

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1520 of 2016

Date of Decision: 11.03.2019

Bache Lal alias Ajay

.....Appellant

Vs.

Union of India

.....Respondent

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

Present:- Mr.Somesh Gupta, Advocate, for the appellant.

Mr.Karminder Singh, Advocate, for respondent/Union of India.

DR. RAVI RANJAN, J. (Oral Judgment)

This appeal is directed against the decision dated 07.10.2015 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by which the claim application filed by the appellant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124(A) of the Railway Act, 1989 claiming a sum of Rs.4 Lacs along with interest as compensation on account of injuries sustained by the appellant in a Railway untoward incident dated 11.03.2013 has been dismissed.

Brief facts which would be necessary for consideration of the *lis* stand enumerated as under:

The claim applicant/appellant disclosed in the claim petition that he was working as a Tailor in RD Factory at Ludhiana. On 11.10.2013, he reached Ludhiana Railway Station at about 18:00 hours as he wanted to go to his home town at Hardoi. It is further claimed that he purchased computerized second class ticket from Ludhiana to Balamau and boarded Banaras Express train No.12238 down. It is claimed that there was heavy

rush in the train which is started with a jerk and he accidentally slipped and fell down from the train and sustained serious injuries. It is further a case of the claimant that GRP personnel and railway employees got him admitted in the Civil Hospital, Ludhiana. A *ruqqa* was issued by the Civil Hospital to GRP, Ludhiana and on receipt of which GRP personnel reached in Civil Hospital. Due to the nature of injury, the right arm of the injured was amputated up to the shoulder. The applicant produced his ticket before the GRP Ludhiana. Subsequently, Civil Hospital, Ludhiana referred him to Balrampur Hospital, Lucknow, for his surgery on 14.10.2013 where, he remained admitted up to 09.11.2013. It is further claimed that incident has rendered him 100% handicap.

The Railways has contested the claim application by filing the written statement and claimed that no such untoward incident causing injury to the applicant within the meaning of Section 124-A read with Section 16 of the Railway Claims Tribunal Act, 1987 has taken place on the date and place alleged and the applicant was not a *bona fide* passenger as he was not travelling in the train on the day of incident. The injuries are the result of his own negligence and criminal act of the applicant.

On consideration of the rival pleading, the Tribunal framed the following issues:

- (1) Whether the injured/applicant was a *bona fide* passenger of train at the time of incident?
- (2) Whether the injured/applicant became victim of an untoward incident which is covered within the ambit of Section 123(C)(2) of the Railways Act.
- (3) Whether the injured applicant is entitled for any compensation of the Railway Act?
- (4) Relief.

The issues No.1 and 2, being intertwined, have been taken up together for consideration by the Tribunal. The Tribunal has decided the issues against the claim applicant-appellant on the ground that in the DRM inquiry report, the brother of the deceased has stated that he has not given the ticket to the police whereas, as per the case of the applicant, ticket was produced by the brother of the injured on 11.10.2013. Further, during the investigation by RPF, the injured could not reveal the platform number and the train number of the train which he had boarded. It also stands certified by the Railway Authority that Train Number 12238 does not have any stoppage at the Railway Station, Balamau and, at the same time, it is not a case of the applicants that deceased had boarded the wrong train. Further, neither the Guard nor the Driver of train has supported such incident. There is no record at station or with the station master regarding any untoward incident. That apart, Ludhiana railway station being very crowded, such type of accident cannot go without notice. It also stands noted in the impugned decision of the Tribunal that the statement was recorded by Swaran Singh, Head Constable GRP also went on 12.03.2013 for the purpose of recording the statement of injured. Though it is the stand of the appellant that one railway ticket was presented by his brother Vishal Kumar to the GRP on 11.10.2013 the brother of the injured has specifically stated before the RPF that he did not draw any ticket from the pocket of his brother and handed over to the police and on the date of accident he was at Mohali. The Tribunal has come to the conclusion that ticket appears to be a planted one and as such, it has been held that injured was not a *bona fide* passenger of the train. Accordingly, issues No.3 and 4 were also decided against the

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

Learned counsel for the appellant has assailed the decision of the Tribunal on diverse grounds. It is contended that the ticket has been found to be genuine and in the absence of any specific pleading regarding planting of ticket by playing fraud, a presumption could not have been drawn by the Tribunal that the ticket is planted one. It is contended that accident took place when the train started from the platform and the injured fell down and he was taken by ambulance 108 to the hospital. His right arm was crushed and amputated due to the accident. It was further amputated up to the shoulder joints later on by the doctor at the time of his treatment.

Per contra, learned counsel appearing for the Railway has supported the decision by submitting that the ticket, in view of the statement given by the brother of the injured before the RPF that he did not draw the ticket from the pocket and handed over to the police and further fact that the ticket was handed over on 11.10.2013 itself i.e. the date of accident itself whereas admittedly, the brother of the injured was at Mohali at that point of time, the ticket could not have been produced by him on that day. It is urged that why a person would board a train to go to Balamau when the said train did not have any stoppage there.

On consideration of the rival contention, this Court is of the opinion that the Tribunal 's decision suffers from several flaws. First and the foremost flaw is that it has presumed that ticket was produced by the brother of the injured on the date of accident itself, i.e., on 11.10.2013 whereas in his cross-examination, the applicant has clearly stated on being

ticket to the police next date in the hospital only. This aspect has completely been overlooked by the Tribunal. That apart, though it stands stated in the impugned decision that the brother of the injured has categorically stated before RPF personnel that he was present during the inquiry but he did not produce any ticket before the police but the question is as to who had recorded the such statement and what would the evidentiary value of that ? Whether the personnel who had recorded the statement was not required to be produced as a witness so that the claimant could have an option to cross-examine him on this issue? In my opinion, answer has to be in affirmative that he was required to be produced as a witness. Learned counsel for the Railways has accepted during the course of hearing that no witness has been produced by the Railways in support of the DRM report. DRM report in itself may be a piece of evidence but it cannot be held to be a conclusive evidence unless until the relevant persons have been produced as witness and opportunity is given to the other side to cross-examine them. That having not been done and even the guard and railway engine driver also having not been examined and further, no suggestion having been given to the AW1 during his cross-examination regarding the stoppage of the train at Balamau, everything written in DRM report cannot be considered as conclusive proof. Of course, the railways are denying that any such incident having taken place on the platform but what is there answer to the letter written by HC Narinder Singh, Thana GRP Ludhiana, on 11.10.2013 to the Medical Officer, Civil Hospital, Ludhiana, which is available at page No.20 of the lower Court records stating that the right arm was severed in the accident and for which injured has been admitted to the hospital for treatment? Subsequently, that severed right arm was recovered from railway

station Ludhiana also and that was available at mortuary. The question is, if no such accident had occurred on the fateful day i.e. on 11.10.2013, how the severed right arm of the injured applicant was recovered from the Railway Station, Ludhiana and sent to the mortuary for keeping it safely? There is no answer to this question and there is no discussion in the impugned decision of the Tribunal. The Tribunal has presumed that since the brother has not stated before the RPF that he had given the ticket to the police, therefore, the ticket has to be considered to be a planted one. Question would be who has planted the ticket? Where is the pleading regarding that? Whether it was planted by the injured person who was unconscious at the time of accident or by the police personnel at the time of taking him to hospital or at the time he conducted investigation regarding the incident? In my considered opinion, if such allegation is to be true then it cannot be done without help of the police personnel. In such a situation, it was bounden duty of railway authorities to plea such as their case as it would be a serious matter in which even FIR was required to be registered against such persons but no action as such having been taken, merely raising an issue would be a futile exercise. In my considered opinion, the Tribunal was in error in presuming the ticket to be a planted one. That apart, even assuming that no ticket was found, in view of the decision of the Hon'ble Apex Court rendered in **Union of India Vs. Rina Devi 2018 (3) R.C.R.(Civil) 40**, if a ticket is not found available with the body or the injured or the deceased, it cannot be presumed that he was not a *bona fide* passenger. The Apex Court has held that the first onus would be upon the applicant which can be discharged by filing affidavit regarding the relevant facts by him and then burden would shift upon the railways. In the present case, when the applicant has stated

regarding the incident and the circumstance is which his right arm was severed from his body which was recovered from the railway station premises, the burden would definitely then shift upon the railway to explain as to how the severed right arm of the injured/applicant was found in the railway station.

In my considered opinion, the Railways have completely failed to discharge its duty not only on the aforesaid issue but all the other issues which have been `discussed as above and even a single witness has not been examined to rebut the claim of the applicant.

In such a situation, this Court is held with no option, in view of the attending circumstances, to hold that the applicant was a *bona fide* passenger and a railway untoward incident took place on the platform of the crowded railway station in which his right arm was severed from the body which was later on recovered by the police from the railway premises and has been sent to the mortuary and as such, the claimant would be entitled for statutory compensation.

Having held so, now the question would be as to what would be the compensation amount which would be available to the claimant? In my considered opinion, since the claim is that due to the accident the right arm was amputated from just above elbow but at the time of operation it has to be amputated further from the shoulder joints, his case would be covered under Part (III)(1) of the schedule attached under Railway Accident and Untoward Incident (compensation) Rules, 1990. From relevant provisions before the amendment in the schedule, the amount would be Rs.3,60,000/-.

However, learned counsel for the appellant has submitted that in the

per amended rules such amount would be Rs.7,20,000/-.

Learned counsel for the railways contests this claim by saying that it is the date of incident which would be relevant to consider as to which amount would be available under the concerned schedule. The date of incident being 11.10.2013, and the amendment having been effectuated from 01.01.2017, amended amount would not be available to the appellant.

In my considered opinion, this limb of submission raised on behalf of Railway is also to be rejected in view of the decision of the Apex Court in **Rina Devi (supra)**. The Supreme Court has considered this aspect of the matter and has taken a decision in paragraph 15.4 of the judgment which stands quoted as under:

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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.

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It is apparent from the aforesaid decision of the Hon'ble

Supreme Court that if the amount calculated on the date of accident along

with interest is less than the amount prescribed as on the date of Award of the Tribunal, the claimant will be entitled to the higher of the two amounts.

However, in the present case, Tribunal has not awarded any amount as the case of appellant was dismissed but the amount is being awarded by this Court. Accordingly, in my considered opinion, the date of present decision would be relevant for the said purpose as even if, 9% interest is granted that would sum calculated alongwith interest of the amount available on the date of accident would be less than the amount which is available on the date of this decision under amended provision which is Rs.7,20,000/-. Accordingly, it is held that, the claimant/applicant would be entitled for a sum of Rs.7,20,000/- as per the amended schedule attached with the Railway Accident and Untoward Incident (Compensation) Rules 1990. He would also be entitled for interest @ 9% p.a on such amount to be calculated from the date of present decision till the date of payment of the same.

In the result, this appeal stands allowed, however, the parties will bear their own costs. The compensation amount would be required to be paid within 6 months.

(DR. RAVI RANJAN)
JUDGE

11.03.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No