

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2439 of 2016 (O&M)

Date of Decision: 13.03.2019.

Ramalo Devi

.....Appellant

Vs.

Union of India

.....Respondent

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

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

Mrs.K.K.Kahlon, Advocate, for Union of India.

DR. RAVI RANJAN, J.

This appeal has been preferred by the appellant seeking quashing of the decision dated 29.09.2015 rendered by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, in case No.OA-II/155/2013 by which the claim/application filed under Section 16 of the Railway Claims Tribunal Act seeking compensation of Rs.6 Lacs for the death of son of the claimant namely Rohit Kumar in a railway untoward incident.

As per the the claim/application on 11.06.2013, the deceased was coming back from Rajpura to Ambala City. He was travelling alone. He reached Rajpura railway station and purchased his railway ticket and thereafter he boarded the train. When the train reached at KM273/26-24 in between Shambhu and Ambala City railway stations, he accidentally fell down and died on the spot. It has also averred in the claim application that the ticket, cash and bag of cloths was lost in the incident.

The respondent-Railway filed the written statement denying and

disputing the averments by taking a ground that deceased was not a bona fide passenger as it was not an untoward incident in terms of provisions of Section 123(c)(2) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (herein after referred to as “an Act”).

On examination of the pleadings, the following issues were framed:-

- (1) Whether the deceased was a bona fide passenger of 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 Railways Act?
- (3) Whether the applicant(s) is/are the sole dependent(s) of the deceased?.
- (4) Relief.

Considering the rival pleadings of the parties, the Tribunal has come to the conclusion that it is not at all established that the deceased was bona fide passenger and the accident could be termed as untoward incident as per the provision of law.

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

It has been urged on behalf of the appellant that none of the driver and guard has been examined by the Railways as witness in this case who could have informed the nearest railway station that anybody had come under the impact of moving train. It is further submitted that though there is no eye-witness from the side of the applicant/claimant, it is also a fact that there is no eye-witness from the side of railways also. In fact, the dead body

that it appears from the incident that the deceased has fallen from the train. However, in the inquiry report it is stated that he has come under the impact of moving train. The Gangman Lal Singh (A-1) also stated before the GRP that it appears that the deceased has a fall from the moving train.

However, none of these witnesses have been examined by the applicant or the Railways before the Tribunal. So far the certain statements recorded by the Police are concerned its evidentiary value is well known. So far DRM report is concerned, it reveals that the same stand which has been taken by the railways that it is neither the untoward incident nor was the deceased a bona fide passenger.

In the event of no witness regarding the purchase of ticket by the deceased boarding a particular train or even the train number from which he was travelling, it would be very difficult to hold that the deceased was a bona fide passenger. However, if the attending circumstances indicate that he fell down from the train then the Court could consider that aspect also but the attending circumstances which are available on record and which emanate out from the pleadings of the rival parties, do not go to show that the deceased died due to fall from the train rather the same suggests that he came under the impact of a moving train which could have only been possible if he was crossing railway line illegally at the place of occurrence. The site map which is on record and which has been prepared by the police shows that the body has been cut into pieces and different parts scattered in different places at railway line over a distance. The Tribunal has also considered the same and also "*Mulahaja Lash*" prepared by police which states as under:

पड़ा है। लाश का सिर पूर्व दिशा की ओर है। लाश का चेहरा रेलगाड़ी द्वारा कुचला हुआ है। लाश की घड़ छाती से नीचे का हिस्सा व एक टांग डाउनलाईन के अंदर लाईनों के बीच में पड़ी है। लाश की एक टांग डाउन लाईन के बाहर पड़ी है। लाश मृतक की जेब में उलझी अवस्था में एक डाईविंग लाईसेंस जिसका नम्बर 570112 है।”

The postmortem report also supports the same which states that that the body of the deceased was in mutilated condition cut into 7 pieces. A question would be whether such injuries would be possible if a person falls from a moving train? Answer would have to be in negative as in such a situation would have been injuries like dislocation of bone, abrasion, laceration and head and the spine injuries etc but body cannot be cut into pieces by falling down from the train as the kinetic energy due to speed of train and blowing wind would throw the body outside the line of the train. Such injury would only be possible if a person comes under the impact of a running train. The Tribunal has also taken a notice that the Assistant Station Master had given a message saying, as reported by Mukesh Kumar, gateman of gate No.129-C, that a dead body was lying at km 273/26-24 between Shambhu-Ambala City Down line in track. This message does not indicate that deceased has fallen down from the same train.

By way of last submission, learned counsel for the appellant has urged that even in case when a person run over by a running train, the driver or guard of the train has to inform the station master of the nearest railway station but that has not been done. Thus, it has to be understood that the deceased has fallen from the moving train. *Prima facie* this limb of argument appears to be attractive but on deeper scrutiny the same is to be rejected because the nature of injury not at all suggests the theory put by the

claimants of falling down from the train as I have already discussed above.

In such a situation, in my considered opinion, the appellants have been unable to make out a case warranting interference of this Court in the impugned judgment.

In the result, this appeal fails and is dismissed, however, parties will bear their own costs.

(DR. RAVI RANJAN)
JUDGE

13.03.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No