

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.7382 of 2016(O&M)
Date of Decision:09.01.2019

Dhanpati

.....APPELLANT

Vs.

Union of India

.....RESPONDENT

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

Present: Mr.S.R.Chaudhary, Advocate for the appellant.

Mr.Parveen Chander Goyal, Advocate for
the respondent -UOI.

DR. RAVI RANJAN, J.(Oral)

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

In this appeal, challenge is to the Judgment dated 25.07.2016 passed in OA-II/252/2013 by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for the sake of brevity 'the Tribunal').

The claim application was filed by the claimant-appellant seeking compensation of Rs.10 lacs on account of the death of her son Shishpal in the alleged railway untoward incident.

As per the case of the claimant, her son Shishpal (since deceased) had gone to pay obeisance to Mata Vaishno Devi and thereafter Golden Temple at Amritsar alongwith his friends from Karnal. The deceased was in touch with the appellant over mobile while in Vaishno Devi and at Amritsar. Last call from the deceased was received by her on 09.04.2013 evening informing her that he will reach Karnal Railway Station after some time. However, after waiting till

late night, the appellant tried to contact over his mobile number of many times, but it was found switched off. In the morning of 10.04.2013, the appellant received a message from GRP, Karnal that her son was lying dead in the lines of the railway track at Karnal railway station yard. Thereafter, appellant's sons and other relatives contacted GRP and reached the spot and identified the dead body of the deceased son. The GRP arranged to conduct the postmortem and in Jamatalashi, a railway ticket was recovered and mobile was found broken and lying scattered in pieces. It was claimed by the appellant that her deceased son was possessing a train ticket No.61038815 dated 09.04.2013 from Amritsar to Karnal.

The respondent-Railway filed the written statement denying and disputing various averments of the claim application. It was further asserted by the respondent-railway that the present claim application is not maintainable in the present form, as the incident would not fall under Section 123(c) (2) read with Section 124-A of the Railways Act, as also the alleged incident is a false and concocted story of the claimant-appellant. It was further submitted that the appellant has failed to mention the train number and name of the train or the time of departure of the train from Amritsar and also the time of the alleged accident. A further stand had been taken in the written statement that the ticket number mentioned in the application is planned one which further establishes the filing of false claim application involving the respondent in the present case as the deceased was not a bonafide passenger of the said train.

On appreciation of pleadings of the parties, the Tribunal framed following issues:-

- “1. Whether the deceased was a bonafide passenger of the train on the date of incident, as alleged?

2. Whether the alleged incident is covered within the ambit of Section 123(c) read with Section 124-A of the Railways Act?
3. Whether the applicant(s) is/are the sole dependant(s) of the deceased?
4. Relief.”

The Tribunal has come to the conclusion that it is not known by the claimant as to by which train and on which date, the deceased was travelling and since the claimant had not seen the deceased either purchasing a train ticket or boarding the train or falling down from the train, a view was taken that the deceased was not a bonafide passenger of the train at the time of the accident.

It is further stated that the GRP has also taken a view that the deceased was run-over by some unknown train while crossing the railway lines.

Learned counsel for the appellant has submitted that the Tribunal has completely forgotten to explain as to how a railway ticket from Amritsar to Karnal was found during jamatalashi of the dead body of the deceased and if a ticket was found there, it has to be established that he was travelling in the train and had falling down from the said train and, thus, he was a bonafide passenger.

In support of his pleadings, learned counsel for the appellant has placed reliance upon a decision of Hon'ble Supreme Court of India rendered in **Jameela and others Vs. Union of India 2010 ACJ 2453**, where the Apex Court has observed that admittedly there was no eye-witness to the incident and case of Railways that deceased was standing at open door of train compartment in a negligent manner from where he fell down is entirely based on speculation. Even assuming that the deceased fell down from the train due to his own negligence, it is not a criminal act so as to attract Clause (c) of proviso to Section 124-A of the Railways Act and, thus, held that the railways are liable to pay the compensation.

Having heard the rival contentions, this Court finds force in the submission made on behalf of counsel for the appellant.

If a ticket is found in the pocket of the deceased, then it has to be considered that he was a bonafide passenger unless contrary evidence is brought by the respondent.

The case of the respondent is that as per the message of the Station Master, issued by the Station Master, Karnal one Shri K.J. Kalia, driver of train No.18102 on walkie-talkie has informed that a dead body was lying at up loop-line in the Delhi end at km 122/09 in the Karnal Yard. However, in no manner it can be presumed that the deceased was run-over by a train. It is not at all stated anywhere by the respondent that any engine driver or guard had informed that, by that particular train, the deceased was run-over. In any case, if a person comes into the impact of running train or is run-over by a train, his body cannot be found lying in between two lines, rather he would be either cut into pieces and the body would spread over in and around the railways track or at least his body would be found in mutilated condition.

Since there is no report of any other train driver or guard regarding any person being run-over by the train, it would be very difficult to presume the story which has been put up by the railway. So far as the submission made by the railway regarding planting of the ticket is concerned, this has also to be noted only to be rejected for the reason that if the railway is taking a particular stand that the ticket was planted subsequently then it would have to make specific pleadings regarding the manner in which fraud has been committed and lead evidence as to who had planted it and in connivance of whom. There is neither such pleading nor is there any evidence regarding that. Simply saying something would not be sufficient to dislodge the claim petition by the claimant.

In above view of the matter, this Court is of the opinion that once a ticket has been found and the same has been found to be correct and valid and not a fake one, the case of accident stands *prima-facie* established on behalf of the claimant for the reason that there is no eye-witness in the case. If there is no eye-witness in the case, the case of the claimant cannot be thrown away on that count. Had it been a case that nothing was recovered in the jamatalashi of the dead body of the deceased, the matter would have been different but in the present case, since a valid ticket has been found from the dead body, it has to be understood that the claimant has been able to put up a *prima-facie* case that the deceased was a bonafide passenger and further, since the mother has specifically stated that her deceased son had gone to visit Mata Vaishno Devi and thereafter Golden Temple at Amritsar and was returning back therefrom. In the absence of any evidence to the contrary, such version has to be accepted.

Learned counsel for the respondent-railways submits that deceased would be entitled for a compensation of Rs.4 lacs only as on the date of accident the compensation amount fixed under Rule 3.2 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, was Rs.4 lacs only.

Per contra learned counsel appearing for the appellant has vehemently argued that, since the statutory amount has been enhanced by the competent authority, the same would be payable to the claimant.

However, in my considered opinion, the compensation of Rs.4 lacs would be permissible to the appellant in the present matter but that amount will be paid along with interest @ 9% from the date of accident till the date of realization of the aforesaid awarded amount.

In the result, this appeal is allowed, the impugned Judgment is set aside and the claim application is allowed to the extent as indicated above. The

appellant is held to be entitled for compensation of Rs.4 lacs along with interest @ 9% from the date of accident till the date of realization of the aforesaid awarded amount.

(DR. RAVI RANJAN)
JUDGE

09.01.2019
Anjal/Anil

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