

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.9377 of 2014 (O&M)

Date of Decision: 27.03.2019

Purushotam Dubey etc.

.....Appellants

Vs.

Union of India

.....Respondent

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

Present:- Mr.Upender Prasher, Advocate, for the appellants.

Mr.Karminder Singh, Advocate, for the respondent-UOI.

DR. RAVI RANJAN, J. (Oral judgment)

This appeal is directed against the decision dated 13.08.2013 rendered by Railway Claims Tribunal, Chandigarh Bench, Chandigarh in case number OA-II/343/2011 by which the claim application filed by the appellants has been dismissed.

The claimants-appellants filed a claim application under Section 16 of the Railway Claims Tribunal Act, 1987, for grant of compensation for the death of Smt.Indu Devi wife of Purushotam Dubey (claimant No.1) in the alleged railway untowards incident. As per the claimants, the deceased Indu Devi boarded Akal Takhat Express train from Patna Railway Station as she was going to Beas Railway Station alongwith some of co-villager women as all of them had to go to Dera Radha Swami Beas. It is claimed that, when the train was about to halt at Railway Station, Beas, the deceased Indu Devi, who was preparing for alighting from the train, accidentally fell down from the train at the platform and sustained head injuries on

Swami where she died during treatment on 23.09.2011. The co-passengers got separated from the deceased and went to Dera Radha Swami and returned back to their native village after few days. When deceased did not reach the village, son of deceased came to Beas and inquired about her and came to know regarding the death. It is claimed that the deceased was travelling as a *bona fide* passenger on general class ticket from Patna to Beas Railway Station and her luggage alongwith the ticket was lost in the incident.

The respondent-railway authority responded by filing written statement controverting the claim and making a statement that the alleged incident does not fall under the preview of Section 123(c)(2) and 124(A) of the Railways Act, 1989 (hereinafter to be referred to as “an Act”). The story has been disbelieved on the ground of being concocted one. It has been questioned that when the lady was admitted in Dera hospital in injured condition and regular announcements were being made by the Dera Authorities, why co-passengers did not care to make a search and inquire from the Dera authorities during their stay? Thus, a stand has been taken that the whole story appears to be falls, fabricated and unbelievable. It has also been averred that even if anything had happened, it might have happened due to negligent act of the deceased itself and the railway authority was not responsible for that. Further, as no information of such incident was given to the station master and no station memo was issued, hence, no such incident has actually appears to have taken place. It is also stated that merely finding a dead-body on the western side of the platform would not mean that deceased had fallen down from the alleged train. In

deceased from one Om Parkash, Secretary, Dera Radha Swami Beas who has stated that on 22.09.2011, a woman was found in injured condition at the western side of platform No.1. But such information was never given to the Station Master. Thus, stand has been taken that the deceased cannot be stated to be a *bona fide* passenger having died in an untoward incident.

The Tribunal, after consideration of the rival pleadings, framed following issues?

1. Whether the deceased was a bonafide passenger at the time of incident?
2. Whether the incident is covered within ambit of Section 123 (c)(2) read with Section 124-A of the Railway Act?
3. Whether the applicant(s) is/are the sole dependants of the deceased in this case?
4. Relief.

In order to prove their case, the applicants have examined the applicant No.1-Purushotam Debey, the husband of deceased, as AW-1. In his cross-examination, he has stated that his wife alongwith four ladies went to Dera Radha Swami Beas on 21.09.2011 by train. Others came back on 28.09.2011 but his wife did not return. Other women informed that she was separated from them at Beas railway station and they tried to make out a search but they failed and came back to Ashram. He has stated that he got married second time and he had three children namely Abhay Dubey, Chandan Kumar Dubey and Amit Kumar Dubey out of which two are married and Amit Kumar Dubey is co-complainant. One Dev Kumari belonging to the village of the deceased, has been examined as AW-2. She

examination she has stated that 5 to 6 people left the village together in which male and females both were there. She had applied for reservation but others were travelling in general class ticket. After reaching Beas Railway station, she had made a search for Indu Devi at the station and also searched her in the dera Ashram but she could not find her. They stayed in Ashram for four days and thereafter they returned back. She has stated that deceased Indu Devi has purchased a ticket for Rs.217/- in her presence.

Several documents have also been filed on behalf of applicants for example death report prepared by the GRP, *Fard Jamatalashi* showing nothing having been recovered from the dead body of the deceased, a letter dated 08.10.2011 from GRP to Professor and Head of Forensic Medical Department seeking opinion regarding the injuries as to whether the same may be caused due to railway accident or not. The statement of Om Parkash, Secretary, Dera Baba Jaimal Singh Radha Swami, Beas dated 23.09.2011 has also been placed on record in which he has stated that a woman was found in injured condition in the platform after falling from unknown train at platform No.1 railway station, Beas near KM 469 and she was admitted in the Baba Awan Singh Charitable Hospital, Beas for treatment with the help of servants of Dera who died during her treatment. He has also stated that announcements were made with respect to the incident repeatedly but no body came up to identify the deceased. The statement of Purushotam Dubey i.e. the husband of the deceased, postmortem report, all the documents were either been recorded or prepared by the GRP or were received by the GRP from the doctor who had done the autopsy on the dead body.

Guard affirming that on 22.09.2011 the deponent was on duty as guard from Ludhiana to Amritsar on the concerned train and also one Balbir Singh who was loco pilot on duty. They have stated that the train departed from Ludhiana at 15:50 hours and reached Beas Railway station at 17:20 hours. Due to heavy rush at Beas Station, the trains stopped for 4 minutes and when all passengers de-boarded and boarded the train then on receiving the proper signal, he gave a signal for departure of the train. They have further stated that no information of any untoward incident was received by them from any passenger, railway employee or the station master. DRM report has also been filed by the railways after inquiry and as per statement of Driver, Guard and station record, a stand had been taken that no incident of falling down of any passenger had happened on 22.09.2011. As per GRP inquest proceedings, no train ticket or any travelling authority was recovered from the person of deceased in *fard jamatalashi*. Thus, a stand has been taken that deceased was not a *bona fide* passenger.

The Tribunal has taken up the issues Nos.1 and 2 together being intertwined. The Tribunal, after consideration of materials on records, has come to the conclusion that deceased was not a *bona fide* passenger and no untoward incident has taken place in terms of section 123(c)(2) read with Section 124 (A) of the Act. Thus, the issues were decided against the claimant/applicants. Issue No.3 has also been decided against the claimants holding that the husband and minors sons of the deceased Indu Devi cannot be stated to be only dependents of the deceased especially other sons and daughters are alive. Issue No.5 has also been decided against the applicants in view of the findings recorded with respect to the issues No.1 and 2, holding that they not entitled for any compensation.

In the background of aforementioned factual matrix, I have heard the parties and perused the record of this case.

Learned counsel for the appellants has vehemently argued that on the basis of circumstances available, it can well be accepted and held that the deceased had fallen down from the train and had died due to injury received and, thus, the applicant/claimants should be entitled to receive compensation amount.

Per contra, learned counsel for the respondent has supported the judgment by saying that there is nothing on record to show that she was a *bona fide* passenger and such type of incident had actually taken place.

The Tribunal has non-suited the claim-applicants on the ground that no ticket was recovered from the person of the deceased by *fard jamatalashi* by GRP. It has also noticed that, though the AW-2, being one of the witnesses, claimed that she only had a reserved accommodation and others were travelling in general class, during her cross-examination, she has first stated that 5 to 6 people consisting of males and females were travelling, however, she has named others but not named the deceased Indu Devi. It has further been noticed that, as per AW-2, after reaching Beas Railway Station, she alongwith others made a search for Indu Devi even in the Ashram also but could not find her. The Tribunal has recorded that it is intriguing as to how, even after repeated announcement for two three days by Dera Authorities they were not able to make a connect with them. Thus, it has been recorded that there are certain contradiction in her affidavit and testimony before the Tribunal vis a vis claim application and affidavit of applicants and her testimony have not been found to be reliable and trustworthy. It has also been noticed that since no station memo was issued

by any station and the guard and driver of the train had clearly stated that no such incident had taken place, it would very difficulty to accept the alleged claim.

However, in my opinion, an important fact appears to have been skipped by the Tribunal that, on 23.09.2011, the Secretary of Dera had informed the Police Authority regarding the incident. Inquest proceeding or other materials of GRP are on record attached with the DRM report. Surprisingly, no effort was made by the railway authorities to approach and record statement of the Secretary of the Dera who had categorically stated that he found Indu Devi in injured condition on the western side of platform No.1 and had reported the matter to the police after getting her admitted in the hospital. His statement was recorded by the GRP which is available on the record of the railway authorities also because everything has been attached with the DRM report, still no effort was made to get either his statement recorded or even get him examined. This is nobody's case that the Secretary of Dera Radha Swami Beas was known to Indu Devi being a friend, relative or otherwise from before. In such a circumstance, it would be very difficult to come to a conclusion, without recording his statement by the railway authority, that he had given a false statement before the police. The question would be, why a person, who is working as Secretary at Dera Radha Swami would make a false statement ? He finds a lady in injured condition on 22.09.2011 admits him in the hospital, she dies and, thereafter, in the morning of 23.09.2011, he informs the GRP.

Secondly, of course nothing was found after search of the dead body by the GRP but whether any attempt was made by any body i.e. either

extensive search to find out the belongings of the deceased from the place of occurrence? Whether it was not the bounden duty by the GRP to reach the place of occurrence and make out a search or do some investigation on the spot but nothing has been done by the two responsible authorities such as GRP and Railways and on this ground, though error is on their part, the claimants have non-suited by the Tribunal.

AW-2 i.e. the lady belonging to the village of the deceased, has stated in clear terms that she boarded the train after getting reservation and others were travelling in general class. She saw the deceased purchasing ticket for Rs.217/- from Patna to Beas Railway Station and also seen her boarding the train. The Tribunal has opined after noticing the aforesaid that, when she was naming the travellers who were accompanying her to Beas, she did not take name of the deceased during cross-examination. In my opinion this inference is erroneous as she must have been naming the persons other than the deceased because every question or affidavit was with respect to the deceased only and she has categorically stated that she was also going to Beas along with her. On a question being asked in the cross-examination as to who were the other person, she might have named others and not the deceased because she had already taken name of the deceased. On the basis of such minor discrepancy, the case of the claimants should not have been thrown out.

Apart from the above, the nature of injury also goes to suggest that she had a fall upon a hard and blunt substance causing head injury which may have been possible due to accidental fall. It may have been possible due to some other reason also but that other reason has not been

could have happened.

So far not finding any ticket is concerned, it is true that on search of the dead body not only ticket has not been found but nothing has been found from her possession. A question would be whether she was travelling from Patna to Beas, which is quite a long distance, for attending some occasion being celebrated at Dera Radha Swami Beas but without any cloth or any belongings? It may happen but that would be exceptional circumstance as ordinarily a person would carry some cloths etc. if he or she is going for 4-5 days outside her village. Where were such belongings ? As I have already observed as above, no extensive search was made to find it out.

If the other belongings have been lost in the accident it is also possible that ticket might also have been lost alongwith that. This is the reason why the Hon'ble Supreme Court in **Union of India Vs. Rina devi 2018 (3) R.C.R.(Civil) 40** has held that if the ticket is not found from the dead body, that would not mean that the person was not a *bona fide* passenger. That will depend upon the facts and circumstances of the case. In the case in hand, there is evidence that she purchased ticket, there is evidence that she boarded the train but there is no evidence that she was alighting from the train and at that point of time she met with some accident due to fall but there is evidence that her body was found on platform No.1 at western side and the injury also suggests that same can happen due to a fall from the train.

Having considered the attending circumstances, I am of the considered opinion, that the aforesaid circumstance clearly indicate that she was a *bona fide* passenger and had an accidental fall and the GRP and

investigation and inquiry in the matter. However, for that, the deceased or the claimants cannot be held responsible and the claimants cannot be non-suited on that count. In the result, I would hold that she died due to untoward incident as envisaged under Section 123(c)(2) of the Act and as such, the deceased being a *bona fide* passenger, the claimants would be entitled for statutory compensation.

So far the amount of compensation is concerned, at the time of occurrence/accident, the statutory amount was Rs.4 Lacs in terms of schedule attached with the Railway Accident and Untoward Incident (Compensation) Rules, 1990, but the same stands amended and revised w.e.f. 01.01.2017 and the amount now has been raised to Rs.8 Lacs. The question would be what would be the amount for which the claimants would be entitled. In my considered view, this issue is no longer *res integra* as the same has been considered and decided by Hon'ble Supreme Court in one of its celebrated decision rendered in **Rina Devi (Supra)**. The relevant passage from the aforesaid judgment is extracted and quoted as under:

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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.

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There is no Award by the Tribunal in the case in hand as the claim case was dismissed. The claimants are being allowed compensation in terms of the present decision. Thus, in my view, the date of the present decision would be relevant for serving the purpose. If a calculation is made then, even after considering interest @ 9% per annum on Rs.4,00,000/- (The amount admissible on the date of accident), the same would come to Rs.36,000/- per annum and if it is multiplied with 8 years, as the date of accident is 22.09.2011, it will come to Rs.2,88,000/- and sum total would be Rs.6,88,000/-, which would be lesser than the amount now revised and fixed at Rs.8 Lacs. In such a situation, this Court would hold that the claimants would be entitled for the compensation amount of Rs.8 lacs along with interest @ 9% to be calculated from the date of the present decision till the date of its payment.

Now another question would be as to how this amount is to be shared by the claimants? In my opinion, the stand taken by the Tribunal while dealing with the issue No.3 i.e. husband and minor son of the deceased are not treated to be only dependents is correct. In my opinion, all the sons

and daughters and the husband i.e. widower would be entitled for the amount in equal shares.

Accordingly, this amount has to be allowed in equal shares to all the sons and daughters as well as the claimant No.1. In such a situation, it is directed that railway authorities will deposit the amount before the Tribunal which would disburse the same in equal shares in between the aforesaid persons.

In the result, this appeal stands allowed and impugned judgment and findings recorded by the Tribunal, save and except the finding recorded with respect to issued No.3, are quashed and set aside.

However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

27.03.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No