

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.7508 of 2015

Date of Decision:17.01.2019

Simranjeet Kaur

.....APPELLANT

Vs.

Union of India

.....RESPONDENT

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

Present: Mr. Upender Prasher, Advocate
for the appellant.

Mr. Rahul Garg, Advocate
for the respondent.

DR. RAVI RANJAN, J.(Oral)

Heard learned counsel for the parties and perused the records of this
Case.

This appeal is directed against the judgment dated 16.07.2015
passed in Case No. OA-IIU/2013/0046 by the Motor Accident Claims Tribunal,
Chandigarh Bench, Chandigarh (hereinafter referred as 'the Tribunal'), by which
the claim of the appellant/claimant-Simarjeet Kaur for compensation amount of
Rs.4 lacs has been rejected by the Tribunal on the ground that she was not a
bonafide passenger.

The appellant/claimant-Simarjeet Kaur claimed in her petition
filed before the Tribunal that on 26.08.2012 at 1:50 P.M., she had boarded a DMU
Ambala passenger train along with her Aunt, namely, Jarnail Kaur and her mother's
sister, namely, Ravinder Kaur. They were coming from Amritsar to Rajpura. At
about 3:00 P.M., when they reached at Kartarpur Railway Station, the
appellant/claimant got down at station to collect fresh water and after taking water

when she was trying to board the said train, her foot was slipped and she got down on the railway track and at that point of time, train was moved as a result of which her left hand was crushed and she also sustained serious injuries on the other parts of her body. She has further claimed in the claim petition that the cause of accident was excessive crowd in the train and due to that the passengers were pushing and pulling each other. That led Simranjeet Kaur is loosing balance and slipping on the railway track. She was taken to General Hospital, Jalandhar for treatment. She also stated that during this process, her purse was lost which was containing her general class railway ticket purchased by her from Amritsar to Rajpura and some money.

The case of the appellant-claimant is that her Aunt purchased three tickets for all the three persons, who were travelling together.

The railway authority filed its written statement refuting the claim of the appellant-claimant. Banking upon the fact that no ticket was recovered from the possession of the appellant-claimant(injured), a stand was taken that she was not a bona fide passenger and, that apart, she received injuries due to her own criminal negligence and the same being self-inflicted injuries, she was not entitled for any compensation under Section 124-A of the Railways Act, 1989 (hereinafter referred as 'the Act'). It was also stated by the respondent-railway that the story of loss of purse at the time of the accident is an after thought because the appellant-claimant has not lodged any report with respect to that.

The Tribunal on consideration of rival pleadings of the parties, framed following issues:-

- “(i) *Whether the injured was a valid railway passenger at the time of incident?*
- (ii) *Whether the above incident falls under Section 123-C of the Railway Act read with Section 124-A.*
- (iii) *The scheduled and non scheduled injuries of the injured petitioner.*
- (iv) *Relief.”*

In order to establish her claim, the appellant-claimant has examined herself as AW-1. She has also brought us on record certified copy of Ex.A-1, which is the injury report, Ex.A-2 i.e. certified copy of statement of Simranjeet Kaur before GRP alongwith its translation, Ex.A-3 certified copy of statement of Jarnail Kaur before the GRP alongwith its translation, Ex.A-4, certified copy of statement of Guard recorded by GRP alongwith its translation. Ex.A-5 is certified copy of statement of SHO alongwith its translation, Ex.A-6, is certified copy of the memo issued by Station Master Kartarpur, Ex.A-7 to Ex.A-19 are copies of her medical record. Ex.A-20 is certified copy of her Voter ID Card, Ex.21 is copy of her disability certificate and Ex.A-22 copy of her bank account, certificate.

On behalf of the respondent-railway authority, DRM report has been brought on record. Besides this, statements of RW-1 Ram Pal, on duty Loco Pilot and RW-2 Satpal, on duty guard have also been brought on record.

The Tribunal has come to the conclusion that it is unbelievable that the claimant-injured had lost her ticket and even her relatives did not produce their tickets before the GRP while being examined. It is further unbelievable that the GRP, at the time of investigation, would not have asked for the tickets of her relatives. Thus, it is not established that claimant-injured was holding a ticket and was travelling with her relatives i.e. Jarnail Kaur and Ravinder Kaur. It is further stated that GRP has recorded the statement of Simranjeet Kaur, Jarnail Kaur and on duty guard after about 3-4 months. Therefore, it cannot be considered to be reliable especially when Jarnail Kaur and Ravinder Kaur could not be examined by the claimant-injured before the Tribunal. It has also been observed that if her relatives were travelling together, there was no reason why three separate tickets would have been purchased. On the basis of such observations, the Tribunal has recorded finding that the claimant-injured was not a bona fide passenger.

Learned counsel for the appellant has submitted that there is no discrepancy or variation in the statement made by the appellant-claimant before the GRP and the Tribunal. She has withstood the test of cross-examination also. The appellant-claimant is the most important person who could have stated regarding the incident in a proper manner. If she was made a statement falsely in affidavit before the Tribunal, that could have been demolished by the respondent at the time of the cross-examination. Simply, since only she has examined herself and her relatives were not examined, though, the statement of one of them was recorded by the GRP and that part of statement had been brought on record by the appellant-claimant, it cannot be held that she was not a bona fide passenger. There is no reason why her story of losing the purse, at the time of accident, cannot be believed.

Per contra, learned counsel appearing for the respondent-railway authority submitted that there is no statement before the police regarding loss of purse either by the appellant-claimant or by Jarnail Kaur. Thus, this story cannot be believed. It has to be understood that she was travelling without ticket and, thus, she cannot be considered as a bona fide passenger and, as a consequence thereof, would not be entitled for any compensation. That apart, it is also stated that as per the Guard's version, she was trying to board on running train, therefore, accident has occurred. In that circumstances, it has to be accepted that she was victim of her own criminal negligence and the injuries are self-inflicted and on that count also, she would not be entitled for any compensation.

However, having considered rival contentions of the parties, this Court find force in the submission raised on behalf of the appellant for the following reasons:-

It is admitted case that at Kartarpur Railway Station, the appellant-claimant met with an accident at the time of boarding the train. Guard's

version is that she was boarding a running train but the Tribunal has disbelieved that because she could not produce the guard memo. The Loco Pilot has only recorded in his notebook that one women fell down and injured herself on platform that means she fell down from train on the platform. That apart, the memo of Station Master also supports the version of Guard which has been believed by the Tribunal rightly. Thus, the version of the railway authority that she was trying to board a running train does not stand established. The appellant-claimant has merely stated to the extent that at the time of boarding the train, she slipped due to push and pull of the crowd and was dragged into the railway line. It has to be understood that she when she fell down and then at that point of time, the train started moving which has caused crushing injury upon her limb which has subsequently to be amputated. So, on the basis of the documents produced by the railway authority itself, it does not appear that she was boarding a running train. Mere making a statement contrary to the records would never establish the claim of the railway authority. Even if it is assured that she tried to board a moving train, now it is well settled that the same would also be covered within the meaning of untoward incident.

Coming to the main issue i.e. whether the appellant-claimant was a bona fide passenger or not?

Of-course, her relative have not appeared to examine themselves before the Tribunal, but the claimant-injured herself has been examined and has filed affidavit and she has been cross-examined also at length by the railway authority.

I have seen cross-examination, which is available on the records of the Lower Court.

In my opinion, she could not be shaken by the counsel for the railway authority during the cross-examination.

Apart from the above fact, her Aunt-Jarnail Kaur recorded her statement before the police also, which is available on record, in which, she has supported the version of the appellant-claimant. So far as loss of purse is concerned, that cannot be held to be unusual thing.

Learned counsel for the respondent-railway has raised a question that if her purse was lost at that point of time of accident then why nobody made a search thereof, so that the same could not found out.

In my considered view, her statement cannot be disregarded on that count also because it is not clear whether the purse fell on the train or on the platform or the railway track and, apart from the above, a statement has been made on affidavit and she has withstood the same in the cross-examination. That apart, duty was also cast upon the railway authorities to make a search for her personal belongings on the train, on the platform and on the railway track soon after the accident but there is nothing on record to show that such extensive search was made and despite that no ticket or such purse or her other belongings could be found out.

In this regard, a reference is made to a decision of Delhi High Court rendered in **Moola Ram Vs. Union of India, 2014 ACJ 1975**. It has been held that minor discrepancies in the testimony of eye-witness who travelled in the same train with the deceased cannot be disregarded by adopting a hyper technical approach.

This Court is in respectful agreement with the aforesaid view expressed by the learned Single Judge of Delhi High Court. There would be always a possibility of loosing the ticket or such lady purse at the time when the person herself fell down from the train and was seriously, severely and grievously injured. A question would arise-whether in such a situation, she or anybody who was travelling with her, would start making a search for the purse or everybody's attention would be to take her to the hospital for treatment? The answer would be

obvious. The first priority would be given to make arrangements for getting the injured treated at a hospital and there would a possibility of losing the purse or the ticket in this process.

But what the railway authority did? They did not make any search of the entire place of occurrence for recovery of any vital clue or evidence. An inquiry was held at a later stage, i.e., after much delay, when there would be no possibility of finding out anything.

So far as the question, as to whether the GRP asked for the production of the tickets or not and whether GRP should have done it or not, would not arise in this case. GRP may investigate the matter in a correct manner or even incorrect manner but that would not create a negative evidence in favour of the respondent-railway authorities. Due to non-statement of loss of purse before the GRP and on that ground of non-suiting the victim would, in my opinion be like taking a very hyper technical view of the matter.

Learned counsel for the appellant, in support of his contention, has referred a judgment of Single Bench of this Court, rendered in Union of India Vs. Sarla and others, 2010 (14) R.C.R (Civil) 253, and contends that if a victim fell down from the crowded train and there is no evidence that the victim was travelling with a ticket, it has to be assumed that the victim was a bona fide passenger.

In its one of the well celebrated judgments rendered in ***'Union of India Vs. Rina Devi' 2018(3) R.C.R. (Civil) 40***, the Apex Court has held 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 also not negative the claim either. Initial burden will be on the claimant which can be discharged by filing an affidavit stating relevant facts

and burden will then shift on the railways. Thereafter, the issue can be decided on the facts shown or the attending circumstances.

In my considered view, since there is nothing on record to show that extensive search was made for finding out the ticket or other belongings of the victim immediately after the accident by the railway authorities, in the absence thereof, it would be very difficult to dislodge the appellant-claimant on the count that she was not a bona fide passenger.

Thus, in my considered opinion, the Tribunal has erred in recording a finding on the assumption and presumption that since GRP did not ask any question regarding the tickets and since three separate tickets were allegedly purchased for three persons but the ticket purchased by the victim was not found from her possession, she was not a bona fide passenger. Such finding has to be held erroneous and has to be set aside. The ticket or the purse containing the ticket could have been lost in the train or on the railway track or on the platform or in the way when the injured was taken to the hospital or even in the hospital where she was being treated. The claimant-injured cannot be fastened with liability to make a search and collect all her evidence and protect the purse and tickets even though at that point of time she had suffered multiple grievous injuries. Apart from being hyper-technical view, this will be inhuman approach also.

Accordingly, finding of the Tribunal with respect to issue No.1 is quashed and set aside and it is held that in the facts and circumstances of the case, the injured would have to be considered as a bona fide passenger.

So far as the finding with respect to issue No.2 is concerned, i.e. upheld in the facts and circumstances discussed above and the view of the Tribunal that the appellant-claimant became victim of accident when she slipped at the time of boarding the train at Kartarpur railway station, is upheld and as a consequence thereof, it is further held that this accident has to be taken as

untoward incident under Section 123-C (2) of the Railways Act, 1989 (hereinafter referred as 'the Act'). As a consequence thereof, the appellant is held to be entitled for compensation under Section 124-A of the Act.

So far as the compensation amount is concerned, it would have to be seen as to what was the extent of injury, as her case is neither covered under Part-II or Part-III of schedule attached to the Railway Accidents and Untoward Incident (Compensation) Rules, 1990, as one of her left hand below elbow had to be amputated, as per the medical report submitted by Civil Surgeon, Patiala, which has been brought on record as Ex.A-21. The same discloses that she has suffered permanent disability of 100% and, as such, her case has to be considered under Rule 3(2) of the aforesaid Rules, as she has been deprived from capacity to do any work. Thus, her compensation can be assessed at Rs.4 lacs as per the aforesaid Rules.

In view of 100% disability due to the amputation of upper limb from below elbow and it was a case of '*Post Traumatic Paraplegia*', which is approved from the medical report. It also appears that due to the accident, there was dislocation and NCCT Spine(whole) as it stands disclosed from the medical report of Rajindra Hospital, Patiala, available in the record, that there was a comminuted fracture and dislocation of D-12 and L-1 vertebrae with marked disc space and several other fractures have been shown therein, which has resulted in *Post Traumatic Paraplegia*.

Learned counsel for the respondent-railways has vehemently argued that, at best, victim's case would be covered under Part-III of the *Schedule at Serial No.21 of Railway Accident and Untoward Incident (Compensation) Rules, 1990* by which, for fracture of spine with paraplegia, only Rs.2 lacs is to be given.

However, he forgets that there was amputation of left limb also, which cannot be ignored and it cannot be taken under *Serial No.21* only of the

aforesaid Rules for fracture of spine with paraplegia.

Admittedly for loss of a hand or the thumb and four fingers of one hand or amputation at Serial No.4 of schedule attached of the aforesaid Rules, amount of compensation is to be given Rs.2,40,000/- and her case would be covered under *Part III* of the schedule attached to the *Railway Accidents and Untoward Incidents (Compensation) Rules, 1990*.

Keeping in view of the fact that her case is covered under *Part-III of the schedule at Serial Nos.4 & 21* both of the aforesaid Rules as her one limb has been amputated below the elbow and she had suffered fracture of a spine with paraplegia also, coupled with the fact that the Civil Surgeon has opined that there is 100% disability as also the fact that if both are taken together that will exceed the amount of Rs.4 lacs, in any considered view, just and fair compensation would be Rs.4 lacs, which is maximum given under the scheme.

Apart from the above, the appellant-claimant would also be entitled for the interest upon the awarded amount.

In the result, the appeal is allowed, part of the impugned Judgement is quashed and set aside to the extent discussed above and the appellant-claimant is held to be entitled for compensation of Rs.4 lacs alongwith interest @ 9% upon the awarded amount to be calculated from the date of the accident till the payment of compensation.

(DR. RAVI RANJAN)
JUDGE

17.01.2019
Anjal

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