

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

FAO No.6244 of 2013

Decided on:14.03.2019

Guddi and another

.....Appellants

versus

Union of India

....Respondent

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

Present: Mr.R.K.Sharma, Advocate,
for the appellants.

Mr.Sanyam Malhotra, Advocate,
for the respondent-UOI.

DR.RAVI RANJAN, J. (Oral)

I have heard learned counsel for the appellants and respondent and have perused the record.

1. The appellants, through this appeal, assail the Judgment dated 16.05.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, in Case No.OA-II/295/2011, by which the claim application filed under Section 16 of the Railway Claims Tribunal Act, 1987, by the claimants/applicants-appellants, has been dismissed.

The claimants/applicants disclosed in their claim application that the deceased was going from Railway Station Ballabgarh to Koshi Kalan by EMU train after purchasing a ticket as he wanted to visit the Shani Dev Temple at Koklawan near Koshi Kalan. When the train reached at Km 150/9-11 between Ballabgarh and Asawti Railway Stations, due to heavy jerk the deceased fell down from the train and died. The engine driver of one of the train, v.i.z., Anil Kumar, informed the Station Master, Ballabgarh that a dead body was lying on the railway track, at Km 150/9-11 on

02.07.2011 at about 3.50 a.m. The Station Master issued memo to GRP which reached at the spot and conducted inquest proceedings. Nothing was recovered from the person of the deceased. After few days the applicants with some other persons enquired from the Station Master, Ballabgarh, who relegated them to GRP and there they identified the deceased when they were shown the clothes and photographs of the dead person. It is claimed that due to railway untoward incident the son of the applicant no.1 and 2 lost his life.

2. The respondent contested the claim by filing the written statement denying and disputing the averments made in the claim application and also taking a stand that he was not a *bona fide* passenger and the incident cannot be termed to be an untoward incident in terms of Section 123(c)(2) read with Section Section 124-A of the Railways Act, 1989. The age of the deceased in the claim application stated to be 27 years, however, the *post mortem* report reveals it to be 28-30 years, but the Secondary School Certificate which is on record states the date of birth as 11.11.1994. According to the certificate the deceased was merely of 17 years of age.

3. The Tribunal has held that the deceased cannot be taken as a *bona fide* passenger as there is no evidence on record that he boarded a particular train after purchasing a ticket and no ticket was found from his purse. Thus, the Tribunal has presumed that it was self inflicted injury which must have taken place at the time of crossing the railway line unauthorisedly.

4. Learned counsel appearing for the appellants has vehemently argued that non-recovery of railway ticket from the body of the deceased

does not mean that he was a ticket-less passenger and would not be entitled for any compensation. However, in my considered opinion, it has to be first established *prima facie* by the claimants/appellants that actually he was the passenger of a particular train. There is no evidence on record showing that he purchased a ticket and boarded a particular train. The Hon'ble Apex Court in Rina Devi has considered this aspect and has held 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.”

It is apparent from the above that the Hon'ble Apex Court, while considering the issue was of the opinion that mere presence of the body on the railway premises would not be a conclusive prove that the injured or the deceased was a *bona fide* passenger for which claim of compensation could be maintained but, at the same time, mere absence of ticket with such injured or deceased would also not negative the claim that he was a *bona fide* passenger. Obviously, initial burden would be upon the claimants which can be discharged by filing affidavit regarding the relevant facts, then the burden will shift upon the Railways and then the issue can be decided on the facts shown or the attending circumstances.

5. In the case in hand, there is no evidence as has been recorded above that the deceased purchased a ticket and boarded a particular train and the ticket was also not found but at the same time there is no evidence led on behalf of the Railways also that he was unauthorisedly crossing the railway line and had met with an accident. However, in my view, the clinching issue would be the nature of injuries which has been found by the

Medical Officer who has done autopsy on the dead body. The report reveals that the body was cut into two pieces and one piece was lying in between the track and another piece was lying outside the track. Now the question is whether it is possible that such type of injury would be inflicted upon a person if he accidentally falls from a moving train? In my considered opinion, it would be very difficult to hold as such. If a person falls from a running train lacerated wounds, fracture of bones, skull or vertebral columns or neck and other such type of injury could be possible. Further, due to impact of the speed of the train and the blowing wind, the body would fall outside the track. The probability of his body being dragged into the wheels of the moving train would be minimal in case of accidental fall from the moving train.

Thus, in view of the facts of the case and the attending circumstances, since there is no specific evidence led on behalf of both the parties, it has to be held that as per the nature of injury inflicted upon the deceased, it would not possible to accept the proposition that the deceased had a fall from a moving train.

6. In view of the aforementioned discussion, since learned counsel for the appellants has not been able to make out a case for interference in the impugned decision, this appeal fails and is, accordingly, dismissed. The parties will bear their own costs.

March 14, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes