

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2163 of 2015 (O&M)

Date of Decision: 02.04.2019

Phulwa Devi 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.Rahul Garg, Advocate, for the respondent.

DR. RAVI RANJAN, J. (Oral Judgment)

This appeal is directed against the decision dated 05.12.2014 rendered by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by which a claim application filed by the claimants-appellants under Section 16 of the Railways Claims Tribunal Act, 1987, has been dismissed.

As per the claim petition, deceased-Bhugal Pawan, who was working as a labourer, was travelling alone from Ludhian Railway Station to Gaya (Bihar) by the train. Prior to that, he came to Ludhiana station on 24.06.2013 alongwith his brother-in-law and purchased a computerized ticket for General Class. He boarded the train and his brother-in-law went back to his home. It is alleged that there was huge crowd in the train so deceased Bhugal Paswan remained standing near the door of the compartment. When his train reached at Km.No.3398/17-19 between Khanna and Chawa-Payal railway station, he accidentally fell down and got seriously injured. A driver of the goods train namely Jagdish gave information to the Station Master, Chawa-Payal that a person is lying

besides the railway track. The Station Master issued a memo to GRP, Chawa-Payal who got the injured admitted in the Civil Hospital, Khanna where he succumbed to his injuries. After the injured was declared dead by the Civil Hospital, the GRP prepared the reports after completion of inquest proceeding. GRP recovered one railway ticket from Ludhiana to Gaya and one small pocket diary after searching the body of the deceased. The GRP contacted the persons on the mobile numbers which were written in on the diary and informed the relatives regarding the incident.

The respondents-railways filed written statement raising various objections for example that the deceased was not a *bona fide* passenger and incident cannot be brought within the meaning of Section 163(c)(2) of the Railway Act, 1989 (hereinafter to be referred as “the Act”). It is further claimed in the written statement that, since the deceased was not a *bona fide* passenger and was not travelling on train, he must have got entangled with some moving train.

On appreciation of rival pleadings, the Tribunal framed following issues:

1. Whether the deceased was a bonafide passenger as alleged.
2. Whether the incident in question is covered within the ambit of Section 123(c)(2) of the RCT Act?
3. Whether the applicants are the only dependents of the deceased?
4. Relief.

The applicants, in order to substantiate their claim, produced claimant-Phulwa Devi, the widow of the deceased as AW-1. A copy of the inquest report along with translation and attested copy of the *fard jamatalashi* along with translation, copy of the journey ticket, the attested

translation, Ex.A-7 attested copy of statement given by Pappu Kumar to GRP along with translation, Ex.A-8 attested copy of memo issued by Station Master Chawa Payal, Ex.A-9 and Ex.A-10 rukka issued by Civil Hospital Khanna, Ex.A-11 attested copy of application for postmortem, report, Ex.A-12 attested copy of postmortem report, Ex.A-13 copy of ration card of Krishan Paswan and Ex.A-14 attested copy of Voter list were brought on record as documentary evidence.

The respondent-railways examined RW-1 Neeraj Kumar who was Assistant Station Master on duty, Chawa-Payal and Jagdeep Kumar, Loco-Pilot as RW-2. Besides that, DRM report has been placed on record.

The Tribunal has decided the issued No.2 against the applicant and in favour of respondent-Railway on the diverse grounds. The first ground is that Pappu, i.e., brother-in-law of the deceased has stated before the GRP that Bhugal Pawan was to go from Ludhiana to Gaya by Amritsar-Kolkata train and, after purchasing the ticket of the train, he returned back from Ludhiana railway station at about 8AM, has not been examined as a witness before the Tribunal. Second ground on which the applicants have been non-suited is that on 24.06.2013 only the train number 12358 down, Durgiana Express crossed Chawa-Payal Station at the relevant point of time but it crossed about 8:46 AM whereas the Loco Driver has seen injured lying besides Railway track after 8:28 AM itself and had informed the railway authorities. Thus, it would be difficult to hold that the deceased fell down from Durgiana Express as his body was lying between UP and DOWN tracks even before the Durgiana Express crossed Chawa-payal railway station. Accordingly, it has been held that the deceased cannot be held to be

While deciding the issue No.1, the Tribunal has taken notice that the AW-1 has stated in her affidavit that Pappu i.e. brother-in-law of the deceased, had got the deceased employed in a tyre factory but, after working for 5-6 days, he was returning from Ludhiana to Gaya and in the way he fell down from the train and got injured, whereas, in her cross-examination, she has stated that she is not aware that her husband had gone to tyre factory, Ludhiana, for what purpose. It is stated that Pappu arranged the ticket from Ludhiana to Gaya in Amritsar-Kolkata mail but strangely he has not been examined by the applicant. The Tribunal has further held that, since after the analysis of issue No.2, it stand concluded that Bhugal Paswan was not travelling in the train from Ludhiana to Gaya hence, it would be impossible for the GRP Chawa-Pawal to recover a journey ticket from Ludhiana to Gaya. Accordingly, it has come to a conclusion that GRP Chawa-Pawal arranged the journey ticket later on by using illegal means and then prepared to case for grant of benefit to the applicant side. It has further noted that, from the copy of personal search memo, it is clear that personal search was carried out by Tejinder Singh of GRP but no independent witness has put his signature and there is only a photo copy of the journey ticket available. That apart, nothing has been recovered, i.e., not even a single rupee from the possession of the deceased. It cannot be believed that a person would travel a distance of about more than thousand kilometers from Ludhiana to Gaya without any money etc. especially when he was travelling alone. The Tribunal has also held that, as per Section 174 Cr.P.C., police has a right to conduct personal search of the deceased person but there is no provision in the Cr.P.C. empowering the police personnel to search injured person which

Thus, the Tribunal, after deciding the issues No.1 and 2 in favour of the Railways and against the applicants, though the issue No.3 has been decided in favour of the claimant holding that they can be considered to be the only dependents of the deceased, finally held that Bhugal Paswan was not a *bona fide* passenger and the accident does not fall within the ambit of “untoward incident” as per the relevant provisions of the Railway Act and, in the result, claim application has been dismissed.

In the aforesaid background of the factual matrix, I have heard the parties and have perused the records of the case.

Learned counsel for the appellants has submitted before this Court that the findings of the Tribunal suffers from several fatal flaws inasmuch as it has jumped to such conclusion without any evidence that GRP personnel has implanted the ticket for the benefiting the applicants. It has not considered anywhere as to why a the GRP personnel posted at Chawa Payal would illegally help the applicant, widow of Bhugal Paswan, who belongs to Gaya in the state of Bihar? It is also contended that injuries apparent from postmortem report supports the case of the applicants.

Per contra, learned counsel for the respondent has supported the decision of the Tribunal by saying that, from the chart maintained by the Railways, it is apparent that the goods train drivers saw the deceased between 8:28 to 8:36 AM whereas, the only train to Gaya had passed the Chawa Payal railway station at 8:46 AM.

Upon consideration of rival contention, this Court is of the view that the impugned decision of the Tribunal suffers from several flaws.

The Tribunal has reached to the conclusion that it is not

information of injured was given by the Loco Pilot of Goods Train prior to passing of the aforesaid Durgiana Express, thus, the incident cannot be held to be an untoward incident as it was impossible for him to fall from the train at the place of incident. Hence, it has come to the conclusion that the deceased got injuries while crossing the railway lines near the place of incident as he may have been hit by a running train and got injured, and later on died. However, the aforesaid findings can only be held to be based on assumption as there is no evidence that after purchasing the ticket, the deceased, in place of boarding the train from Ludhiana came near Chawa Payal railway station and was trying illegally to cross railway track so that a train could hit him. Secondly, according to the railways, the Loco Pilot of the goods train very sincerely informed the Assistant Station Master of the Railway Station Chawa Payal that one injured person was lying between the up and down track but the DRM report is silent about the fact as to whether any engine driver of any train had informed the Station Master or any railway authority that one person came into the impact of his running train? Answer has to be in negative. In my considered view, had such accident occurred, being his bounden duty, the engine driver and the guard of the concerned train ought to have informed the Station Master of the nearest railway station so that he could have taken steps in terms of the provisions contained in Section 113 of the Railways Act, 1989. In the absence of such information, in no manner it can be presumed that the concerned person got injuries while crossing the railway track and was hit by some moving train. Apart from the above, whether the injuries shown in the postmortem report supports such claim? The ante-mortem injuries found in the post mortem

temporal region of the skull. The opinion of the Doctor, who has done autopsy, is that the injury on the skull was sufficient for causing death. Now the question would be as to whether a person would receive such type of lacerated wound and injury in temporal region of the skull if he was entangled with a moving train? Answer once again has to be in negative. If a person comes under impact of running train, either his body would be cut into pieces, limbs would be severed or there would have been lots of crush injuries upon the entire body. The body would have been found in mutilated condition in such circumstance. None of such wounds is there on the dead body of the deceased rather the injuries suggest a fall from the train as his skull might have struck either the railway track or the hard earth or the ballasts which are kept besides the railway track, causing depression on it. Thus, in my view, such conclusion of the Tribunal, in the facts and circumstances, holding that deceased was trying to cross railway line and was hit by the running train, has to be discarded for lack of any evidence supporting the view.

While deciding the issue No.1, the Tribunal has held that incident was not an untoward incident and the deceased was not found travelling in the train. It has held that the ticket was implanted by the GRP to benefit the applicants. Now the question would be as to whether a Court of law or a Tribunal can come to such conclusion without any positive evidence available in record regarding such fraud having been played by a police personnel? It is well settled that fraud has to be specifically pleaded and would be required to be proved by leading evidence and the test would be equivalent to the test which is required in proving a criminal case i.e.

come collusion between the applicant and police personnel and due to that police personnel implanted the railway ticket. Apart from the above, the DRM report itself discloses that the ticket found by the GRP is a genuine one. The search of dead body was done on 24.06.2013 itself. For procuring such ticket, a person was required to purchase it and forego his travel foreseeing that Bhugal Paswan is going to die and therefore, he would be required to produce such ticket. Otherwise, there would be no other means to procure the same. In fact there is no discussion at all as to how it has been procured and planted. It is stated by the Tribunal that the search of body of injured was conducted by GRP for which a police personal was not empowered under the Cr.P.C, however, it appears from the report that search was made on the dead body and there is no material at all to show that infact the search was made on the injured itself. Another view has been taken by the Tribunal that there is no independent witness on search memo. Even if it is not there, these things would be of some relevance if a Court of law is considering the issue of conviction or acquittal of an accused but in summary proceedings in nature of enquiry like the present one, the applicants are never put to strict proof of the things as is done in a criminal trial. The GRP might have erred in not taking signature of a witness on the document but, the connivance or collusion not having been proved, it would not be sufficient ground to non suit the appellants.

Accordingly, in view of the discussion made above and in the facts and circumstances of the case, it is held that there was no material to show that fraud has been played and ticket was implanted and the deceased received fatal injuries while trying to cross the railway line having coming

not suggest the same. Next question would be, after the affidavit having been filed by the claimants regarding the relevant facts and the evidence having been led as above, what is the explanation of the railway regarding the accident having taken place in their premises? None of the railway driver or guard informed the railway authority regarding any person having come under the impact of his running train. This is also a fact that injuries on the body of the deceased suggest a fall from train. In such a situation, railway would have to come up with cogent evidence to rebut the aforesaid claim and to show that in fact the deceased was hit by a running train but there is no evidence led by the railways in that regard. Even the DRM report has also come to the conclusion that, on search of the body of the deceased, the GRP has found a railway ticket valid from Ludhiana to Gaya and on verification the same was found correct. Further, since there was no indication of any criminal offence, therefore, in place of registering any first information report, the proceedings have been conducted under Section 174 Cr.P.C. and above all, there is no evidence led by the railway to prove how the incident had actually occurred? In such a situation, the railway would not be in a position to take a firm stand that the deceased died due to coming in the impact of a running train. A reference is made to a decision rendered by Hon'ble the Supreme Court in the case of **Union of India Vs. Rina Devi 2018 (3) R.C.R.(Civil) 40.**

It has also been noticed by the Tribunal that nothing was found with the deceased save and except the railway ticket. It cannot be imagined that a person would travel more than thousand kilometers without any money or baggage with him. The aforesaid finding can not be acceptable in

made of the entire area where the injured was found either by the GRP or the Railway Authority to find out or recover the belongings of the deceased.

In the result, in the absence of cogent evidence put forth by the railways, in my considered opinion, the justice has to tilt in favour of the applicant by holding that he was a *bona fide* passenger and incident, in the facts of the case, has to be taken as untoward incident within the meaning of Section 123(c)(2) of the Act and as such, the claimants would be entitled for statutory compensation in terms of the provisions contained in Section 124(A) of the Act.

Now, next question would be as to what would be such statutory amount. The date of accident is 24.06.2013 and in terms of the schedule attached with the Railway Accident and Untoward Incidents (Compensation) Rules, 1990, the statutory compensation amount available on such date was Rs.4 Lacs. However, in **Rina Devi (Supra)**, the Apex Court has held that in case that amount, if calculated along with interest, comes to a sum total less than amended amount of Rs.8 lacs, which has been made effective from 01.01.2017, and if the Award is being passed by the Tribunal after 01.01.2017, then the higher amount, i.e. Rs.8 Lacs has to be allowed to the claimants. In the present case also if 9% interest is added to Rs.4 Lacs even and it is multiplied by 6 years even then the sum total comes to much less than Rs.8,00,000/- on the date of passing of the present order. Though the Hon'ble Apex Court has held that, in such situation has to be on the date of the Award being passed by the Tribunal but in the present case, the Tribunal has rejected the claim of the claimants, thus, there is no Award of the Tribunal. However, their claim is being allowed by the present order of this

relevant and as such, the claimants would be entitled for compensation of Rs.8 Lacs along with interest @ 9% per annum to be calculated from the date of this order till the date of payment.

In a sequel to the aforesaid discussion, the impugned decision of the Tribunal save and except its finding recorded on the issue No.3, is quashed and set aside. Since, the findings regarding issued No.3 has been upheld, it is held that claimants would be entitled for the compensation amount in equal share. However, share of the minor Chandani Kumari would be kept in a term deposit of any Nationalized Bank and she should be entitled to receive the amount along with interest accrued, after she attains majority.

In the result, this appeal stands allowed to the extent as indicated above, however, the parties will bear their own costs.

(DR. RAVI RANJAN)
JUDGE

02.04.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No