

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

FAO No.4475 of 2013
Decided on:09.05.2019

Pattar Bai and others

.....Appellants

versus

Union of India

....Respondent

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

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

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

DR.RAVI RANJAN, J. (Oral Judgement)

This appeal is directed against the decision dated 18.10.2012 of the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, rendered in Case No.OA-II/129/2011, by virtue of which the claim application filed by the claimants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987, has been dismissed.

1. As per the claimants, the deceased Mohan Lal, his son Parshotam, his wife Rajni Bai and his neighbour-Ramu were to board Hira Kund Express at platform No.4/5 of Amritsar Railway Station for reaching their village at Bilaigarh. It is claimed that no sooner the deceased boarded the train, it started moving slowly but due to jerk Mohan Lal fell down from the train on the track. He was taken out of the track with the help of police and other passengers and was rushed to Railway Hospital where he was declared dead. It is further claimed that the deceased and his relatives

purchased the railway general ticket which was kept in a bag and was lost at the time of accident. Thus, no ticket was found on search of the dead body but the deceased was a *bona fide* passenger.

2. The respondent-Railways filed the written statement controverting the averments made in the claim petition and taking a stand that the accident was not an “untoward incident” within the meaning of Section 123(c)(2) of the Railways Act, 1989 (hereinafter to be referred as the 'Act'), and the deceased Mohan Lal was not even a passenger what to say about *bona fide* passenger. As such, the applicants/claimants are not entitled for the compensation. It is also submitted that the alleged train does not go to Bilaigarh or Raipur and the GRP proceedings are not based on any material.

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

1. Whether the deceased was a *bona fide* passenger of train Hirakund Express on 12.01.2011 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 applicants are the sole dependents of the deceased?
4. Relief.

4. The issue no.1 and 2 were decided against the claimants and in favour of the respondent-Railways holding that the deceased was not the *bona fide* passenger and the accident is not covered within the ambit of Section 123(c)(2) read with Section 124-A of the Act.

5. 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 assails the impugned decision on diverse grounds. It is contended that in view of the findings recorded in the DRM's inquiry report, the railway could not have taken a stand before the Tribunal that no such incident took place on the platform and the incident is not to be treated as railway untoward incident. That apart, the co-passenger Ramu Lal, who has been examined as AW2, has given a graphic account of the incident and withstood the test of cross-examination and, as such, the case of the claimants should have been allowed. It is also stated that the injuries found on the body of the dead person as per the *post mortem* report also suggests that the same was outcome of the railway accident.

Per contra learned counsel appearing for the respondent-Railways has supported the impugned decision by submitting that RW1 Arvind Kumar Deputy SS, Amritsar Railway Station, RW2 Chandrawati Parshad who was working as Shunting Master, Railway Station Amritsar and RW3 Krishan Kumar, Guard on duty on train No.18508 Hira Kund Express train Amritsar to Ambala Cantt., have stated that no such incident had taken place on the fateful day. There is no station memo issue in that regard. No information was given to the GRP by the Railway and, as such, the death cannot held to have been caused due to some railway untoward incident.

6. The Tribunal considered the issue no.1 and 2 being intertwined together.

It has non-suited the claimants chiefly taking into account the evidence led by Railway personnel of RW1, RW2 and RW3 and the fact

that it is apparent from the GRP report that no ticket was recovered from the dead body and further the fact that the case of the Railways is that Hira Kund does not go either to Bilaigarh or Raipur and further that the story is unbelievable that a person will purchase ticket for himself and his relatives but not put it in his pocket rather put it in a bag which was lost during the accident and though such relatives were travelling with him but the bag could not be retrieved. The Tribunal took into account the fact that no station memo was issued and no duty railway staff was aware of alleged incident and it is not known how the GRP came and brought the deceased to railway hospital without any information given by the station authorities. No reference memo is there in the inquest report prepared by the GRP and it appears that it was in fact the hospital authority which had informed the GRP and only then GRP reached the spot and conducted the inquest proceedings. The Tribunal has held that the contention of the applicants that the deceased was taken out of track with the help of police and other passengers gets falsified in view of the aforesaid facts and circumstances and even from GRP inquest proceedings also it appears that the deceased was having injury mark on his buttocks due to striking against the train which clearly indicates that the deceased might have got entangled with some train in the railway yard and not on the platform. It has been further held that the aforesaid fact falsified the claim of the applicants that the deceased boarded the train and got slipped and also that the incident had actually taken place at platform itself because in such case any passenger must have informed the railway authorities or the GRP which is not apparent from the records. Even the Guard of the train stated that no person fell down

from the train. On consideration of the aforesaid facts and circumstances, finally it has been held that the deceased was not a *bona fide* passenger and the death of the deceased does not appear to be a result of untoward incident defined under Section 123(c) (2) of the Railways Act. However, while deciding issue no.3, the Tribunal has held that the applicants, i.e. widow, sons and mother are the dependents of the deceased, but in view of the findings recorded with respect to the issue nos.1 and 2 the claim application has been dismissed.

7. Upon going through the material available on record and on appreciation of rival contentions, this Court is of the opinion that the impugned decision suffers from several flaws. First and the foremost is that the Tribunal, though has considered the oral evidence led on the part of the railway authorities to be one of the reason for non-suiting the claimants/applicants but it has surprisingly overlooked to discuss the vital documentary evidence brought on record by the Railways in the form of DRM's inquiry report which is a statutory inquiry in terms of Section 115 of the Railways Act. The DRM's inquiry report in clear terms has opined that the deceased Mohan Lal alongwith his co-passengers and sons were returning back to their native place and were waiting for their train and at the time of boarding the train, he slipped and fell down due to which he got serious injuries and was taken to railway hospital where he was declared dead. However, further finding is that since no ticket was found from the dead body of the deceased he cannot be held to a *bona fide* passenger. Now the question would be whether the railways authorities could have led oral evidence against this DRM's inquiry report which is outcome of statutory

inquiry and is a vital documentary evidence as the opinion is after the railway inquiry by the railway authorities themselves. In a chart under the caption "Brief Particular of Untoward Incident" the same opinion stands entered in Column No.2B and at Serial No.2D. The GRP has also conducted inquiry proceedings which would be apparent from the Inquest Report No.7 U/S 174 Cr.P.C dated 13.01.2011.

Though the RW1 Arvind Kumar Gupta, Deputy SS, Railway Station, Amritsar has stated in his affidavit before the Tribunal that Form no.1 was not issued by the deponent, a copy of Form No.1 duly signed by the authority has been appended with the DRM's inquiry report which again says at Sr. No.5d that one passenger namely Mohan Lal son of Chet Ram fell down during catching the running train No.8238 on 13.01.2011 and got seriously injured at 16/15 hours. At Sr. No.8 of the same Form, it is stated that he was admitted in the railway hospital and declared dead by the railways doctors. Again a question would arise whether the respondent-Railways can take a stand contrary to such inquiry made by it and the documents attached with the DRM's report? The Answer has to be in negative. Third and foremost error is that without considering such vital evidence on record, the Tribunal has accepted the submission of the Railways which is contrary to their own record.

Even if it is assumed that no station memo was issued and no other formalities were done such as informing the GRP, in view of the aforesaid outcome of the DRM's inquiry report, a prudent person can only come to a conclusion that railway authorities were negligent in not doing so because the factum of accident by a particular train stands admitted in the

DRM's inquiry report. In place of taking action against those erring personnel, the same has been taken as tool to dislodge the case of the claimants.

8. There is another vital thing which the Tribunal appears to have overlooked. AW2 was cross-examined by the counsel for the Railways and to a question put up to him, he has answered that “it is incorrect to say that Mohan Lal was entangled with the train while he was on the platform and was leaning towards the track.” He was answering to the suggestion given by the Railways that actually the deceased got entangled with the train while he was on the platform and was leaning towards the track, which has been answered in negative. However, it shows that the Railways were of the view that he was present on the platform and the accident had occurred on the platform itself but a contrary stand has been taken at the time of hearing by them.

So far the finding by the Tribunal that how the co-passengers did not make a search to retrieve the bag in which the ticket was kept by the deceased which was allegedly lost during the accident and further why a prudent person, after purchasing ticket, would not put it in his pocket rather put it in a bag which was being carried by him is concerned, infact there is no answer to such question as the question itself is questionable. Why a person will not keep his ticket in his pocket, why he will keep it in his bag that could only have been answered by the deceased himself. How somebody else would come and say as to what was going in his mind actually? So far why the search was not made to retrieve the back is concerned, whether it is expected from a son whose father has got seriously

injured in a accident, to make a search of his belongings in place of taking him to hospital in such an emergent situation? It cannot be expected from any prudent person that he would start searching the bag in such a traumatic situation when his father had fallen down from the train in place of taking him to hospital. Infact, it was the duty either of the GRP or the railway authorities to make an intensive search of the spot of incident or the nearby area to retrieve the belongings of the deceased but nothing of that sort appears to have been done. So far the travel route of train which was being boarded by the deceased is concerned, of course AW2 has admitted that the Hira Kund Express does not go to Bilaigarh but it does not mean that it can be inferred therefrom that the same does not go any place nearest to Bilaigarh as such evidence is not available on record. One can go by a train to nearby place and then continue his journey either by bus or any other means of transport. For dislodging the claim of the claimants on this score more evidence could be required for proving that Hira Kund Express does not even go to a nearby place to Bilaigarh but that has not been done and especially when AW2 has further stated in his cross-examination that it is incorrect to say that they were not going to Bilaigarh and thus, they had not boarded that train rather he has stated that they normally use to go by this train only for that purpose.

9. In a decision rendered by the Hon'ble Apex Court in **Union of India vs. Rina Devi, 2018 (3) RCR(Civil) 40**, it has been held that merely not finding ticket on search of the dead body of the deceased would not prove that he was not a *bona fide* passenger. From the inquiry made by the railway authorities itself in the form of DRM's inquiry report, it is apparent

that the accident had taken place at the platform No.4/5 at Railway Station, Amritsar, and therefore, some personnel of GRP which is stationed at the Railway Station itself, alongwith other persons, might have taken the deceased to the railway hospital which is also inside the premises of the Railway Station because no other explanation is possible. At the railway hospital he was declared dead though no station memo was prepared and no formal information was given to the GRP. It would be the *lacuna* and negligence on the part of the railway authorities because incident stands admitted by them in the inquiry report.

10. Now the next question would, if the deceased was boarding a train and he fell down even assuming that the train had already started moving, it would come under the perview of untoward incident as per Section 123(c)(2) of the Act or not? The issue is no longer *res integra*. In the same decision, i.e., **Rina Devi (supra)**, the Apex Court has held that the provisions of this beneficial piece of legislation are based on no fault theory. If such self-inflicting negligence is taken in account then it will lead to holding and assessing contributory negligence which would be against the object of the concerned statute. As such, even if the accident might have occurred due to some error on the part of the passenger, if he was boarding the train or had boarded the train or accident took place at the time of alighting from the train, all would be covered under the perview of untoward incident as per Section 123(c)(2) of the Act, unless it is proved that he went there with clear cut intention of inflicting injuries on his body.

In the aforementioned facts and circumstance, in my considered view, the deceased has to be held to be a *bona fide* passenger and the

accident is to be held as a railway untoward incident within the meaning of Section 123(c) (2) of the Act.

In the result, this appeal is allowed, the impugned decision of the Tribunal save and except its finding on issue no.3 is quashed and set aside. It is held that the appellants/applicants are entitled for the statutory compensation in terms of Section 124-A of the Act.

11. Now the next question would be what would be the compensation amount.

Prima facie it appears that the applicants would be entitled for the statutory amount which was available on the date of accident as per the Schedule attached with the Railway Accident and Untoward Incident (Compensation) Rule 1990, in case of death, i.e., Rs.4 Lakhs. However, in **Rina Devi (supra)** the Apex Court has held that in case at the time of pronouncing the Award amendment has already come and if the earlier fixed statutory amount alongwith interest is at the lower side then the applicants/claimants would be entitle for the higher of the two. Though the impugned decision of the Tribunal is dated 18.10.2012 but by such decision no Award has been pronounced rather the claim application of the claimants was dismissed. The compensation is being granted by the present decision to the claimants in view of the findings recorded by this Court as above. Thus, in my considered view the date of the present order would be relevant for that purpose. If the earlier fixed statutory amount of Rs.4 Lakhs with interest at the rate of 9% per annum is added, it will come only to Rs.7,36,000/-, which would obviously be less than the amended statutory amount of Rs.8 Lakhs which has been made effective from 1st January,

2017. Thus, in my view, the provision being a beneficent one, the claimants should be granted that benefit of amended provision.

In the result, it is held that the claimants would be entitled for statutory compensation amount of Rs.8 Lakhs alongwith the interest at the rate of 9% per annum which is to be calculated from the date of the present decision till the date of actual payment in favour of the claimants.

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

May 09, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes