative. There is not evidence put forth by the Railways that the deceased was trying to cross the railway line while the train was moving and she got entangled with the train and was crushed by the train. The only evidence in DRM Report is of the driver and the guard of the said train. The driver has not been examined before the Tribunal but during the DRM inquiry the driver had said that it was the Guard who informed that a lady, while crossing the railway line, has been run over by the train, whereas, the Guard, who has also been examined during the DRM inquiry and has been examined before the Tribunal also as RW1, has stated that he has not seen any occurrence rather some people who were standing on the platform informed him that the deceased was trying to cross the railway line from the side of platform no.2 and 3. Thus, there is no direct evidence of the aforesaid as neither the Guard nor the driver had seen the occurrence. If some person, who was standing at the platform no.1, had actually informed the Guard then his statement was neither recorded at the time of DRM inquiry nor was he produced as a witness before the Tribunal. That apart, it is intriguing as to how the testimony of AW1 and AW2 could not inspire confidence but the story put forth by the Railways, without any evidence, could inspire confidence of the Tribunal and the same has been accepted as truth? If a person is standing on platform no.1 and a train is also moving on such platform, the next question would be whether what is happening on the other side of the train would be visible to such person? The answer has to be in

negative because the train moving at a slow or moderate speed would never be a transparent wall through which anything happening on the other side of the train would be visible to a person standing on platform no.1. The entire story does not inspire any confidence at all.

Had it been a case that she tried to board the train from other side, the matter would have been different, but the case of the Railways is that the deceased tried to cross the running train. Question would be, why a person would try to cross the line when the train had already been moving unless and until she had intention to commit suicide? However, this is not the case of either of the side also. In such a situation, it is not at all understandable as to how and why such story has been accepted by the Tribunal and the claimants have been non-suited on that count. The Tribunal has assumed that she was coming to platform no.1 by crossing the railway line to purchase ticket so that she could board the same train by which she was run over. This again raises a question as to whether a person would go from platform no.1 to platform no. 3 without purchasing a ticket and then again would come back from platform no.3 to platform no.1 by crossing the railway line for purchasing a ticket for boarding a train which is to start from platform no.1 itself? Further question would be why she would go to platform no.3 at all if she had to catch the train from platform no.1 itself? There is no answer to this. AW2 has stated that she had purchased ticket from the ticket window which is near the platform no.1 and she had to board the train from platform no.1 itself, which admittedly was to go towards Kaithal, i.e. her destination.

Even injuries shown in the *post mortem* report are not

suggestive of a person having been run over by a train. There is no crush or cut injury which could have ordinarily happened if a person would have been run over by a train. The injuries are lacerated wound which are on neck, limb and other parts. That can be possible if a person falls from a moving train. It is stated that the palms were having some grease like thing. On the basis of this observation of the doctor, who has done autopsy on the dead body, the Tribunal has come to the conclusion that it could have only been possible if a person came under the running train because the wheel or other parts of the train might have been greased. However, this submission made on behalf of the Railways and finding recorded in this regard by the Tribunal does not inspire confidence as the greasy substance was not chemically examined to come to the conclusion that it was actually grease used by the railway authorities for maintenance of the coach or the railway engine. Even if it is assumed as such then, the same might have been spilled over the ground and also besides the railway line at the time of maintenance. Thus, it cannot be conclusively proved that the presence of such black and greasy substance would definitely lead to the fact that the person has been run over by the train even though the injuries do not suggest that.

8. Thus, in my considered view, the findings recorded by the Tribunal suffers from fatal flaws. Of course the Apex Court in “**Union of India vs. Rina Devi,**” 2018 (3) RCR(Civil) 40, has held that merely finding a dead body on the railway premises would not be conclusive to hold that the injured or the deceased was the *bona fide* passenger but, at the same time, it has also been stated that mere absence of ticket with

such injured or deceased could also not negative the claim that he was a *bona fide* passenger. Initial burden would be on the claimant which can be discharged by filing an affidavit of the relevant facts and, then the burden would shift upon the Railways. The issue can be decided on the facts shown or the attending circumstances.

In the case in hand, no ticket has been recovered but neither the DRM report nor any report of police authority goes to show that, to recover or find out the belongings of the said deceased, an extensive search was made by the Railway Authorities of the nearby areas of the spot of accident where the dead body was found. In the absence of that, even if ticket was not found, it cannot be presumed that she was ticketless passenger.

So far the accident is concerned, as has been discussed above, the Railway Authorities have produced no evidence, save and except, the assumptions and presumptions that she might have met with an accident while crossing the railway line. In my considered view, it cannot be accepted and in view of the injuries and the other attending circumstances it can only be held that she had received injuries by accidentally falling from the train. There was no occasion for her to go to platform no.3 when the train was to start from platform no.1 itself.

In the result the impugned decision of the Tribunal is quashed and set aside, save and except, the issue no.3 which has been decided in favour of the applicants holding that the claimants/appellants are her dependents.

9. It is further held that the deceased has to be taken as a *bona*

fide passenger and the accident has to be taken an untoward incident within the meaning of Section 123(c) (2) of the Act and, as such, the claimants would be entitled for statutory compensation.

Though at the time of accident, the statutory compensation amount in terms of the Schedule attached to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, was Rs.4 Lakhs but the same has been enhanced to Rs.8 Lakhs with effect from 01.01.2017.

10. The next question would be whether the applicants would be entitled for compensation under the old provisions or under the amended provisions. The issue is no longer *res integra* as the same has been considered and decided by the Hon'ble Supreme Court in **Rina Devi (supra)**. The Supreme 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.”

Though the Apex Court in **Rina Devi (supra)** has observed that if such amount is less than the amount prescribed as on the date of

the Award of the Tribunal, the higher of the two should be given to the claimants, however, in the present case no Award has been prepared by the Tribunal rather the claim application has been dismissed and the compensation amount is being allowed by the decision rendered in the present case by this Court. Thus, in my opinion, the amount available as on the date of passing of the present order should be taken into account and, since the amount available on the date of accident along with interest would be less than the enhanced statutory amount of Rs.8 Lakhs as on date, the higher amount is being allowed. Thus, it is held that the appellants/applicants would be entitled for Rs.8 Lakhs as compensation alongwith interest at the rate of Rs.9% per annum to be calculated from the date of the present decision till its payment.

Ordered accordingly.

The amount has to be shared in equal share by all the claimants.

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

April 04, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes