

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6316 of 2016

Date of Decision: 09.01.2019

Maya Ram and another

.Appellants

Vs.

Union of India

.....Respondent

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

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

Mr.Sanyam Malhotra, Advocate, for Union of India.

DR. RAVI RANJAN, J. (Oral Judgment)

I have heard parties and perused the record of this case.

The judgment dated 25.02.2016 rendered in OA-II/86/2015 by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, has been assailed by the appellants by preferring the present appeal.

The appellants are parents of the deceased Anand Mohan who filed the claim application under Section 16 of the Railway Claims Tribunal Act, seeking compensation for the death of their son on the following set of facts :

The deceased on the fateful day i.e. on 14.09.2014 was travelling from Acharya Narendra Dev Nagar (Faizabad) to Ludhiana and when the train reached at Km 204/1, Kalanaur Yard, the deceased fell down from the train and sustained multiple and serious injuries. He was taken to Govt. Hospital, Saharanpur in Garib Rath, Express train but he succumbed to the injuries on 16.09.2014 during the treatment in the hospital. Thus, it has been

pleaded by the claimants that, since deceased was having a valid ticket but the

same was lost at the time of incident, he has to be taken as *bona fide* passenger and since he had fallen from the train which has caused injury and ultimately he died, the incident has to be taken as untoward incidents under Section 124 A of the Railway Act, 1989 (herein after referred to as “the Act”) and accordingly, they would be entitled for compensation.

The railway authorities filed their written statement disputing the claim chiefly on the two grounds. The first and foremost is that no railway ticket was recovered from the possession of the injured person/dead body and actually no such accident has taken place on 14/15.09.2014, therefore, the claim application has to be dismissed as the deceased was not a *bona fide* passenger and was not travelling in any train on the alleged date of accident.

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

१. क्या मृतक दुर्घटना के वक्त सदभावी (वैध) रेल यात्री था?
२. क्या मृतक की मृत्यु ऐसी घटना में हुई है जो कि रेलवे एक्ट की धरा १२३ (सी) (२) के अंतर्गत पारिभाषित अप्रत्याषित घटना की परिधि में आती है?
३. क्या आवेदक/आवेदकगण मृतक का/के एक मात्र वैध आश्रित है/हैं?
४. अनुतोष १

Several documents have been brought on record on behalf of appellants as such inquest report Ex.A-1, station memo Ex. Ex.A-3, Death Memo; Ex.A-4, death report; Ex.AE, *fard jamatalashi* dated 16.09.2014; ExA-6 -10, Statement of Sh.Shri Bharat Singh, Raju S/o Giriraj Singh, Maya Ram : Kusala Devi; Jagdish Parshad before GRP; Ex.A-11, postmortem report; Ex.A-12 Antim report; Ex.A-13, copy of voter card of Mayaram; Ex.A-14 copy of voter card of Kusalavati; Ex.A-15, copy of ration card and

both the claimants have been examined as AW-1 and AW-2.

Respondents have also filed the DRM report which discloses that after inquiry, it was found that no train ticket was recovered from the body of the deceased in *fard jamatalashi* by the GRP which proved that deceased was not a *bona fide* passenger and he died while crossing the railway line unauthorizedly.

However, it is surprising that the Tribunal, while highlighting the paragraph-6 of the pleadings of the applicant for its grammatical and other errors, though noticed that the deceased left his home for Ludhiana to search a job and on 14.09.2014 as the father of the deceased, after purchasing the railway ticket of Rs.230/- (lost) of Kissan Express got him in the train for travel from railway station Acharya Narendra Dev Nagar (Faizabad) railway station for railway station Ludhiana, has recorded a finding that it is not clear from the averments made in the claim petition that from which station to which station the deceased was travelling. In my considered opinion, this is a apparent error committed by the Tribunal which is apparent from the findings recorded with respect to issue No.1. Further, the Tribunal has disbelieved the father's testimony as AW-1 on the ground that the name of originating station was not readable in his statement (Maya Ram (AW-1)) recorded by the GRP but the same is there in his testimony before the Tribunal which is visible improvement and it clearly makes certain that Maya Ram has been planted as a forged witness at a later stage.

In my considered opinion the aforesaid finding is also erroneous. Even assuming that before the GRP, the father of the deceased has only said that he took his son to railway station and purchased a ticket for Rs.230/- for Ludhiana, this minor discrepancy cannot be of such extent that his case can

be thrown out on that count. He has disclosed his place of residence even before the GRP and, as he has stated that he had gone to railway station and purchased the ticket for Kishan Express for Ludhiana, it would mean that he must have purchased a ticket at a nearby Station from his residence. I am of the considered opinion that this minor lacuna cannot be held to be so serious that it would change the fate of the case.

That apart, the statement recorded by the Police would not be of such a great relevance for consideration for payment of compensation which is a proceeding of summary nature and claimants cannot be put to strict proof beyond all the reasonable doubt like one which is required under Criminal Trials.

That apart, the Tribunal has said that father of the deceased has stated that he purchased the ticket between 9 to 10 AM for his son and after 15 minutes of purchasing the ticket, the train started, whereas, it has been found that said train reaches Faizabad at 11:00 am. This may be a discrepancy but I am of the opinion that this may also be not of such extent that case of the claimant can be thrown away. This statement has been recorded after about a year of the accident and as such, there can be possibility of certain minor discrepancies in making it.

However it is, well settled, that if the claimant files affidavit explaining all the relevant facts then the burden shifts upon the Railway to show or to make out a case that this statement is false and in fact, he was not a *bone fide* passenger. To do that, the Railways has merely stated that since he was not having a ticket, therefore, the deceased might have travelled for about 600 to 700 Kms from his place of residence to unauthorizedly cross the railway line and came under the impact of a train. Such type of assertion is hardly

acceptable and digestible especially when there is no evidence led on their part with respect to the manner of death. It is merely a presumption that he might have tried to cross the railway line and must have come under the impact of a train. A question would be whether the driver or guard of any train had informed that a person at a particular point of time and place was run over by his train? There is absolutely no evidence like that. That apart, the body of the injured was found between two tracks which may be possible if a person has a fall from the train as in such case there would always be a possibility that his body, under the impact of blowing wind and speed of the train, would be thrown at a distance but a that would be hardly possible if he is run over by train as in such case, ordinarily and generally, the dead body would be found between the track itself or just beside the railway line in a mutilated condition. There is no report of the expert also available even on the record of the railway authorities opining that if a person is run over by the train his dead body could be found between the two tracks. It has to be kept in mind that the death of the person was not immediate as he was found lying injured between two railway tracks and he was taken to hospital near Saharanpur by the railway authorities by a train and he may have died during treatment after one/two days of the incident.

Though, it may also not be held that merely the presence of body on railway premises would be a conclusive proof to hold that injured or deceased was *bona fide* passenger for which claim for compensation could be maintained, however, at the same time, mere absence of ticket with such injured or deceased will not negative claim of the deceased that he was a *bona fide* passenger. A reference in this regard is made to a decision of

Hon'ble Supreme Court rendered in **Union of India Vs.Rina Devi 2018 AIR**

(SC) 2362. The Apex Court has held in the aforesaid decision that initial burden of proof would be on the claimant which can be discharged by filing affidavit of relevant facts then burden will shift upon Railways and issue can be decided by the Tribunal on facts shown or the attending circumstances. In my considered view, under the aforesaid attending circumstances and facts, it has to be held that the deceased was a *bona fide* passenger and he met with an untoward incident and has received multiple, grievous and serious injuries due to which he subsequently died on 16.09.2014 as no other plausible explanation or material is available on record. Thus, the finding recorded by the Tribunal that the deceased cannot be taken as a *bona fide* passenger and incident also cannot be taken as untoward incident, is erroneous and thus, is liable to be set aside.

Ordered accordingly.

In the result, this appeal succeeds. The impugned judgment is quashed/ set aside and it is held that the claimants, being parents of the deceased are entitled for compensation under the statutory provisions of the Railway Act, to the extent of Rs.4 Lacs in equal shares, i.e. Rs.2 Lacs each. In addition to that, claimants will also be entitled for interest @ 9% on the aforesaid awarded amount from the date of accident till the date of its realization.

(DR. RAVI RANJAN)
JUDGE

09.01.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No