

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

FAO No.11 of 2016
Decided on:28.03.2019

Sawinder Kaur and another

.....Appellants

versus

Union of India and others

....Respondents

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

Present: Mr.Upender Prasher, Advocate,
for the appellants.

Mr.Nitin Kumar, Advocate,
for respondent no.1-UOI.

DR.RAVI RANJAN, J. (Oral)

I have heard learned counsel for the parties and perused the record of this case.

This appeal is directed against the decision dated 07.10.2015 rendered by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, in case No.OA-II/47/2013, by virtue of which, the claim application filed by the claimants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987, claiming that the deceased Mangat Singh died in an untoward incident as envisaged under Section 123(c)(2) of the Railways Act, 1989 (hereinafter to be referred as the 'Act'), has been dismissed.

1. Brief facts of the case are that on 27.03.2012, at about 4.00 A.M., the deceased Mangat Singh and his son Kawaljit Singh boarded a passenger train from Amritsar railway station to travel upto Fatehgarh Churian on a railway ticket valid upto Dera Baba Nanak. At about 5.15 A.M., when the said train reached at Fatehgarh Churian railway station and

was in the process of stopping, the deceased came to the door for de-boarding the train but the grip of his hand slipped from the pipe of the door due to push and pull of the fellow passengers. As a result of which, he fell down from the moving train and received multiple injuries. He was taken to Guru Nanak Hospital, Amritsar for treatment, where he died in the afternoon on the same day. His *post-mortem* was conducted in the Medical College, Amritsar on 28.03.2012.

2. The respondent-Railways contested the claim application by filing the written statement stating that the incident cannot be held to be within the meaning of Section 123(c)(2) of the Act, and as such the claim application should be dismissed. It was further averred that the train in question left Fatehgarh Churian railway station after taking its schedule halt of two minutes. When the train again started moving, few persons alighted therefrom. One of them received head injury, which was noticed by the guard of the train who immediately got the train stopped by informing the driver of the train. The injured person was admitted in the hospital where he died. The stand of the Railways is that the injury being self-inflicted one, the claimants are not entitled for any compensation.

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

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

4. In order to substantiate their case the applicants have examined applicant no.2-Kawaljit Singh as AW1. The applicants have also filed

documents such as Death Report, Statement of Kawaljit Singh recorded by the GRP, Bed Head Ticket, *Post-mortem* report, *Fard Jamatalashi* and family ration card as documentary evidence in support of his claim.

The respondent-Railways did not examine any witness, however, DRM's inquiry report has been placed on record.

5. The issues no.1 and 2, being intertwined, have been considered together by the Tribunal.

The Tribunal has come to the conclusion that it is apparent from the police diary note forming part of the death report prepared by the GRP during the course of inquest proceedings and which has been placed on record by the applicants themselves as Ex.A-1, that at two places in Column no.22 and 23 nothing is shown to have been recovered from the dead body. However, in the *fard jamatalashi* (Ex.A-5), one computerised railway ticket valid from Amritsar to Dera Baba Nanak has been shown to have been recovered. The *fard jamatalashi* bears the signatures of Head Constable Karanbir Singh and Sardool Singh, brother of the deceased, as witness to the personal search of the deceased.

In view of the aforesaid contradiction and further in view of the fact that in the cross-examination AW1 Kawaljit Singh has stated that he alongwith his father was travelling from Amritsar to Fatehgarh Churian and a joint ticket was purchased by his father and was kept by him which was a card-board ticket from Amritsar upto Dera Baba Nanak however, before the Railway Authorities, he had stated that they had purchased the train ticket from Amritsar to Fatehgarh Churian and in fact these were two separate tickets, one was found by the police from the pocket of the deceased and another was with him, the Tribunal has come to the conclusion that the

deceased cannot be held to be a *bona fide* passenger of the train and the accident cannot be held to be covered under Section 123(c)(2) read with Section 124-A of the Act.

6. Learned counsel for the appellants has submitted before this Court that whatever may have been stated before the Railways Authorities by Kawaljit Singh, in the cross-examination before the Tribunal, he had stated the correct thing that two tickets for two persons were purchased by his father and one of the ticket was found in *fard jamatalashi*. Thus, on the ground of certain contradictions in recording the statement before the Railway Authorities, which has barely any evidentiary value, the claimants/appellants should not have been non-suited by the Tribunal.

7. *Per contra* learned counsel for the Railways has submitted that the AW1 Kawaljit Singh has accepted in his cross-examination that he has appended his signatures on the statement dated 19.06.2013 which was given before the RPF, therefore this statement would be binding upon him and in view of the variation in his cross-examination before the Tribunal and the statement made before the RPF, his evidence has to be discarded and it has to be held that the deceased was the ticketless passenger.

It is next contended that, since the ticket was valid from Amritsar to Dera Baba Nanak, there is no explanation as to why both the persons will alight much earlier at Fatehgarh Churian railway station. Thus, it has to be understood that they were neither travelling in the train nor having any valid ticket. It is also contended that AW1 has stated in his cross-examination that the ticket was a card-board ticket whereas the ticket recovered from the dead body of the ceased was the computerised ticket.

8. However, in my view, the Tribunal forgot to notice a fact that

the guard, driver of the train engine and the clerk have recorded their statements before the Railway Authorities during DRM inquiry and it is clear from the inquiry that the scheduled stoppage of the train at Fategarh Churian railway station was only of one minute, therefore, certain persons tried to hurriedly alight from the train and in the meantime the train had started in which one of such passengers fell down and received multiple injuries. He was brought to the Railway Station by the person accompanying him and he informed the ambulance no.108 which took him to the hospital. Thus, it stands established that the deceased was travelling on the train concerned and further, that the deceased was being accompanied by another person. It is nobody's case that some person other than Kawaljit Singh was also travelling with him and was known to him. Therefore, it has to be understood and accepted that Kawaljit Singh i.e. AW1, being son of the deceased, was also travelling with him. It further stands established by the aforesaid evidence that the scheduled stoppage of the train was only of one minute which was insufficient and while the deceased was trying to alight from the train, the train started moving and he fell down and received injuries. He was taken to the hospital and he died there. In fact everything has been accepted in the written statement of the Railways also. Case of Railways is that the fall injury received by the deceased was self-inflicted one as he was trying to get down from a moving train. However, this issue is no longer *res integra* inasmuch as they have been considered and decided by various Courts in catena of decisions. A reference in this regard is made to a decision of Hon'ble Apex Court rendered in **Union of India vs. Prabhakaran Vijaya Kumar and others, 2008(3)R.C.R.(Civil)577**. It has been held therein that it would be

irrelevant as to whether the deceased was getting down from the train or trying to board a train as both the situations would be covered under the expression- “untoward incident,” as defined under Section 123(c)(2) of the Act. In yet another decision rendered in **Union of India vs. Rina Devi, 2018 (3) RCR(Civil) 40**, the Hon'ble Supreme Court has held that once it is established the deceased was travelling in the train and he was a *bona fide* passenger, then his negligence would not be of much relevance as the provisions under Section 124-A are based on “No Fault Theory.” So, there cannot be any *iota* of doubt, in the aforementioned facts and circumstances, that the present case would be covered within the meaning of an untoward incident under Section 123(c)(2) of the Act.

9. Now the next question would be, whether the deceased was a *bona fide* passenger or not? The Tribunal has accepted the DRM report and, after noticing the alleged contradiction in the testimony of AW1 compared with his statement before the RPF as well as the fact that in the police diary note it is shown that nothing was recovered but in the *fard jamatalashi*, a ticket has been shown to have been found. The ticket appears to be planted one. Now the question would be whether there was any positive evidence regarding planting of ticket, for example, who had planted the ticket and in collusion of whom it was done? No specific pleading is there. Only a vague statement has been made but there is no evidence led in support thereof. Of course, there is contradiction in the statement of the AW1 recorded by RPF, during DRM inquiry and one which was recorded before the Tribunal but whether that would be enough to discard everything and even discard the ticket which has been found by the police from the body of the deceased? Before coming to the conclusion, it has to be noted

here that the statement recorded by the RPF during DRM inquiry is in *Hindi*, whereas the AW1, in his cross-examination has admitted that he has put the signature, which is in *Punjabi* but, at the same time, he has further stated in his cross-examination that he does not know *Hindi*. In such a situation, can it be accepted with confidence that he signed the statement fully knowing the contents thereof? In my opinion, it becomes very very doubtful. Had it been a case that it was in *Punjabi* he could have understood the statement or he could not have signed it without reading the same but here is the case that the statement has been recorded in *Hindi* and in his cross-examination he says that he does not know *Hindi* at all. In such background of the matter, it would be very difficult to discard the evidence on that count specially when it is established that he was travelling with his father as would be evident from the discussion made as above. One thing remains unanswered as to why they will purchase ticket till Dera Baba Nanak though they had to get down at Fatehgarh Churian itself. This is, of course, a discrepancy because there is no explanation for it. But whether in such types of summary proceedings under a beneficial piece of legislation, on this ground alone, the claim should be discarded? Answer has to be in negative because by now it is well settled that in such a proceedings of summary nature, the claimants can not be put to strict proof of the matter or to prove the same beyond the clouds of all reasonable doubts as is being done in criminal trials. Thus, in my considered view, if it is established that it was an untoward incident and the ticket has been recovered from the dead body of the deceased, it would be very difficult to discard the case of the claimants on such technical ground. In my opinion, the impugned decision of the Tribunal suffers from aforesaid errors and as such, the same is

quashed and set aside, save and except, the answer to the issue No.3 in which the Tribunal has held that the applicants alongwith the daughters of the deceased, namely, Palo and Pinki, would be entitled for compensation.

10. Having held as above, the next question would be as to what would be the amount to which the claimants would be entitled? The accident being of the year 2013 and at that point of time, as per the Schedule attached with the Railways Accidents and Untoward Incidents (Compensation) Rule, 1990, the compensation amount in case of death due to untoward incident would be Rs.4 Lakhs but at the same time that has been revised, w.e.f. 01.01.2017, and now the compensation is Rs.8 Lakhs.

The Apex Court in its much celebrated decision rendered in **Rina Devi (supra)** has held that the compensation would be payable as applicable on the date of accident with interest as may be considered reasonable, however, if the amount so calculated is less than the amount prescribed as on the date of Award of the Tribunal, the claimant would be entitled to the higher one. In the present case the date of accident is 27.03.2013, however, there is no Award of the Tribunal because the Tribunal has dismissed the claim application. The compensation is being awarded to the claimants by the present order. Thus, in my considered view the date of this order would be the relevant date and even if the interest is allowed at the rate of 9% per annum from the date of accident, the total interest would come to Rs.2,88,000/-. The sum total, after adding it to the statutory compensation amount of Rs.4 Lakhs, would definitely be less than Rs.8 Lakhs. In such a situation, this Court would hold that the claimants/applicants would be entitled for statutory compensation amount of Rs.8 Lakhs. They would also be entitled for interest @ 9% per annum to

be calculated from the date of present order till the date of its payment.

It is further held that the amount should be deposited by the Railways before the Tribunal within a period of three months. The Tribunal, after proper verification of Palo and Pinki both daughters of the deceased, would disburse the amount in equal shares between the claimants/appellants including the aforesaid Palo and Pinki.

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

March 28, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes