

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3190 of 2016 (O&M)

Date of Decision: 03.05.2019

Premlata and Others

.....Appellants

Vs.

Union of India

.....Respondent

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

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

Mr.Vikas Chatrath, Advocate, for respondent/Union of India.

DR. RAVI RANJAN, J. (Oral Judgment)

The claimants/appellants have assailed the decision of the Railways Claims Tribunal Chandigarh, Chandigarh Bench, dated 05.02.2016 in Case No.OA-IIU/2014/0276 by which it has dismissed the claim-application filed under Section 16 of Railway Claims Tribunal Act, 1987.

Briefly stating, the case of the claimant is that deceased-Narayan Singh had gone to offer prayer to Mata Vaisno Devi alongwith his nephew (Keshav Singh). They purchased a common computerized ticket for two persons from Jammu Tawi Railway Station to New Delhi for return journey and boarded Shalimar Express. When the train reached at Ludhiana Railway Station, since they felt unconformable due to hot weather and heavy rush in the train, both of them alighted from the train so that they could take some relief. When they were taking breakfast, train left station. After that they boarded the Sachkhand Express. There was heavy rush in the general compartment and when the train reached at Km No.350/17-19 in between

Chawa and Doraha Railway Stations, the deceased accidentally fell down and died on the spot. A Junior Engineer, v.i.z. Anil Kumar informed the Station Master, Doraha regarding finding a body lying in between UP and Down tracks. The nephew of the deceased made a search for the deceased after reaching at Ambala Cantt. Railway Station but he was not found. After alighting from the train at the said station, he informed the relatives at New Delhi who reached at Ambala Cantt. They went together to Ludhiana side to find out what has happened to him. Finally, they could know at Doraha that one person had fallen down near Doraha Railway Station then they reached Civil Hospital, Khanna and identified the deceased. The nephew of the deceased produced common ticket for two persons from Jammu Tawi to New Delhi before the GRP Doraha. Accordingly, the claim application was filed by the Widow and the minor sons under Section 16 of the Railway Claims Tribunal Act, 1987.

The respondent-Railways responded by filing written statement denying and disputing the averments made in the claim application taking the ground that the accident cannot be termed as untoward incident within the meaning of Section 123 (c) (2) of the Railways Act, 1989 (hereinafter to be referred as “the Act”). They further took a stand that tickets were planted, managed and story set forth in the claim petition is imaginary and fabricated. Thus, it was claimed that the deceased cannot be held to be *bona fide* passenger.

On appreciation of rival pleadings, the Tribunal framed the following issues:

1. Whether the deceased was a *bona fide* passenger of train at the time of incident.

2. Whether the incident is covered within the ambit of Section 123(c) (2) read with Section 124-A of the Railway Act?
3. What the applicant(s) is/are the sole dependent(s) of the deceased.
4. Relief.

The applicant-claimant No.1 i.e. Premlata produced herself as a witness and was examined as AW-1. The nephew of the deceased, v.i.z., Keshav Singh was examined as AW-2. Apart from the above, certain documentary evidences were also brought on record, for example, copy of the inquest report, personal search memo, *Peshgardgi*, copy of the tickets, copy of the statement of Harmesh Singh HC GRP, copy of the statement of Bhagwan Singh-Railway Gangman recorded by the police, written statement of the Keshav Singh before the police, statement of Premlata before the police and the postmortem report etc.

The Railways examined one Desh Raj, Station Master, Doraha as RW-1 and Ramesh Kumar, on duty Guard train No.12716 as RW-2 and also brought on record the DRM report.

The Tribunal on appreciation of materials available on record came to the conclusion that no cogent evidence could be led on behalf of the claimants to prove that the accident was an untoward incident within the meaning of Section 123(c) (2) of the Railways Act, 1989. Secondly, even if, it is assumed that deceased alongwith AW-2 was travelling in Shalimar Express, there could not have a break journey at a distance which was less than 500 Kms. from the originating station and there is no endorsement also on the ticket of the applicant by the competent authority allowing such break journey. Thus, in view of the above, the Tribunal has come to the

conclusion that the deceased was a ticketless passenger.

That apart, it has also been noticed by the Tribunal that there are certain discrepancies in the evidence of AW-2 especially in his cross-examination and no evidence has been led by the claimants bringing on record any proof that the deceased as well as AW-2 stayed at Jammu.

In the aforesaid background of factual matrix and materials available on record, I have heard learned counsel for the appellants as well as the respondent.

Learned counsel for the appellant has taken a stand that hyper-technical view has been taken by the Tribunal for non-suiting the claimants as it would be borne out from the evidence led on behalf of the claimants that the deceased slipped from the Sachkhand Express and died and since a ticket was produced for two persons which was verified from Jammu by the Railway Authorities and found valid, the deceased would have to be considered as a *bona fide* passenger and the accident to be an “untoward incident” in terms of Section 123 (c) (2) of the Act.

Pet contra, learned counsel for the Railways have fully supported the findings recorded by the Tribunal and has submitted that discrepancy in the cross-examination of the AW-2 are fatal and, that apart, no ticket was found from the personal search of the dead body rather the same was produced lateron by Keshav Singh before the GRP which is clearly an afterthought having been done with a purpose to grab the compensation amount from the Railways.

However, one thing which could not be considered by the Tribunal or pointed by the parties before the Tribunal and would be of vital

records which gives the location of the dead body as (A) in between the UP main line and Down main lines. Secondly, ante-mortem injuries found in the postmortem report. The location of dead body between the lines would suggest a fall from the train rather than due to coming into the impact of a running train as in such case parts of the body would have been found in mutilated condition, cut into pieces and crush injury would have been found all along but this is not the case which would be apparent from the post mortem report.

Apart from the above, the Tribunal has non-suited the claimants after holding that the deceased was ticketless passenger on the ground that break journey was unauthorized as has been mentioned above. However, from reading of the claim-application and on appreciation of evidence, it appears that it is not the case of claimants that the deceased opted for a break journey at Ludhiana and then boarded another train rather their case is that they alighted from the train at Ludhiana for having breakfast and, in the meantime, the train left. They could not catch it. Since they were having a ticket from Jammu to New Delhi, in such condition, they boarded general *boggy* of Sachkhand express which was heavily crowded. Even the nephew could not see whether the deceased was able to board it or not. Though there is no eye-witness of accidental fall but the claimants have filed affidavit and produced evidence including the co-passenger stating that till Ludhiana they were in company of each other and they decided to board Sachkhand Express but since there was heavy rush, the co-passenger could not locate as to whether the deceased also boarded the train or not and the body was found between UP and Down railways tracks subsequently as

on behalf of the railways after proper enquiry would have been of great help. Since, such affidavit was filed on behalf of the claimant and evidence was led which prima facie leads to a situation that there could be no circumstance other than that which have been shown by the claimants, the burden was on the railways to show that actually the death did not occur in such manner which has been claimed by the applicants/appellants but the DRM report is totally silent on that point.

The DRM report shows that the Guard or Engine Driver of the concerned train did not inform regarding accidental fall of any passenger from their train but at the same time it says nothing or gives no explanation for finding a dead body in between the UP and Down track. The only other explanation available would be that the deceased was trying to cross the railway track unauthorizedly and was run over by a train. But even the engine driver or guard of such train could not inform the Station Master that such mishap had happened with that particular train. Thus, in my considered view, when there is no other explanation possible and this is admitted fact that the dead body was found between up and down railway tracks, the only possible explanation would be one which has been set up by the claimants that the deceased was travelling by the train and had an accidental fall. Apart from that, the injuries found in the postmortem report also suggest the same.

So far as planting of ticket is concerned, though such stand has been taken by the Railway but there is no evidence led in that regard. Of course no ticket was found from the search of the dead body but accident is dated 19.08.2014 and the tickets were also purchased on the same date. It

would be very difficult to accept that the person, within 24 hours, would manage such ticket on the date of accident itself showing a purchase from Jammu railway station which is far away from the place of accident. In the aforesaid facts and circumstances, the theory of implanting the ticket by the AW-2 put forward by railway authority becomes very doubtful and under such circumstance, only option left is to accept the case of the complainant that the ticket was with the co-passenger and it was produced before the GRP when he first appeared before it. It has also to be kept in mind that these are summary proceedings in the nature of inquiry and it is well settled that in such type of proceedings the claimants cannot be fastened with the liability to prove their case beyond all reasonable doubts as is being done in a criminal trial. The matter has to be decided on the basis of preponderance of probabilities. The evidence led by both the sides would have to be weight and law will tilt in favour of the evidence which would be found more plausible. The minor discrepancies, which were being pointed out in the cross-examination of AW-2, would not be sufficient to dislodge the claimants.

As a sequel to aforesaid discussion, this Court is of the opinion that, in the facts and circumstances, it has to be held that the deceased was a *bonafide* passenger and accident would be within the meaning of “untoward incident” as per the provisions contained in Section 123(c) (2) of the Act, and, as such, the claimants would be entitled for statutory compensation in terms of the schedule attached with the Railway Accident and Untoward Incident(Compensation) Rules, 1990.

However, the findings recorded by the Tribunal with respect to the

issue No.3 accepting the claimants to be dependents, is kept intact.

Next question would be as to what would be the compensation amount for which the claimants-appellants would be entitled? Since the accident is of the year 2014, prima facie, it has to be held that in case of death, as per Schedule mentioned above, the claimants would be entitled for Rs.4 Lacs. However, the said compensation amount was revised by bringing amendment in the aforesaid rules w.e.f. .01.01.2017 enhancing it to Rs.8 Lacs. The Apex Court in **Union of India Vs. Rina Devi 2018 (3) R.C.R.(Civil) 40**, has held that in case the accident is covered by the previous provisions under which Rs.4 Lacs is to be granted but amount with interest, if remains below the enhanced compensation amount of Rs.8 Lacs on the date of Award, in such case, the claimant would be entitled for benefit under the amended provision.

In the present case, no Award has been pronounced by the Tribunal rather the claim application was dismissed. The appellants are getting such benefit in view of the findings recorded by this Court vide the present decision. Hence, in my considered opinion, the date of passing of the present order would be relevant and applying the same principle as per **Rina Devi (Supra)**, the appellant would be entitled for compensation amount of Rs.8 Lacs along with interest @ 9% per annum from the date of the present decision till its realization.

In the result, this appeal stands allowed and the impugned decision of the Tribunal is quashed and set aside save and except the findings recorded by the Tribunal in connection with issue No.3 which has been kept intact.

The amount of compensation shall be distributed in equal share between the claimants. The parties would bear their own cost.

(DR. RAVI RANJAN)
JUDGE

03.05.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No