

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

**FAO No.7134 of 2016**  
Decided on:07.05.2019

Rukmesh and another .....Appellants

versus

Union of India ....Respondent

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

Present: Mr.Subhash Sachdeva, Advocate,  
for the appellants.

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

**DR.RAVI RANJAN, J. (Oral Judgment)**

The challenge in this appeal is to the decision dated 11.04.2016 rendered by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by virtue of which the claim application filed by the claimants/appellants under Section 16 of the Railway Claims Tribunal Act, 1987, has been dismissed on the ground that the deceased neither can be considered to be a *bona fide* passenger nor can the accident be termed as railway untoward incident.

1. Short facts which are necessary for consideration of the *lis* stand enumerated as under:

The claimants are the parents of the deceased and as per the claim application, on 11.06.2013 the deceased informed his companion Krishan that he was going to Sonipat by train for collecting Rs.5,000/- from one Parvesh Kumar and he would return by the evening/night by train. He

purchased an ordinary second class ticket for his journey from Sonipat to Panipat and boarded a passenger train. When the train in question reached between the railway station Diwana and Panipat, the deceased accidentally fell down from the train and due to which grievous/multiple injuries were inflicted upon his body to which he succumbed on the spot itself. It was claimed that cash amount of Rs.2,000/- as well as ticket was lost in the accident. His co-worker Krishan Kumar, who was returning from Kishan Pura to Azad Nagar saw that many persons have assembled and upon inquiry he found that Deepak had died due to falling from the train. He identified the body of the deceased-Deepak before the GRP. One Asha Ram Gateman gave information to the Station Master, Panipat, who informed the GRP. The GRP recovered the dead body and *post mortem* was conducted and in search of the dead body Rs.3,100/-, ration card and voter ID issued by Election Commission were found but no ticket was found. On aforesaid set of facts, the claim petition was filed before the Tribunal under Section 16 of the Railway Claims Tribunal Act, 1987.

The respondent-Railways filed written statement refuting the averments made in the claim application and taking a stand that the accident cannot be termed as railway untoward incident within the meaning of Section 123(c) of the Railway Act, 1989, (hereinafter to be referred as the 'Act') and further that the deceased was not a *bona fide* passenger as no ticket was found during the search of the dead body. Another stand was taken that infact it is a case of self-inflicted injury due to criminal/negligent act on the part of the deceased himself.

2. On appreciation 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 applicants are the sole dependents of the deceased?
  4. Relief.
3. To prove their case the applicants examined the claim applicant no.2 Kanwar Pal as AW1 and Krishan as AW2.

The applicants have also placed on record several documents, such as, application by GRP to Civil Hospital, Panipat for conducting *post mortem* on the dead body of the deceased Ex.A-1, railway station memo to the GRP and RPF as Ex.A-2, death report Ex.A-3, *fard jamatalashi* Ex.A-4, statement of Asha Ram, Railway Gateman, Panipat as Ex.A-5, statements of Kanwar Pal and Smt.Rukmesh-applicants Ex.A-6 and Ex.A-7, statement of Krishan Ex.A-8 and that of Randhir Singh Ex.A-10, *post mortem* report Ex.A-11, joint statement Ex.A-12, death certificate Ex.A-12, the voter ID card of the claimants Ex.A-13 and Ex.A-14 and family ration card as Ex.A-15, in support of their claim.

The respondent-Railways placed on record the DRM's inquiry report alongwith number of documents as prepared during the course of inquiry.

4. The Tribunal, after noticing that AW2 being interested and chance witness is not reliable and further that it is not digestible that though Rs.3100 and voter ID card were recovered from the dead but Rs.2,000/- but railway ticket was lost, has held that the deceased does not appear to be a *bona fide* passenger. It has further been held that the memo was received by the Station Master from Gateman Asha Ram to the effect that a dead body

of unknown person was lying on Up-line between Diwan and Panipat at KM No.86/03, whose statement was also recorded during DRM's inquiry. On finding no evidence of falling down of the deceased from the moving train coupled with the fact that recovery of a dead body on or near the railway track does not *ipso facto* proves that the person had fallen down from the train, also taking into account the DRM's report, the Tribunal has held that it appears that the deceased was run over by any train due to his own negligence. It has further been noticed in the decision of the Tribunal that the deceased was residing at Azad Nagar which is an area near the railway line, thus, there would always be a probability that he was run over by some moving train at the time of crossing the railway track.

However, while dealing with issue no.3 the Tribunal has accepted, since the deceased was unmarried that the parents would be the dependents.

5. In the aforesaid background of factual matrix, I have heard learned counsel for the appellants and respondent-Railways and have also perused the records of this case.

Learned counsel for the appellants has submitted that the Tribunal has rejected the testimony of the witnesses examined on behalf of the claimants and doubted the pleadings also, however, while doing so it has put them to strict prove like a criminal trial, as if its claimants were required to prove their case beyond all reasonable doubts whereas while considering the Railways' stand all the presumptions and assumptions put forward by the Railways have been accepted and DRM's report has also been accepted as if *Gospel* truth. Though no witness could be examined by the respondent-Railways, accepting the case of the Railways and refuting that of the

claimants the claim application has been dismissed.

On the other hand, learned counsel for the respondent-Railways has vehemently argued that since there was no ticket found from the search of the dead body, and further, for the reason that the dead body was found near a crossing which is at Gate No.51 near Azad Nagar, which is nearer to the place of residence of the deceased, it is apparent that he must have been crossing the railway track unauthorisedly and was run over by a train.

On consideration of rival contentions this Court does not find any force in the submission made on behalf of the respondent-Railways. Of course, there is no eyewitness to the accidental fall of the deceased but AW1, who is the father of the deceased, has stated before the Police and also in his testimony before the Tribunal that the deceased had gone to Sonipat to collect his wages for white-washing work from one Parvesh Kumar and while returning back he accidentally fell down from the train and died. Though AW1 cannot be held to be an eyewitness as he himself says that he is not an eyewitness but one thing is clear from his testimony that he was able to give the reason why the deceased went to Sonipat and from where he was returning. This much is also established from the testimony of AW2, Krishan who has also supported this line and has further stated that the deceased informed him that he would be returning back to the place of residence by evening/night by train after collecting Rs.5,000 from Parvesh Kumar. He also boarded a train for returning home. When he reached the place of occurrence, he saw some persons assembled there and on inquiry he found that his companion Deepak had died due to fall from the train. He is also not an eyewitness to the accident fall, infact there is none, but he atleast has established by supporting the case of AW1 that the deceased went to

Sonepat to collect Rs.5,000/- and he had informed that he would be returning in the evening/night by train and further, he saw the dead body at the place of occurrence. The Tribunal has rejected his testimony on the ground that he is an interested and a chance witness. I wonder how such testimony to that extent could have been rejected on the aforesaid count. The question is, who could have been the best person to say as to why deceased went to Sonepat or why he was returning from Sonepat to his place of residence by train? It has to be none other than the family member or a friend or companion of the deceased. There cannot be any independent witness to this. This is not a criminal trial in which such type evidence can be discerned on the technical ground of being a chance witness or interested witness. It has been held on several occasion in several decisions rendered by the Hon'ble Apex Court as well as the High Courts that the proceeding before the Tribunal is summary in nature and in the nature of inquiry only. It is done under a beneficial piece of legislation to achieve its object of granting compensation on no fault theory, therefore, the claimants cannot be put to strict proof of his case beyond all reasonable doubts as is done in a criminal trial. A reference is made to the decision of the Apex Court in **Union Of India vs Prabhakaran Vijaya Kumar & Ors, 2008 (9) SCC 527.** The Apex Court has held that provisions of compensation engrafted in the Railways Act is a beneficial piece of legislation, thus, a liberal and wider interpretation has to be given and not a narrow and technical one. Hence, if two interpretations are possible, one which advances the object of the statute, serves the purpose should be preferred.

Thus, in my considered opinion, the testimony of AW1 and

AW2 could not have been brushed aside in such a manner by the Tribunal.

6. Much emphasis has been given by the Tribunal to the inquiry held and as a result of which the DRM's report has been submitted before it. A stand has been taken that since no ticket was found, therefore, the deceased was not a *bona fide* passenger and since there is no eyewitness to the accidental fall and since the place is adjacent to the Azad Nagar where the deceased was residing, it appears to be the case of run over by a train, though no such evidence has been brought on record either in DRM's report or before the Tribunal. It appears that the Tribunal has accepted the assumptions and presumptions put forward by the respondent-Railways, which was not required to be done. Infact the witness in the DRM's inquiry, i.e., the Gatekeeper Asha Ram has stated before the GRP that the case appears to be of accidental fall from the moving train but this aspect has neither been taken care of in the DRM's inquiry report nor has been considered by the Tribunal though the same is available in the record of the Tribunal. He has clearly stated that it appears that the deceased has fallen down from an unknown train but ignoring the aforesaid, without any evidence that by which train he was run over, whether the the engine driver or guard of that train had informed the Station Master or not that from his train such accident has occurred in which a human life has been lost, the DRM's report has been prepared saying that it appears that it is a case of self inflicted injury as he must be trying to cross the railway line and was run over by the train. The worst part is that even the Tribunal has accepted the story based on such assumption to be true, whereas, it has put the claimants to the strict proof of the pleadings like a criminal trial.

Apart from the above, the most important *lacuna* which

emerges out of the record is none-consideration of the nature of injuries which have been disclosed in the *post mortem* report. The injuries are extracted from the records and quoted as under:

“(A) (1) XXXXXXXXXXXXXXXXXXXX XXXXX  
(2) XXXXXXXXXXXXXXXXXXXX XXXXX  
(3) XXXXXXXXXXXXXXXXXXXX XXXXX  
(4) XXXXXXXXXXXXXXXXXXXX XXXXX  
(5) XXXXXXXXXXXXXXXXXXXX XXXXX  
(6) XXXXXXXXXXXXXXXXXXXX XXXXX  
(7) XXXXX

1. Lacerated wound 24X10 cm from tip of nose of nuchal prominence posteriorly with underlying bone fractured and brain matter protruding from the wound.
2. Bruise 12X5 cm on left middle back subcutaneous hematoma
3. #4<sup>th</sup> metacarpal middle on left side
4. #5<sup>th</sup> metacarpal middle left side
- 5 #Sternum Middle
6. Xleft 5th, 6th, 7th, 8<sup>th</sup> ribs laterally.”

7. Even if it is presumed that the deceased was trying unauthorisedly to cross the railway line and in the meantime he was run over by a train, a question would arise as to what would be the nature of injuries in such a case? Obvious answer would be that the body of such person would be dragged into the wheels, would get mutilated and may be cut into pieces. No such injury is apparent from the *post mortem* report of the deceased, whereas, the lacerated wounds, bruise, fracture of metacarpal bones, Sternum, ribs etc. may suggest towards an accidental fall if no other explanation is available, when the dead body gets thrown from the moving train and it falls on the earth. In such type of cases, which are summary in nature and are in the manner of inquiry, the Tribunal should base its finding on the availability of materials on record and preponderance of probabilities. On the aforesaid facts and materials which are available on record, in my considered opinion the claimants' case is fit to be accepted.

So far not finding the Railway ticket is concerned, it is by now well settled that it cannot become a sole ground to hold that the deceased

was not a *bona fide* passenger. In this regard, a reference is made to the relevant passage extracted and quoted from a decision of the Hon'ble Supreme Court rendered in **Union of India vs. Rina Devi, 2018(3)RCR(Civil)40,**

*“17.4 We thus hold 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 not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”*

If the evidence led by the claimants and available on record on behalf of the Railways compared on this aspect then it would be as follows:

AW1 said that he was going to Sonapat for collecting Rs.5,000/- from one Parvesh Kumar as the same was due since he and Krishan had done white-washingwork in his house.

AW2 Krishan Kumar supports and further says that the deceased had informed him that he would be returning by train in the evening/night. While returning home by train in the evening/night, he saw at the place of occurrence that several persons had assembled there and the body of his companion Deepak was found.

It would have been better if such Parvesh Kumar could have been examined on behalf of the claimants from whom Rs.5,000/- was to be collected by the deceased, however, at the same time and it would also have

to be considered that the claimants are persons belonging to lower strata, thus, it would be very difficult for them to bring aforesaid Parvesh Kumar to the witness box. However, if the evidence led by the claimants is compared with the documentary evidence which have been brought on record by the Railways, it would appear that there is nothing on record to show that by a particular train at a particular time the deceased was run over. It has been presumed that since railway ticket is not found, therefore, the things ought to have happened in such manner and the worst part is that the Tribunal has accepted the same also. Infact there is no inquiry on the point as to whether any engine driver or guard of the train had informed the Station Master that by his train a human life has been lost or some person has run over.

The DRM's inquiry report has completely ignored the statement recorded by the Police of the Gatekeeper Asha Ram where he had stated that, in all probabilities, it appeared that the deceased had fallen down from the train. The *post mortem* report also suggests the injuries received may be due to accidental fall and it definitely does not suggest at all suggest that such injuries would have been inflicted if a person is run over by the train. That apart, it is also not the case either of the GRP or the Railway Authorities that extensive search was made on the spot of accident or the nearby area to find out the belongings of the deceased. In the absence of that it can be held that there would always be a possibility of losing the ticket in such type of accidents and in the absence of any search having been made by the relevant authorities, there cannot be any presumption that since the ticket was not found, the deceased was a ticket-less passenger. There cannot be a presumption either regarding a person that he would travel by train illegally as a ticket-less passenger.

Having regard to the aforesaid discussion, I am of the opinion that in the facts and circumstances of the case it has to be held that the deceased was the *bona fide* passenger and the accident is an untoward incident in terms of Section 123(c) read with Section 124-A of the Act and as such, the claimants being the parents of the deceased would be entitled to receive the statutory compensation amount.

8. Now the next question would be, what would be the amount of such compensation. Since the date of accident is 11.06.2013, *prima facie*, it appears that Rs.4 Lakhs, which was the statutory amount as disclosed in the Schedule attached with the Railway Accident and Untoward Incident (Compensation) Rule 1990, would be that amount. However, it is contended on behalf of the appellants/claimants that this Schedule and the relevant portion of the Rules were amended by bringing a notification, which was made effective from 01.01.2017, raising the statutory compensation amount in the case of death to Rs.8 Lakh. Thus, it is urged that the amount of Rs.8 Lakhs alongwith interest should be paid. On the other hand, learned counsel for the Respondent-Railways has submitted that since this amendment has come much after the date of accident, i.e., after about 4 years from the date of accident, the same would not be applicable to the present case. In such a case, Rs.4 Lakhs only can be given, if it is to be given at all. However, this issue is no longer *res integra* having been considered and decided by the Apex Court in **Rina Devi (supra)**. The Apex Court 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 Rath 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.”*

It is apparent from above that in case the amount which was available on the date of accident is added to the reasonable interest and the sum total comes less than the amended statutory compensation amount of Rs.8 Lakhs, on the date of Award by the Tribunal the claimants would be entitled for the higher of the two amounts. However, in the present case there is no Award in favour of the claimants rather the claim petition was dismissed and compensation amount is being awarded by the decision of the present Court only. Thus, in my considered view, the date of the present decision by which the compensation amount is being paid would become relevant and thus, since on this date the statutory compensation amount of Rs.8 Lakhs is available and the earlier amount of Rs.4 Lakhs even if is added with per annum interest either at the rate of 8% or 9%, would be much less than Rs.8 Lakhs, the claimants would be entitled for the higher amount of Rs.8 Lakhs. Accordingly, it is held that the claimants would be entitled to receive Rs.8 Lakhs in equal shares and this will also carry interest at the rate of 9% per annum to be calculated from the date of the present decision till the date of payment of compensation amount.

In the result, this appeal is allowed and the impugned decision

of the Tribunal is set aside save and except its finding recorded with respect to the issue no.3, by which the Tribunal has held that the claimants are dependents of the deceased. However, the parties will bear their own costs.

May 07, 2019  
*dharamvir*

(DR. RAVI RANJAN)  
JUDGE

|                            |     |
|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether Reportable :       | Yes |