

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3926 of 2014 (O&M)

Date of Decision: 20.05.2019

Nirmala Devi and Others

.....Appellants

Vs.

Union of India

.....Respondent

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

Present:- Mr.M.S.Rana, Advocate, for the appellants.

Mr.Nitin Kumar, 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 Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by which the claim-application filed by the claimants/appellants under Section 16 of the Railway Claims Tribunal Act, 1987, has been dismissed.

The brief facts emanating out of the records, stand enumerated as under:

The deceased-Lalit Kumar was travelling from Ballabhgarh to Faridabad New Town on 21.10.2011 in EMU passenger train. When the train reached at platform of New Town Faridabad railway station and when he was trying to get down, due to sudden jerk he fell down from the train and received fatal injuries. The injured was taken to the hospital but he succumbed to injuries. It is stated in the claim petition that deceased was having valid ticket but the same was lost at the time of accident.

denying the case to be an untoward incident within the meaning of Section of 123(c) of the Railways Act, 1989 (hereinafter referred to as “an Act”) and as such, questioned the entitlement of the claimants for compensation under the provisions contained in Section 124(A) of the Act. A stand has been taken that the applicants failed to mention as to how the deceased fell down from the train and also the date and time of the journey. Another stand was taken in the written statement that no ticket having been found in the search of the body of the deceased, it cannot be assumed that he was a *bonafide* passenger.

The Tribunal on appreciation of the rival pleadings, framed the following issues:

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

In order to prove their case, the claimants examined one of the applicant-Nirmala Devi as AW-1. She is mother of the deceased.

Apart from the above, the applicants filed several documents including the documents of GRP as well as Railways and the hospital. The postmortem report and death report were also brought on record.

The respondents examined Ajay Kumar Singh, Station Master, Faridabad New Town Railway Station, as RW-1 and Suresh Kumar, Guard of the train as RW-2 and apart from the above, DRM report and other documents have also been brought on record.

The Tribunal has decided the issues No.1 and 2 against the

appellants chiefly on two grounds. First is that, since no ticket was found from the body of the deceased, he cannot be held to be a *bonafide* passenger and secondly that the deceased fell down between the platform and the train and caused serious injury due to his own negligence which can be termed as self inflicting injury. As such, on both counts, the claimants would not be entitled for any compensation amount for the death of aforesaid Lalit Kumar. The Tribunal has also recorded that it is nowhere mentioned what was the negligence of the Railways in all the episode. A further stand has been taken that neither in the claim petition nor in the affidavit, the name or number of the train has been mentioned. It is also not stated that any body has seen the deceased having purchased the ticket.

In the aforesaid background of the matter, I have heard the parties and perused the records of this case.

Learned counsel for the appellant has submitted that even if it is assumed that the deceased did not fall from the train due to jerk at the time of de-boarding rather he fell down while he was trying to board the train and at that point of time train started moving, that would also amount to railway untoward incident as defined under Section 123(c)(2) of the Act. It is further contended that since beginning, it is the case of the claimants that the ticket purchased by the deceased was lost during the course of accident. Accordingly, it is contended on that count, the claimants should not have been non-suited.

On the other hand, learned counsel for the respondent has vehemently argued that the Guard has seen that the deceased was trying to board the moving train and as such, the injury causing death has to be

considered to be self inflicted one. That apart, since no ticket was recovered from the body of the deceased, it cannot be held that he was a *bonafide* passenger. Thus, case of the claimants is falls on both the grounds. It has been forcefully argued before this Court that the claimants have not disclosed either the name and number of the train in the claim petition or specific timing. This has been discussed by the Tribunal also in detail and it has been found to be one of the grounds for non-suiting the claimants. However, in my considered view, since from the DRM inquiry as well as the testimony of the respondents i.e. RW-1 and RW-2, it is apparent that the deceased became victim of a particular train at a particular time at a particular railway station, thus, the aforesaid omission on the part of the claimants would not be of much relevance.

Secondly, the conduct of Guard himself becomes questionable as admittedly, he has stated before the GRP that deceased was trying to alight from the train which was still in motion and that had caused the accident. In the Guard book, he has recorded that the deceased came running on the platform and collided with the train, whereas, in his testimony before the Tribunal, he has taken altogether a new turn by stating that the deceased came running and was trying to board a moving train due to which accident had taken place. Even during DRM inquiry, he had stated that deceased was trying to board the moving train. Of course, he has stated in his cross-examination that police has wrongly written in his statement recorded under Section 175 Cr.P.C that the deceased was trying to get down from the train at the time of accident but the question would be as to why he signed that document? The statement bears his signature and

at different stages, he has made different statements as discussed above. Since he has made several improvements in his statements at different stages, such improvement would be required to be discarded. That apart, even if, for the time being, it is assumed that the deceased was trying to board a train which was moving, this issue is no longer *res integra* as the Hon'ble Supreme Court in **Union of India Vs. Prabhakaran Vijaya Kumar and others 2008(3) R.C.R. (Civil) 577** has opined in a clear terms that whether the deceased was actually inside the train at the time of accidental fall or he/she was only trying to get into the train and in that process he/she fell down, both would amount to accidental falling of the passenger from the train carrying passenger and as such, that would be covered under “untoward incident” as defined in Section 123 (c) of the Railway Act. In view of the aforesaid, it would not be of much relevance as to whether the deceased was boarding the train or getting down from the train. In both cases, it has to be held that the incident is “untoward incident” within the meaning of Section 123 (c) (2) of the Railway Act. In **Union of India Vs. Rina Devi 2018 (3) R.C.R.(Civil) 40**, the Apex Court has held as under:

“16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar³⁴ laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor

Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will 34 2017 (13) SCALE 652 not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

It is further recorded in the impugned decision of the Tribunal that the claimant failed to disclose as to why he was carrying journey from Ballabhgarh to Fridabad New Town station or from Faridabad New Town to Ballabhgarh. However, it appears from the lower Courts record that applicant AW-1 Nirmala Devi has stated that her son was studying in Rawal University, therefore, he use to take train journey. In such a situation, in my considered view, the Tribunal should have taken into notice the aforesaid fact before dislodging the case of the applicants on such ground.

The next issue which has been raised by Railways and has been accepted by the Tribunal is that the railway tickets of the deceased could not be recovered during the search of the body of the deceased, thus, he was not a *bonafide* passenger. However, such issue is also no longer *res integra* as Hon'ble Supreme Court in **Rina Devi (Supra)** has opined that merely not finding a ticket with dead body would not mean that the deceased or injured was not a *bonafide* passenger. The decision regarding the same would have to be taken in view of the attending circumstances. In the present case also, though ticket could not be found during *jamatalashi* of the deceased but at the same time it is not the case of the railways that either the GRP personnel or the railway personnel made an extensive search of the spot of the accident or the nearby area to recover the

belongings of the deceased. In the absence of that, it would be very difficult to presume and hold that the deceased was a ticketless passenger. Apart from the above, it is intriguing that during cross-examination of the AW-1 Nirmala Devi, a suggestion was made by the counsel for the Railway Authority that the deceased was not travelling on ticket but he had got prepared a railway pass. If this is the case of the railway then how a ground can be taken that he was ticketless passenger if he was having a railway pass? It also appears from the cross-examination that the deceased always used to travel Ballabhgarh to Faridabad New Town since he was student of Rawal University, Faridabad. He regularly used to travel as a routine passenger but the Tribunal has held otherwise by observing that there is nothing on record to show that he was daily passenger or routine passenger. In my opinion, such finding recorded by the Tribunal is also erroneous and requires to be reversed as once the claimants have brought the aforesaid fact in their testimony, it cannot be ignored when there is no evidence to rebut the same.

So far the self inflicting injury theory, as envisaged in proviso to the Section 124(A) is concerned, the Apex Court has held in **Rina Devi (Supra)** that the concept of “self inflicting injury” would require intention to inflict such injury and not mere negligence of any particular degree otherwise that would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on “no fault theory”. In the present case also, though it is stated by the Guard that deceased came running to catch a moving train but there is nothing on record to show that he came with the intention to inflict injury upon

himself. In the absence of that, it cannot be held that the fatal injuries were self inflicted.

Having regard to the aforesaid facts and circumstances of this case, it has to be held that deceased was a *bonafide* passenger and the accident is covered within the meaning of definition of the “untoward incident” as envisaged under Section 123 (c) (2) of the Act. Accordingly, it is held that the applicants-appellants would be entitled for statutory compensation amount.

Next question would be as to what should be the just and proper compensation amount in this case. Of course, at the time of accident, such compensation amount as per schedule attached with the Railway Accident and Untoward Incident (Compensation) Rules, 1990, was Rs.4 Lacs. However, in **Rina Devi (Supra)**, the Hon'ble Supreme Court has held that enhanced compensation has to be awarded if enhanced amount of compensation as per amendment brought in the statute, if available of the date of Award, is greater than the amount which was payable on the date of accident along with interest. In the present case no Award has been pronounced by the Tribunal rather the claim application was dismissed. However, the compensation amount is being allowed by the present decision, therefore, in my considered view, the higher amount which would be available on the date of present decision would be the actual, just and proper compensation amount. In such a situation, if 4 Lacs is added with even 9% interest per annum interest from the date of accident, the sum total would be lesser than Rs.8 Lacs, i.e., the amount which is available as per the amendment brought w.e.f. 01.01.2017. As

such, in my view, the claimants/appellants should be entitled for a compensation amount of Rs.8 Lacs alongwith interest @ 9% per annum to be calculated from the date of the present decision till the date of payment.

In the result, the appeal is allowed. The impugned order of the Tribunal save and except the findings recorded with respect to issue No.3, is quashed and set aside.

The Parties would bear their own costs.

(DR. RAVI RANJAN)
JUDGE

20.05.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No