

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

FAO No.6258 of 2016

Decided on:14.03.2019

Gayatri Devi and others

.....Appellants

versus

Union of India

....Respondent

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

Present: Mr.Vibhor Bansal, Advocate,
for the appellants.

Mr.Yogesh K.Saini, Advocate,
for the respondent-UI.

DR.RAVI RANJAN, J. (Oral)

I have heard the learned counsel for the parties and have perused the records.

Through this appeal, the appellants assail the decision dated 01.03.2016 rendered by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh in case No.OA-II/156/2014 by which the claim application of the applicants filed under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989 has been dismissed.

1. Briefly stating, the case of the claimants/appellants is that the deceased, who was husband of the applicant-appellant no.1, was working in a factory at Panipat. He started his journey from his village to Panipat by boarding a train from Devriya Sadar Railway Station on 13.04.2014. On 14.04.2014, due to heavy rush and sudden jerk of the train, the deceased fell down from the train at Km No.86/16-18 in between the Railway

Stations Diwana and Panipat and died on the spot.

2. In view of the aforesaid accident the applicants/claimants being widow, minor son and daughter, and father of the deceased claimed compensation to the tune of Rs.10 Lakhs.

As usual, the Railways contested the claim of the applicants by filing a written statement taking a stand that the victim was not a *bona fide* passenger and the accident would not come within the ambit of the definition of untoward incident as envisaged under Section 123(c)(2) read with Section 124-A of the Railway Act, 1989 (hereinafter to be referred as 'the Act'). Since a railway ticket was found from the dead body, a stand was also taken by the Railways that the ticket was planted one as no train number and name is printed on ticket.

3. On consideration of the rival pleadings the Tribunal 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 Sec.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?
4. Relief.

4. The issue no.1 and 2, being intertwined, were taken up together for consideration by the Tribunal.

The Tribunal has rejected the claim of the claimants/applicants on the ground that, though as per the case of the claimants the deceased was travelling by a train on Up Track from Devriya to Panipat but his body was found lying outside the Down Track and that too not in between the Down Track but after the Down Track, therefore, it cannot be held that deceased accidentally fell down from the train while travelling from Devriya to Panipat.

5. Learned counsel appearing for the claimants/appellants has submitted that the Tribunal has made gross error in non-suiting the appellants on the aforesaid ground as a ticket was also found from the pocket and there is no explanation as to how the dead body was found besides the railway track being the Down Track or Up Track.

6. *Per contra* learned counsel for the respondent-Railways has fully supported the impugned decision of the Tribunal saying that since body was found after the Down Track, it would not be possible that the same was due to fall from the train which was running on the Up Track.

7. On consideration of rival contentions, this Court is of the opinion that the findings recorded by the Tribunal and the decision based on the aforesaid findings suffers from the vice of gross errors. It is admitted position that a ticket from Devriya to Panipat was found from the dead body of the deceased. In the written statement, as usual, the Railways has taken a stand that the alleged ticket is planted one just to extract money from the respondent-Railways and that was yet to be proved, verified and linked with the journey of the deceased. It is intriguing as to how, without any proper verification, such stand could have been taken by the Railways in the written statement. The Railways had to eat their own words when it came up in the DRM report that the ticket was genuine and was issued from Devriya Sadar for journey to Panipat. Secondly, how such an irresponsible statement could have been made in the written statement that ticket was planted by somebody? If that was so, then such action suffers from the vice of fraud but the Railways has not specifically pleaded that as to in what manner the fraud was committed. It has not come up in the DRM report also that such fraud has been committed by somebody. It is well settled that

fraud has to be pleaded specifically and is to be proved by leading cogent evidence. In the case in hand, it is not pleaded as to on whose connivance and participation and in what manner the ticket was subsequently planted in the pocket of the deceased. There is nothing in the DRM's report also of that sort and no evidence has also been led on the issue. Therefore, such presumption would be a gross error.

8. So far the fact that the train name and number were not given in the ticket, the same has to be answered by the Railway Authorities themselves, because they confirm that the ticket was genuine. They have to answer why they issue ticket without giving the name and train number, not by the claimants. The most important aspect which has been completely ignored by the Tribunal at the time of consideration of the claim application is the *post-mortem* report which discloses lacerated wounds all over the dead body which can be possible if a person had a fall from a running train. The *post-mortem* report belies and falsifies the claim of the Railways that he might have been run over by the Train. Had it been the case, the body of the deceased must have been mutilated and cut into pieces. The *ante mortem* injuries shown in the *post-mortem* report does not suggests such type of theory which has been propounded by the Railway Authorities. It appears that in almost each and every case the Railway Authorities are taking such stand without any proof or any material available. This is regretted as this should not be a stand of the arm of the Government while dealing with a matter under a beneficent legislation like Section 124-A of the Act, etc. If a person falls from a running train, where would his body would fall and at what distance,; would always depend upon the speed of the train as well as the direction and the speed of the wind. If the train is

running at a high speed then at the time of fall the speed of the dead body would also be equivalent to the speed of the train and would be full of kinetic energy. As such, it could well flow upto such distance of 5-8 feet, which according to the learned counsel for the respondent-Railways, is usual distance in between the Down and Up Tracks. Unfortunately, none of the aforesaid aspects have been considered by the Tribunal, rendering its finding to be misconceived.

9. That apart, once the affidavit has been filed by the claimants/appellants given every detail and a genuine ticket was also found from the dead body, onus would shift upon the Railways to show under what circumstances the dead body was found besides the track. A reference is made in this regard to a decision of Hon'ble Supreme Court rendered in **“Union of India vs. Rina Devi,” 2018(3)RCR(Civil)40**. There is no material on record which justifies the presence of dead body on the railway track, however, a cryptic stand has been taken by the Railways on the basis of assumption and presumption that he might have been run over by a train while unauthorisedly, crossing the railway line. It has also not been answered by the Railways that why a person, who was resident of village Pipra Pathak, P.S.Mail, District, Devriya, U.P., would cover such a long distance to cross a railway line illegally at Km No. 86/16-14 in between the Railway Stations Diwana and Panipat? Secondly, the *post-mortem* report also does not support that version of the Railways at all as the lacerated wounds, etc. in no manner would suggest that the person died due to coming under the impact of a running train.

10. In the background of the aforesaid discussion, this Court has no hesitation in holding that the deceased was a *bona fide* passenger and

the accident would fall under the definition of Section 123(c)(2) of the Act and as such, he would be entitled for compensation under Section 124-A of the Act.

11. Having held so, another question would arise regarding the quantum of compensation they would be entitled for? It is admitted position that on the date of accident, as per the Schedule attached with the Railway Accident and Untoward Incident (Compensation) Rule 1990, the statutory compensation would be Rs.4 Lakhs, however, subsequently, the same has been amended and revised and now as per the revised Schedule being effective from 01.01.2017, the amount would be Rs.8 Lakhs.

In its much celebrated decision i.e., in **Rina Devi (supra)** the Hon'ble Supreme Court, while considering this issue, has held 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.”

In the present case, since the claim application of the claimants/appellants was dismissed by the Tribunal, however, this Court has already found the appellants to be entitled for statutory compensation, the

date of the Award has to be taken the date of the present decision and as such, in my considered opinion, the claimants-appellants would be entitled for Rs.8 Lakhs as Rs.4 Lakhs alongwith interest would be at lower side than the awarded amount. They would also be entitled for simple interest at the rate of 9% per annum to be calculated from the date of this decision till the date of payment of awarded compensation amount.

In the result, this appeal is allowed, the impugned decision of the Tribunal is hereby quashed and set aside and the claim application stands allowed as per the discussion made above.

March 14, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes