

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5963 of 2013

Date of Decision:13.05.2019

Sunita Devi and others

.....APPELLANTS

Vs.

Union of India

.....RESPONDENT

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

Present: Mr.Shubhash Sachdeva, Advocate for
Mr.Satinder Kumar Rana, Advocate for
the appellants.

Ms.Abha Rathore, Advocate for the
respondent-UOI.

DR. RAVI RANJAN, J.(Oral Judgment)

This appeal is directed against the Judgment dated 31.05.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for the sake of brevity 'the Tribunal') in Case No.OA-II/249/2011, by which the Tribunal has rejected the claim application filed by the appellants (widow and minor children of the deceased) under Section 16 of the Railway Claims Tribunal Act, 1987 (for the sake of brevity 'the Act') seeking compensation of Rs.10,00,000/- on account of death of one Vimal Mandal.

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

As per the claimants, in the night of 11.06.2011, the deceased Vimal Mandal went to railway station Mandi Dabwali along with his cousin brother Ram Udgar Mandal, as he was to go to his village near Darbhanga(Bihar) by boarding a train Awadh Express. When they reached at

railway station at the midnight of 12.06.2011, Vimal Mandal (since deceased) purchased one ticket of superfast mail train from Dabwali to Darbhanga(Bihar) in the presence of his cousin brother Ram Udgar Mandal and put the same in his bag in which clothes, water bottle and cash were also kept. Ram Udgar Mandal, after purchase of ticket, returned back. When the train No.15610 reached at railway station Mandi Dabwali, there was huge rush of passengers in the general compartment. Vimal Mandal (since deceased) was trying to put his legs on the footboard of the said train to board the same, in the meantime, the train started with a jerk and caught speed and, as a result of which, he slipped and fell down from the train and received serious grievous and multiple injuries on the vital parts of his body particularly on head and succumbed to death at the spot. The Station Master gave information to the GRP/Mandi Dabwali that one dead body was lying near railway line at railway station Mandi Dabwali whereupon the GRP personnel reached at the place of occurrence and conducted inquiry under Section 174 Cr.P.C. The postmortem of the deceased was also conducted in the Civil Hospital, Dabwali on 12.06.2011. According to the claimants. The number of purchased ticket, as mentioned in the claim application, is 67592606 dated 12.06.2011 of a value of Rs.229/-.

The respondent-Railways contested the claim application by filing written statement wherein by way of preliminary objections, it is averred that the alleged incident does not fall within the provisions of Section 123(c) (2) read with Section 124-A of the Railways Act, and, as such, no untoward incident causing the death of the deceased occurred on 12.06.2011 and secondly, that the deceased was not a *bona fide* passenger.

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

- “1. Whether the deceased was a *bona fide* passenger at the time of incident?
2. Whether the incident is covered within 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 in this case?
4. Relief.”

However, after filing of the written statement, an inquiry was conducted by the railway and its report was submitted in the name of 'DRM Report' in which a clear-cut stand has been taken by the respondent-Railway Authority that the deceased had tried to board the moving train due to which the above incident had occurred in the night time. Since the occurrence took place in night, no one could see the deceased falling down from the said train. The investigating agency, i.e., the GRP, in his report, has also stated cause of death of the deceased due to fall from the train while boarding it.

Taking into account such materials which were available on record, the Tribunal has held that the accident can be termed as 'Railway Untoward Incident' within the meaning of Section 123 (c) (2) of the Railways Act, 1989. There is no challenge to the aforesaid finding in the present appeal as there is no cross-objection or cross-appeal by the Railway. Accordingly, the aforesaid finding that the accident was a 'Railway Untoward Incident', is kept intact.

However, the issue, on which the appellants-claimants have been non-suited, is that the deceased was not a *bona fide* passenger. The Tribunal has held that there is variation in the version of AW1-Sunita Devi(claimant-appellant No.1), who is the widow of the deceased and AW2-Ram Udgar Mandal, who is cousin brother of the deceased.

Before coming to the issue, let it be noted that the original ticket was produced along with the claim application itself and nothing was recorded

in the police record regarding the recovery of same either from the dead body or any article found along with the deceased. AW1 has stated that she found the ticket kept in the bag of the deceased carried at the time of journey after the bag was returned to her by the police. Whereas AW2 has stated that, in fact, the ticket was recovered from the dead body and he is the witness to the *fard jamatalashi*.

On such contradiction having been found between the testimony of AW1 and AW2, coupled with the fact that a ticket was produced later on, i.e., along with the claim application as the same was not found during the search of the dead body of the deceased, the Tribunal has recorded a finding that the Railway appears to be correct in saying that the ticket was introduced later on and, in fact, the deceased was a ticket-less passenger and not a *bona fide* one. Thus, the claim application has been dismissed on that count.

In the aforesaid background of the factual matrix, I have heard learned counsel for the appellant as well as the respondent-Railways and have perused the records of this case.

From the pleadings and the materials available on record, it is apparent that case of the appellants-claimants is that a ticket was purchased of which AW2 is an eye-witness. There is no eye-witness of the accidental fall but that is of no consequence as the Tribunal has already recorded a finding that it was a 'Railway Untoward Incident' and Railways has not filed any appeal or cross-objection assailing that finding.

It is further clear that, according to the reports of the police, no railway ticket was found on personal search of the dead body of the deceased and Rs.1740/-, one mobile phone (Nokia) and two slips containing telephone numbers were recovered. The widow of the deceased, while being examined as

AW1, has stated before the Tribunal that she found a ticket in the bag which was carried by the deceased at the time of journey and which was given back to her by the police whereas there is contradiction to that in the testimony of AW2 to the extent that he has stated that the ticket was found in the *jamatalashi* by the GRP.

Now, the question would be as to whether, on the basis of the such contradiction, it can be held that deceased was not a *bona fide* passenger and a ticket-less passenger especially in view of the fact that there is no otherwise evidence produced by the Railway? Railway is merely relying upon such contradiction in the testimony of AW-1 and AW-2 and also the fact that the ticket was not found during *jamatalashi*. However, a clear stand has been taken by AW-2 that the deceased purchased a ticket in his presence as his brother gave Rs.230/- on the ticket counter and he got back Rs.1 from the concerned employee of railway present at the window. So far as this part of his affidavit is concerned, he has withstood the test of cross-examination and there is nothing on record to show that the same was a false statement. In fact, there is no evidence led on this part by the Railways. Then, in such a circumstance, even if it is assumed that no ticket was recovered at the time of *jamatalashi* from the dead body and the ticket has only been produced later on, it would be at best the case in which no ticket could be recovered from the body of the deceased. Whether even in such circumstance, it can be presumed that, since no ticket was recovered from him, the deceased was a ticket-less passenger?

The issue is no longer *res-integra* as the same has been considered and decided by the Hon'ble Apex Court rendered in **Union of India Vs. Rina Devi 2018 (3) R.C.R.(Civil) 40**. The Apex Court in paragraph 17.4 of the aforesaid decision has observed as under:-

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a *bona fide* passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a *bona fide* passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

From perusal of the above, it is apparent that mere non-recovery of ticket from the dead body would not be enough to hold that the deceased was a ticket-less passenger. At the same time, the Apex Court has also observed that even if a body is found within the railway premises or besides the railway line, there cannot be any presumption that he was a *bona fide* passenger. The things will depend upon the facts of the case and attending circumstances.

In the present case, the claimants have come up with their stand in the claim application that deceased purchased a ticket, ticket number was given, original ticket has been brought on record but it is being contradicted in view of the contradiction in the version of AW1 and AW2 and also the fact that police report does not disclose that any ticket was recovered but what about the testimony of AW2 regarding the purchase of the ticket? The railways have not been able to rebut it by leading any evidence. That apart, it has also to be kept in mind that it is the bounden duty of the Railway Authority to make necessary arrangements to regulate the entry of passenger in the railway stations, platforms as well as in the compartment of concerned train. It has got manpower and full mechanism for doing that.

A Division Bench of Allahabad High Court(Lucknow Bench) in **Union of India Vs. Balak Ram Joshi, (2013) ACJ 727**, has held that even the entry of the passengers to the platform is restricted subject to purchase of platform ticket, thus, it has to be presumed that every person travelling in the train or entering the platform is holding a valid ticket unless proved otherwise but the otherwise has not been proved by the railway.

The Bombay High Court Nagpur Bench in the case of **Mahadeo Laxman Kumare and another Vs. Union of India, 2006 ACJ 681**, has held in a case in which the *panchnama report* disclosed that *panchnama* prepared by the police did not disclose recovery of any journey ticket, however, since there is positive assertion as well as evidence placed on record by the claimants regarding journey ticket and the respondent-railways failed to lead any evidence or rebut the same, it cannot be said that appellants-claimants failed to discharge their initial burden to prove the claim and hence, the deceased was declared a *bona fide* passenger.

Accordingly, in my considered view, even assuming that no ticket was found, in search of dead body in a accident of such nature in which human life has been lost, there would always be a possibility of ticket being lost. There is nothing on record to show that either the GRP or the Railway Authorities made extensive search at the spot to nearby area to find out the belongings of the deceased. In such a situation, this Court is left with no option than to hold, in view of the attending circumstances, that the deceased has to be considered as a *bona fide* passenger. As such, the finding recorded by the Tribunal with respect to issue no.1 as to whether the deceased was a *bona fide* passenger at time of incident or not, is quashed and set aside. The deceased is held to be a *bona fide* passenger and, accordingly, the appellants-claimants would be entitled for grant

of compensation.

Having held so, another question would arise as to whether what would be the quantum of such compensation amount? Ordinarily, at the time of accident, the amount which was available as per the relevant statute, i.e., the Schedule attached with the *Railway Accidents and Untoward Incidents (Compensation) Rules, 1990*, would be such compensation amount. In the year 2011, admittedly, such amount was of Rs.4 lacs. However, learned counsel for the appellant, at the time of hearing, has submitted that the compensation amount has been enhanced by bringing an amendment which has been made effective from 01.01.2017 and, as such, the appellants-claimants are held entitled for enhanced amount of Rs.8 lacs alongwith interest.

Per contra, learned counsel for the respondent-Railway authority has submitted that the amount which was available on the date of the accident would only be available to the appellants-appellants in this case.

The issue is also no longer *res-integra*, inasmuch as the same has already been considered and decided by Hon'ble Apex Court in **Rina Devi (supra)**. The Apex Court in paragraph 15.4 of the aforesaid decision has observed as under:-

“15.4 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.”

It is apparent from the above decision that on the date of Award, if the compensation amount, which was available on the date of accident along with reasonable interest, is on the lower side than the enhanced amount, then in such a situation, the appellants-claimants would be entitled for higher of the two amounts.

However, in the present case, there is no Award by the Tribunal rather the claim application was dismissed by it. Thus, in my considered view, the date of the present decision by which the compensation amount is being allowed, would be of relevance. Now, if the earlier available amount in the year 2011, i.e., Rs. 4 lacs is added with the interest @ 9% per annum even then such enhanced amount would be less than Rs.8 lacs. Thus, in my view, such provision of the statute being beneficial one, the benefit of enhanced compensation amount should be given to the appellants-claimants in view of the decision of Hon'ble Apex Court rendered in **Rina Devi (supra)**.

Accordingly, I hold that the appellants-claimants would be entitled for enhanced compensation amount of Rs. 8 lacs along with interest @ 9% per annum to be calculated from the date of the present decision till its payment.

As such, as per the finding recorded by the Tribunal with respect to issue No.3, the appellants-claimants would be entitled to share the aforesaid compensation amount in equal shares. The amount payable to the appellant-claimant No.1-Sunita Devi, who is widow of the deceased, would be disbursed in her favour whereas the amount payable to the minor children, i.e., appellants-claimants No. 2 to 4, who are the son and the daughters of the deceased, as it has been informed, at the time of hearing, that they are still minor, would be

kept under the term of Fixed Deposit of any Nationalized Bank in their names which would be withdrawn by them along with interest after attaining the age of majority.

In the result, this appeal stands allowed to the extent as indicated above. However, there would be no order as to costs.

**(DR. RAVI RANJAN)
JUDGE**

13.05.2019
Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No