

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

FAO No.5320 of 2016

Decided on:12.03.2019

Beant Kaur and others

.....Appellants

versus

Union of India

....Respondent

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

Present: Mr.Somesh Gupta, Advocate,
for the appellants.

Mr.Amit Kumar, Advocate,
for the respondent-UI.

DR.RAVI RANJAN, J. (Oral Judgement)

The judgment dated 04.08.2016 passed in Case No.OA-II/24/2015 by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, is under challenge in this appeal.

1. The claimants/applicants, being the widow, parents and minor children of the deceased, got filed the claim application under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railway Act, 1989, seeking a statutory compensation of Rs.4 Lakhs on account of the fact that the deceased died in an untoward incident which had taken place on 14.08.2014 while he was travelling by a passenger train. The Tribunal has dismissed the claim application on diverse grounds.

2. According to the claimants/appellants the deceased-Amarjit Singh, who was the Constable in the Indian Army, boarded the train No.12414-Dn Pooja Express, alongwith one of his colleague Gurmail Singh on 14.08.2014 from Ludhiana, as both of them were going to Alwar to join

their duties. Two computerised tickets were purchased by the deceased for their journey. It is claimed that, when the train reached between Shambu and Rajpura Railway Station, the deceased accidentally fell down from the train and died on the spot. The Guard, Bharat Kumar, informed the Station Master, Rajpura, that one dead body was lying on the spot. On receipt of such information, the Station Master, Rajpura, issued a memo to the GRP, Rajpura. The GRP reached the spot and recovered the dead body. Upon search thereof, two railway tickets, one identity card, one canteen smart card and one Nokia mobile was recovered. The GRP personnel contacted the family members of the deceased on the number saved in the mobile phone of the deceased. They reached the spot after getting such information and identified the dead body.

3. The respondent-Railways contested the claim application by filing the written statement. It took a ground that death was not caused due to any untoward incident as defined under Section 123(c) read with Section 124-A of the Railway Act, 1989 and also that the deceased was not a *bona fide* passenger. Further stand taken by the Railways that the tickets were planted later on. It also stands averred in the written statement that the nature of injuries belie the theory of falling down as such injuries can only be possible if somebody is run over by some train due to his own criminally negligent act. Therefore, a prayer was made to dismiss the claim application with costs.

4. Upon consideration of the rival pleadings the Tribunal framed following issues:

1. Whether the deceased was a bonafide passenger of the 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 Railway Act?

3. Whether the applicant(s) is/are the sole dependent(s) of the deceased?
4. Relief.
5. The issues no.1 and 2, being intertwined, were taken up together for consideration by the Tribunal.

The Tribunal has dismissed the claim application chiefly on the ground that AW1 Beant Kaur, i.e. the widow of the deceased, is not an eye-witness and even the tickets were not purchased in her presence. Further, she has stated that AW2 Gurmail Singh, who is a resident of a different village, had come to Ludhiana Railway Station by train so that he could board the train along with her husband for journey, however, the said AW2 Gurmail, who is also employed in Indian Army and posted at Alwar, has stated in his testimony that he reached Railway Station at Ludhiana on 14.08.2014 from Gurdaspur by bus where the deceased was already present and the deceased had purchased tickets for both of them. They boarded the train No.12414-Dn Pooja Express, but this statement stands belied by the report of Court of Inquiry conducted by the Army, which has been brought on record by the claimants/applicants themselves, in which it is disclosed that AW2 Gurmail Singh boarded the train at Jalandhar at 2200 hours and Amarjit Singh boarded the same train at Ludhiana at 2300 hours. Thus, the Tribunal has come to the conclusion that his testimony is not trust worthy. AW2 has further stated that due to spat with the pantry boy, they shifted to another coach from where police officials took away the deceased to yet another coach. He kept on waiting for the deceased in the said coach due to the fact that their luggage was lying there. After some time, he slept and woke up at Alwar. On the way he tried to contact the deceased on his mobile phone but he did not attend the call. After reaching at Alwar, the

GRP officials attended his call and told him about the death of the Amarjit Singh, whereupon he reached at his unit and informed the unit officials. He has stated that pantry person was drunk and had an altercation with the deceased-Amarjit Singh who had slapped him. The pantry person brought the GRP person to sort out the issue. He complained the GRP officials regarding the intoxicating condition of the pantry person who was misbehaving with the passengers. The GRP officials took away the deceased from his compartment with them, however, he could not know as to in which in compartment he was taken to by the GRP officials.

In view of the fact that the Tribunal was not satisfied with the version of the AW2 that he did not try to find out as to where his colleague was being taken away by the police personnel, the Investigating Officer, who is Kaka Singh, Head Constable, GRP, Rajpura, was summoned and examined as Court witness. It stands recorded in the impugned judgment that the IO has stated that he had not written anything regarding the recovery of the ticket in *fard jamatalashi* but had pasted the ticket thereupon. At the first instance, he has stated that he had made personal search of the deceased and found a purse in the back pocket of pant from where he recovered two tickets but he has not written anything about the purse, however, on his own volition, he has stated that he recovered the tickets from the identity card holder. When the Court enquired about the identity card, the witness stated that the same is not attached with the file because it was given back to the family of the deceased but he could not produce any receipt showing that. The Tribunal has also found cutting at serial number of the pages of the inquest report from page 25 onwards which has not been explained.

On the basis of aforesaid statement, the Tribunal has come to the conclusion that his testimony is shrouded with falsity.

In the facts and circumstances of the case, it has also come to the conclusion that, in view of the doubtful statement of the IO coupled with the falsity of the statement of AW2, it has to be understood that tickets were planted subsequently.

6. In the background of aforesaid factual matrix, this Court has heard the matter and perused the records of this case.

Learned counsel for the appellants has assailed the impugned judgment on diverse grounds. It is contended that, since the tickets have been found from the personal search by the GRP, there was no occasion for the Tribunal to come to a conclusion that the deceased was not a *bona fide* passenger. Even the report of the enquiry conducted by the Army personnel cannot belie the aforesaid fact and, as such, the version and the stand which has been taken by AW2 before the Tribunal would have to prevail as it is entirely unknown as to on the basis of what materials available and on the basis of recording of which witness, the Army authority could come to the conclusion that AW2 boarded the train at Jalandhar and Amarjit Singh was in intoxicated condition while boarding the train of Ludhiana.

7. Learned counsel appearing for the respondent-Railways has vehemently supported the impugned judgment by taking a stand that the testimony of AW2 completely stands belied by the report of inquiry conducted by the Army and, thus, it has to be assumed that the tickets were planted one.

8. This Court has considered the rival contentions. AW1 Beant Kaur, the widow of the deceased, has stated in her testimony that the

colleague of the deceased-Amarjit Singh reached the Railway Station at Ludhiana to join her husband. They purchased two computerised railway tickets from Ludhiana to Alwar Railway Station. This version stands supported by AW2-Gurmail Singh, who has stated that he reached Ludhiana by bus and then the deceased purchased two computerised tickets which were found on search of the dead body by the GRP. Though the IO has stated that he had not written anything about the ticket in the *fard jamatalashi* but the fact is that he has accepted that he pasted the tickets on the document. Thus, it cannot be presumed that actually no ticket was found in *fard jamatalashi*. In answer to a further question put to him, the witness has stated that he had made personal search of the deceased and found the tickets. Much emphasis has been given by the Tribunal that the IO, at the first instance, had stated that he found the tickets from the purse found in the back pocket of the deceased and then he corrected himself by saying that he found the tickets from the identity card holder which is not available in the record as the same has been returned to the family of the deceased. In my considered view, on the ground of such minor discrepancies, the entire testimony cannot be thrown away. Since the tickets are there and since the IO has stated that he had made a personal search and found the tickets, it has to be understood that things have taken place in the manner which has been extended, unless and until, otherwise is proved.

9. Now, if the testimony of IO is shrouded with falsity, as has been stated by the Tribunal in impugned judgment, then what is the explanation of tickets having been found in the police record? On the basis of aforesaid, it has been presumed by the Tribunal that the tickets are planted one completely forgetting that planting of ticket would amount to

committing fraud and which will give rise to several questions, for example, who has done this; whose computerised tickets, which were purchased on 14.08.2014, were made available so that it could be planted in the police records? Which police personnel in connivance of the widow of the deceased, who is a resident of village Fatehgarh Sibian and is a housewife, has done this for her benefit and why he would take such a risk by committing an offence of tampering with the police records? This is also not a fact available on record that she is well off person and could have spent money for winning the personnels of police department for doing the wrong. It is well established that fraud is to be specifically pleaded and then proved. Though it stands stated in the written statement that tickets are planted one but there is no specific pleading regarding that, for example, who had planted the tickets and who were the conspirators and more importantly, the planted tickets belonged to whom and who had provided it to the concerned person for being planted in the police records? Even the DRM report does not disclose anything of this sort that the tickets were planted by somebody in the police records.

Of course, the report of the Court of Inquiry conducted by the Army shows that AW2 Gurmail Singh boarded the train at Jalandhar and deceased Amarjit Singh boarded the train at Ludhiana but it is not known as to under what condition such things have been recorded. Without examining the concerned persons and granting opportunity to the claimants/appellants to cross-examine them, how the findings recorded by the Court of Inquiry would be acceptable to dislodge the testimony of AW2 recorded before the Tribunal would be another question.

It is stated in the report of inquiry conducted by the Army that

deceased Amarjit Singh was drunk when he boarded the train and he had an altercation with a civilian. The GRP personnels took him to another compartment for questioning but he did not come back after questioning and his dead body was found near the railway track. However, the Court of Inquiry completely is silent thereafter. It has not recorded as to under what circumstances his body was found on the railway track and more importantly, what the GRP was doing in the running train. The GRP is to be stationed at Railway Station. Only the RPF personnels are available in a running train. Even if it is assumed that the deceased was taken by the RPF personnels and did not come back after questioning by them, then what had happen to him is totally unknown. Whether the deceased was pushed from the train by somebody or he had fallen down from the train, is a mystery. There cannot be third explanation. Even from the report of Court of Inquiry, it is established that the deceased had boarded the concerned train then how it can be assumed that he was not a *bona fide* passenger, secondly, if he was in a drunken condition, why nothing of that sort is apparent from the *post-mortem* report? If nothing of that sort could be found then can it be presumed that that he was in a drunken condition?

10. A learned single Judge of Delhi High Court in “**Union of India vs. Amarawati Devi**” (FAO no.625 of 2002 decided on 24.09.2002), has held that even if it is written in the *post-mortem* report that the liquid content of a stomach was smelly like alcohol, that would not be sufficient to prove that the deceased, when fallen down from the train, was in intoxicated condition merely because he was smelling of alcohol. Unless and until there is a specific report confirming the alcohol or associated chemical in the viscera no such thing can be presumed. In the present case, the situation is

reverse as nothing of that sort is written there in the *post mortem* report at all. Infact a stand has been taken by AW2 in his testimony before the Tribunal that the pantry boy was in intoxicated condition and he had started quarrelling with the deceased who slapped him and then the police personnel came and took him away. Now the question is whether the police personnel themselves pushed him from the train? But it also cannot be presumed because there is no such evidence on record. In such a situation, a prudent person would have to come to conclusion on the aforesaid attending circumstances that in some manner he fell down from the running train because his presence in the train is established by both, i.e. the testimony before the Tribunal as well as by the report of inquiry conducted by the Army personnels and tickets were also found on search from the body of the deceased. Then, in such circumstances in my considered opinion, the Tribunal has committed serious error in considering that he was not a *bona fide* passenger.

11. Once the same having been established, this Court has to come to a conclusion that the incident was an untoward incident as per the provisions contained in Section 123(c) of the Railways Act 1989, and, as such, the claimants/appellants would be entitled for the statutory compensation amount.

12. Now another question would be - what should be the compensation amount? On the date of accident, admittedly the amount available as per the Schedule attached to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 was Rs.4 Lakhs. However, the Apex Court, in its much celebrated decision rendered in “**Union of India vs. Rina Devi,**” 2018 (3) RCR(Civil) 40, has taken a view that the

legislation covering the field being a beneficent one, the amount which would be available on the date of Award, if is higher than the amount which is available on the date of accident alongwith the interest, would be required to be paid to the claimants/appellants. Even if 9% per annum interest is allowed on the date of accident i.e. 14.08.2014 and the statutory compensation amount is taken to be Rs.4 Lakhs, the same would definitely be on the lesser side than the amount which would be available today, i.e., after amendment of the concerned Schedule and relevant provisions of the aforesaid Rules, w.e.f. 01.01.2017, which is Rs.8 Lakhs. It is clarified that in **Rina Devi (supra)** the Apex Court has considered a situation where amended provision was available on the date of pronouncement of Award by the Tribunal. However, in the case in hand, there is no such Award as the Tribunal has dismissed the case of the applicants-appellants. The compensation amount is being allowed by the present decision of this Court, thus, the date of present decision is being taken for the relevant consideration. Accordingly, I hold that, in view of the aforesaid decision of the Hon'ble Supreme Court, the claimants/appellants would be entitled for amount of compensation to the tune of Rs.8 Lakhs alongwith interest of 9% to be calculated from the date of this decision till the date of payment of aforesaid amount to the claimants/appellants.

In the result, this appeal stands allowed and the impugned judgment to the aforesaid extent is quashed and set aside, however, the parties will bear their own costs.

March 12, 2019

dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes