

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3569 of 2016

Date of Decision:11.02.2019

Murti Devi and others

.....APPELLANTS

Vs.

Union of India

.....RESPONDENT

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

Present: Mr. Atul Bhatia, Advocate
for the appellant.

Mr. Neeraj Madaan, Advocate
for the respondent.

DR. RAVI RANJAN, J.(Oral)

The appellants (claimants before the Tribunal) have assailed the Judgment dated 15.10.2015 passed in *Case No.OA-II/20/2014* by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”) by which their claim application filed under Section 16 of the Railway Claims Tribunal Act, seeking compensation of Rs.8,00,000/-(Rupees Eight Lacs) for the death of Shri Hari Pal, who was the husband of appellant/claimant No.1-Murti Devi, has been rejected by the Tribunal on the ground that the appellants-claimants have not able to prove that the deceased was a *bona fide* passenger and the accident was not a Railway Untoward Incident as contemplated under Section 123 (c) (2) of the Railways Act, 1989.

Shorts facts necessary for consideration of the *lis* stand enumerated as under:-

The claim application, as stated above, was filed by the claimants on 28.01.2014 after the death of one Hari Pal (husband of appellant-claimant

No.1-Murti Devi on 17.12.2013. As per the claim application, in the morning of 07.12.2013, the deceased-Hari Pal was going to Rohtak for doing some work and boarded the train at Kharawar Railway Station which reached there at about 8.30 A.M. After purchasing the journey ticket, he boarded the train but somehow fell down from the running train at km No.60/4-5 between Asthal Bohar and Khararwar Railway Station and died at the spot. According to the claimants, the deceased was a *bona fide* passenger and had died in the accident which has to be taken as untoward incident but during the accident, his Railway ticket got lost.

The respondent-railways filed written statement denying and disputing the averments of the claim application on the ground that no such untoward incident causing death of the deceased-Hari Pal within the meaning of the provisions of Section 123(c) (2) read with Section 124-A of the Railways Act, took place. It is also stated that the deceased was not a *bona fide* passenger of the train on 07.12.2013, as no ticket could be found from the search search of the body, and, thus, cannot be held to be entitled for the statutory compensation amount.

In the written statement, it has categorically been stated in paragraph No.9 that DRM report was still awaited hence the respondent-railway reserves the right to amend the written statement as new facts may come up during inquiry. However, admittedly, no amendment was made in the written statement by the respondent-railway authority.

On consideration the pleadings of the parties, the Trial Court framed following issues:-

“(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 applicants(s) is/are the sole dependents(s) of the deceased?

(4) Relief.

In order to support their case, the claimants examined the applicant/claimant No.1-Smt. Murti Devi, widow of the deceased as AW-1. She has deposed that she was not accompanying the deceased and, thus, exactly she would not be able to say as to how incident took place and also, she is not a witness as to whether the deceased purchased the ticket or not.

AW-2, namely, Anil has stated in his affidavit that he is doing private job in a company and on the fateful day, i.e., on 07.12.2013, he was coming from Rohtak on Bhiwani Passenger Train to his village Karor. When he alighted from the train and was going from Kharawar Railway Station on foot to his village Karor, he saw his uncle Hari Pal (since deceased), who told him that he was going to Rohtak by passenger train of 8.30 hours from Kharawar Railway Station for purchasing the cattle feed. On the same day, Anil came to know that his uncle had fallen down from the train at km No.60/4-5 between the Railway Station Kharawar-Asthal Bohar and has died. He reached at the spot and from there he reached at Dead House of PGIMS, Rohtak and identified the dead body of his uncle-Hari Pal. However, it appears from his cross-examination that he has accepted that he was not travelling with the deceased on the fateful day and, thus, he is not an eye-witness to the incident.

The applicants-claimants also brought on record several documents including the post mortem report, station memo, fard jamatalashi, statements of Sudama, Keyman of railway, Bahadur Singh, Rameshwar, Amit, Jile Singh, Smt. Murti, Anil Son of Shri Jaipal before GRP/Rohtak.

The respondent-railways authority had filed the DRM report. It has been noted by the Tribunal that, according to DRM report, no ticket could be recovered from the deceased in the fard Jamatalashi by GRP. Thus, it is established that he was not travelling in any train rather he came under the impact of some train while crossing the railway lines unauthorizedly.

The Tribunal has come to the conclusion that the applicants-claimants have not put on record any documentary evidence or other evidence to support the fact that the deceased was a passenger of the train rather it has been mentioned in the claim application in para No.7 that the ticket was lost in the incident which was not found in fard jamatalashi. The Tribunal has further held that, from the statement of Sudama, Keyman of Railway, it is apparent that the body of the deceased has been found cut and lying at two different places and part was found in the middle of the track, whereas, statements given by Rameshwar and Amit, which have been appended with the DRM report, clearly mentioned that the deceased came in impact of some train and died. Thus, the Tribunal has come to the conclusion that the deceased has been struck with some train and got injured and ultimately died and he has not fallen down from any train.

Further, since the burden to prove the untoward incident lies upon the applicants-claimants, they have to prove that the death was on account of injury sustained in the train accident in the manner establishing that the same was the untoward incident in terms of Section 123 (c)(2) of the Railways Act, which could not be done and the claim application was rejected by the Tribunal.

In the aforesaid background of the matter, I have heard learned counsel for the appellants as well as the respondent and have perused the records of this case.

On appreciation of rival contention, it appears that a Keyman of railway, namely, Sudama informed the Station Master regarding a dead body lying on the railway track and part of which was out side the track also at about 9.45 A.M., which obviously supports the claim of the claimants that death had occurred after 8.30 A.M. at that point of time, the deceased was to board a passenger train according to the claimants. It is nowhere stated in the written statement or the DRM report that no train was available at 8.30 A.M. from Kharawar Railway Station to Rohtak, i.e., the place to which deceased was going to purchase cattle feed. Since this was the case of the applicants-claimants in the claim application and there is no specific denial then it has to be considered that such passenger train available at the relevant point of time at Kharawar Railway Station.

Since the deceased was travelling alone, there was no question of any of his close relation having seen him boarding the train or falling down therefrom but AW-2 Anil has clearly stated in his affidavit that, while he was coming from the railway station after alighting from the train and going to his village, he met his uncle who informed him that he was going to board a train at 8.30 A.M., as he has to go to Rohtak for purchasing cattle feed.

The aforesaid fact coupled with the fact that there is no denial by the railways that 8.30 A.M., no such train was available from Kharawar to Rohtak, even if there is no direct evidence, it has to be considered, in view of the attending circumstances which are available, that he was going to Rohtak to purchase cattle feed. If he was going to purchase cattle feed but nobody was accompanying him, whether it can be presumed that he was a ticket-less passenger for the reason that no ticket could be found from the person of the deceased.

The aforesaid situation has been dealt with and answered by the Hon'ble Apex Court in its well celebrated Judgment rendered in **Union of India Vs. Rina devi 2018 (3) R.C.R.(Civil) 40.**

For better appreciation, the relevant passage, i.e., paragraph No.17.4 reproduced 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.”

On plain reading of the aforesaid passage, it is clear that the Apex Court has held that mere presence of a dead body on the railway premises will not be conclusive to hold that the injured or the deceased was a *bona fide* passenger. However, mere absence of ticket with such injured or deceased will also, at the same time, will not negative the claim that he was a *bona fide* passenger. Of course, initial burden will be on the claimant which can be discharged by filing an affidavit of relevant facts then burden will shift on the railways and the issue can be decided on the facts shown or the attending circumstances.

If there is no eye-witness then then the circumstantial witness, i.e., AW-2, who has stated that he saw his uncle going to board the train and the claim is that he purchased a ticket and boarded the train, it cannot be rejected outrightly on the ground that the ticket was not found from the dead body of the deceased because the burden would definitely shift upon the railway to show as

to how he died actually. Question would be, if he died while crossing the railway lines unauthorizedly then he came under the impact of which train? If such accident happens, the driver of the engine and the guard of the train has to immediately inform the Station Master of the nearest railway station informing that an accident has taken place in which there has been loss of human life. Section 113 of the Railways Act, 1989 lays down in clear terms that whenever any accident with loss of human life or grievous hurt occurs, the Station Master of the station nearest to the place at which the accident occurs shall, without delay, give notice of the accident to the District Magistrate or the Superintendent of Police, within whose jurisdiction the accident occurs. Now the question would be can he do this duty without having been informed by the Engine Driver or the Guard of the train which was involved in such type of accident? The answer has to be in negative. This will give rise to another question as to whether any inquiry has been conducted in this regard? DRM report is silent on this point. Thus, in the absence of that, it cannot be held or presumed that since no direct evidence is available of falling of the deceased from train, he must have died while crossing the railway line as was run over by a train. These things cannot be held on the basis of the presumption. By taking benefit or shelter of such type of unwarranted presumption, the case of the claimants cannot be dislodged.

Secondly, if certain inquiry was held by the DRM, even though the respondent-Railway has categorically stated in Paragraph No.9 of the written statement that railways reserves the right to amend the written statement after receiving DRM report if new evidence and facts would come up in the inquiry report, no amendment could be brought in the written statement. In fact, in the written statement, no such claim has been made that deceased died while

illegally crossing the railway track; In such a situation another question would be as to whether such type of presumption would be available? Answer, in view of the aforesaid discussion, would have to be in negative again.

Apart from the above, as per the DRM report, the inquiry held by one Jaipal Singh, ASI, RPF. The statement of Lineman stand appended to the report but neither said Jaipal Singh nor the Lineman-Sudama has been examined as witness by the railways. This would also be fatal for the stand of the railways as the claimants would have a right to say something in replication had the written statement been amended by the respondent-railways authority and if those persons would have been examined, the claimants would have a right to cross-examination also. However, such opportunity was never given to the claimants. Even from the statement of Sudama, which stands appended with the DRM report, it appears that same is merely a guess-work because he has stated that he does not know that the accident had taken place by which train.

Thus, in my view, the railways have not been able to discharge their onus at all and merely on the basis of guess-work, aforesaid stand had been taken at the time of placing argument only without either making any amendment in the pleading or bringing anything on record by way of any positive evidence as to how such death had occurred within the premises of railways. The Tribunal, in my considered opinion, has got swayed away by such limb of submission made on behalf of the respondent-railways authority which was not required to be done.

In my view, the materials available on record doesn't at all show that the death of the deceased could have occurred in any manner, other than the same which have been stated by the claimants, i.e., falling down from the train.

By way of last resort, it has been urged on behalf of the respondent-railway authority that the postmortem report goes to show that a leg was severed and part of the body was found on the track, which cannot happen if a person falls from the train. However, this limb of argument is also noted only to be rejected for the reason that no expert has been examined by the railways on this issue. In the absence of which, in my considered view, it cannot be presumed that if a person falls from the train in no condition, he cannot be dragged into the railway track by the impact of blowing wind or the speed of the train. Secondly, had it been the case then the body of the deceased should have been cut into pieces and scattered which is not the case. Actually one leg was severed from the body but the other injuries indicated in Postmortem Report may also be possible due to fall from the train for example the head injuries and the broken shoulders etc. Thus, on this specific issue also, there would be very difficult to non-suit the claimants.

So far as the issue of *bona fide* passenger is concerned, it is true that no ticket was found from the body of the deceased but in such type of accident, there would always be a possibility that same may be lost. In fact there is nothing on record to show that either the GRP or the Railway Authority had made an extensive search on the spot of accident or the area nearby it to find out the belongings of the deceased. In the absence of that, there cannot be a presumption that the deceased was a ticket-less passenger.

Therefore, in my considered view, the appellants-claimants are to be entitled for grant of statutory compensation amount as envisaged under the Schedule of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (hereinafter referred to as the “the said Rules”). On the fateful day of the accident, i.e., 07.12.2013, the statutory amount available to the

appellants-claimants was Rs. 4 lacs as the impugned Judgment is dated 15.10.2015, ordinarily, the amended statutory compensation cannot be given to the claimants which was made effective from January, 2017.

However, Hon'ble Apex Court had held in Rina Devi (supra) that though 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 but if the amount so calculated alongwith interest 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, i.e., one with interest under the old provisions or one which have been provided in the amended provision made effective from 01.01.2017. Since no Award was pronounced by the Tribunal rather the case of the claimants was dismissed but not correctly as has been held in the case in hand, in my considered view, the same principle will apply in this case also considering the date of this decision as the relevant date. Learned counsel appearing for both the parties have agreed that if simple interest is calculated @8% or 9% from the date of accident, the amount as per the amended Schedule of the said Rules would be much higher.

In such a situation, I would have no hesitation in holding that the appellants-claimants would be entitled for the statutory amount equivalent to Rs.8 lacs, as has been provided by the Notification published on 22nd December, 2016 with respect to the relevant Schedule attached with "the Rules" substituting the words "rupees four lakhs" to "rupees eight lakhs."

Thus, it is held that the entitlement of the claimants-appellants would be of Rs. 8 lacs alongwith simple interest @ 9% per annum to be calculated from the date of the present decision till the realization of the compensation amount.

In the result, the impugned decision of the Tribunal is set aside and the appeal is allowed with the aforesaid terms.

(DR. RAVI RANJAN)
JUDGE

11.02.2019
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No