

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

**FAO NO.7538 OF 2016 (O&M)**

**Date of Decision:25.03.2019**

Suresh Jain and another  
Versus

....Appellant(s)

Union of India

...Respondent(s)

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

Present: Mr.K.C.Bhatia, Advocate for the appellants.

Mr.Vikas Chatrath, Advocate and  
Mr.Khushkaran Kumar, Advocate for respondent-UOI.

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**DR.RAVI RANJAN, J.(ORAL JUDGMENT)**

This appeal is directed against the decision dated 27.4.2016 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh in Case No.OA-II/290/2013 by which the claim application filed by the claimants/ appellants has been dismissed.

2. Short facts that are necessary for consideration of *lis* and which emanate from the record of this case, stand enumerated as under:-

According to the claimant, the deceased Gaurav, who was pursuing his LLB Course from Narela and use to travel by train from Ganaur to Narela every day for that purpose and was having a valid Monthly Seasonal Ticket (herein to be referred as MST) from Ganaur to Khera Kalan, was going on the fateful day, i.e., on 20.09.2013 to attend his college by boarding Jhelum Express from Ganaur Railway Station. There was heavy rush in the train. When the train reached Km 51/6-4 at Sandal Kalan yard, the train took jerk and the deceased accidentally fell down from the running train, suffered various multiple injuries due to which he died. Station Master/ Sonepat issued memo to

GRP/RPF who reached the spot and conducted inquest proceedings recovering one bag from the place of incident containing MST and other articles. According to the claimant, it was a case of untoward incident as defined under section 123 (c) (2) of the Railways Act, 1989 (hereinafter to be referred as 'the Act') and, as such, under section 124-A of the Act they would be entitled for statutory compensation.

3. The Railway Authorities contested the claim by filing written statement stating that case is not covered under the meaning of provisions contained under section 123 (c) ( 2) and section 124-A of the Act as the deceased was not a *bona fide* passenger. There is no *jamatalashi* report attached with the application. Railways are not responsible for the death. The dead body has been found inside the railway track and the nature of the injuries received by the deceased was also not possible in case of fall from the train. It has further been averred that there may be a possibility that he was trying to cross the railway line unauthorizedly and died coming under the impact of a moving train. In para 6 of the written statement, the railways authority has stated that, since the DRM report is still awaited, hence it reserves the right to amend the written statement as and when new facts and evidence would emerge in the inquiry.

4. It would be pertinent to mention here that even after DRM inquiry report was brought on record, no amendment in the written statement was sought by the Railways. As such, the pleading on the part of the railway remained as above.

5. On the basis of the pleadings of the parties, the Tribunal as framed following issues:-

1. Whether the deceased was a *bona fide* rail passenger at the time of incident?

2. Whether the death of the deceased occurred at such time which is covered as untoward incident under section 123 ( c) (2) of the Railways Act?
3. Whether the applicant(s) are sole legal heirs of the deceased?
4. Relief.

In order to substantiate their case, the applicants examined Suresh Jain AW-1, who is the father of the deceased. He has supported the case that the deceased was pursuing his LLB Course from Narela and use to travel from Ganaur to Narela and come back. The college is situated in between Narela and Khera Kalan and as such, sometimes he used to drop at Narela and on many occasions he used to go upto Khera Kalan. He was having a valid MST from Ganaur to Khera Kalan. On the fateful day he had boarded Jhelum Express and had an accidental fall when the train reached Km 51/6-4 of Sandal Kalan yard. He has stated in his cross-examination that it would be wrong to say that the police did not get any railway pass from the dead body and that was given by him to the police on a later occasion. It was not within his knowledge as to whether that MST was valid from Ganaur to Narela or not.

6. The Tribunal has non suited the claimants chiefly on the ground that the MST was from Ganaur to Khera Kalan but that was not having the signature of the MST holder and actually that was found in the case of the identity card which was also not having the signature of the person identifying it. Further, it has been noted that Jhelum Express does not has the schedule stoppage at Khera Kalan. Therefore, for reaching Khera Kalan, a person could not have boarded the aforesaid train. The Tribunal has further noted that, in the Police Death Report, nothing i.e. any luggage or other article has been shown to have been recovered from the proximity of the dead body and even in the jamatalashi nothing has been recovered by the GRP.

authentic proof of travel in Jehlum Express Train because the journey break is not allowed in the MST and Jehlum Express train does not have scheduled stoppage at Khera Kalan. Thus, Tribunal has held that deceased was not the *bona fide* passenger and has decided the issue No.1 against the applicants.

8. Issue No.2 has also been decided against the claimants/applicants on the ground that the dead body was lying within the track No.1 at Km 51/6-4 in Sandal Kalan yard and nature of injuries would also not suggest that it was the result of accidental fall. Thus, placing reliance upon the DRM inquiry report, it has been held that the deceased was run over by any train due to his own negligent act.

9. In the aforesaid background or factual matrix, I have heard parties and have perused the records of this case. Learned counsel for the appellant has assailed the decision of the Tribunal on the diverse grounds. First and foremost is that it would be evident from the *Fard Makbujgi*, that a bag was recovered from near by area of the dead body and one dictionary as well as note book and MST were recovered from the backpack bag. It is also urged that the injuries also suggest that it was due to accidental fall.

*Per contra* learned counsel appearing for the Railways has vehemently argued that there would be no possibility of dead body lying between the tracks if a person falls from the train. Therefore, it has to be held that it may be an accident but the same cannot come within the meaning of “untoward incident” in terms of provision of Section 123 (c) (2) of the Act.

10. However, on consideration of rival contentions this Court finds force in the submissions raised on behalf of the appellant, for the following reasons:-

First and foremost is that monthly MST has admittedly been

found from the bag recovered from proximity of the dead body. Whether it was stated in the *Jamatalashi* or not would be a different question altogether as in the summary proceeding under a beneficial legislation, strict proof like a criminal trial is not required. The police might have erred in not disclosing the fact in the *jamatalashi* but the fact that the ticket was attached in a separate sheet is proved from the police records itself. Though it is stated in the police report that in *jamatalashi* nothing has been recovered but as per *Fard Makbujgi*, backpack bag was recovered from area near the place of the dead body. It is apparent that same was containing English dictionary, note book, two ball pens and one 'Monthly Seasonal Ticket' valid from Ganaur to Khera Kalan. In my considered opinion, there was no occasion to non-suit the claimant on a ground that recovered MST cannot be relied upon because the MST holder has not put his signature thereupon. Question would be what was such MST doing in the bag of the deceased who admittedly was a student and used to go to college which is situated between Narela to Khera Kalan? The aforesaid fact that the deceased was studying in such institution is evident from the affidavit of his father also who has been examined as AW-1. It has also been noted that by the Tribunal that since Jahelum Express does not stop at Khera Kalan and journey break is not allowed in MST, therefore, there is no authentic proof of travel by Jahelm Express. However, there is nothing on record to show that if a person was in possession of MST from place A to C, he would not be authorized to board or de-board train at a place in between. The father of the deceased, who has been examined as AW-1, has clearly stated in his testimony that the college, in which the deceased was studying, was situated in between Narela and Khera Kalan. The deceased sometimes used to go by train upto Narela and some to upto Khera Kalan. Therefore, there may be the strong possibility that even if there was no schedule stoppage at Khera

Kalan, he might have decided to get down at Narela itself. There is no cross examination on this point by the Railways. In such a situation, it would be very difficult to dislodge the claimant on such ground.

11. Another ground taken by the Railways is that the dead body having been found lying in between the track, there was no possibility that deceased fell down from the train. It is contended that whenever a person falls from the running train, his body, due to force generated by the speed of the train and the blowing wind would fall at a great distance. There would be little possibility of it coming between the track itself. However, from the site map, which is available on record, it appears that the body of the deceased was lying on a track which was adjacent to the platform at Sandal Kalan which was admittedly not a schedule stoppage of the Jhehlum Express. To accept such limb of submissions raised on behalf of the railways, there has to be some evidence that the Jhehlum Express was plying on the same track between which the dead body was recovered. This would generate another question as to whether a train, which is not scheduled to stop at a station, will be allowed passage from the track which is just adjacent to the platform or it would be allowed to pass through another track so that rail traffic on the track adjacent to the platform is not disturbed? There is nothing on record to show that the train was moving on the same track from which the dead body was recovered. Had it been a case that at Sandal Kalan station also, the train was scheduled to stop then matter would have been different, however, when the train would be plying on other track then there would be a big possibility that if a person falls from the train he might be thrown up to the next track and body might have been found lying in between the track upto which it has flown due to impact of wind and speed of the train. In the absence of any positive evidence in this

regard or even any pleading or material on the record that the Jhehlam Express was passing from the same track on which the dead body was found lying, this limb of argument that the body can not be found in between the track in accidental fall from the running train, would not be acceptable for the aforesaid reasons. Another question would be supposing the case of the railways to be correct for the time being that the deceased himself came there and was trying unauthorizedly to cross the railway track and in such process, he came under the impact of the running train then a question would be why he was trying to cross the line after the end of the platform of Sandal Kalan railway station when he was residing at Ghanodi which is a different place and several Kilometers away therefrom? Secondly, where is such pleading or any evidence that he died at the time of crossing the railway track? Under Section 113 of the Railways Act, the moment the Station Master of the nearest railway station from the place of accident is informed about railway accident in which human life is lost, he has to take certain steps such as, informing the competent authority so that inquiry could be held. Whether any Railway Engine Driver had informed the Station Master of the nearest Railway Station that a person has been run over by a moving train? Answer has to be in negative because there is neither any pleadings nor is there any evidence to that extent. The only thing which is on record is that station master has given a message to GRP RTA that some outsider has reported regarding one dead body lying in the track No.1 at Km 51/6-4 in Sandal Kalan yard. No Railway Engine Driver has informed to the Station Master that there was any accident. In such a situation this limb of argument is also to be rejected.

12. That apart, the injuries also do not suggest that a person died due to coming under the impact of a running train. As would be evident from the

that the skull was broken and all along the body there were lacerated wounds which can only be caused by hard and blunt substance. However, if a person is run over by the train then either there would be several crushed injuries upon the body or he would be cut into pieces due to coming under the impact of wheels of the moving train. In the absence of such injuries, it would be very difficult to assume that the accident was positively due to coming of deceased under a running train. In such a situation the issue No.2 decided by the Tribunal holding that the deceased was not involved in any untoward incident under Section 123(c)(2) of the Railway Act, 1989, is also held to be erroneous.

13. From the materials available on record as discussed hereinabove, it is apparent that the justice has to tilt towards the appellant-claimants in such attending circumstances. The materials which has been recovered by the police such as note book, ball pens, MST and dictionary etc. goes to support the case put forward by the claimant that the deceased used to go to study in a college in between Narela and Khera Kalan. The AW-1 has stated in clear terms that the deceased used to deboard the train sometimes at Khera Kalan and sometimes at Narela Railway Station. It is not stated any where, even in the DRM report, that there is no stoppage of the Jhehlum Express at Railway Station Narela as well. To the contrary, there is a register maintained by the Driver available on the record which shows that train No.11078 Jhehlum Express was going to Sonapat and had passed the spot of accident at about 8:34 AM in the morning.

14. Above all, though several grounds have been raised by the Railways before the tribunal and this Court also, as discussed above, but unfortunately, even after coming of DRM's inquiry report, no amendment in the pleadings was even sought to be made. Any ground raised at the time of leading evidence or at the time of hearing, in the absence of any pleadings to that effect, can not be accepted.

In view of the aforesaid facts and circumstances and discussions, in

my considered view, this appeal has to be allowed.

Ordered Accordingly.

In the result, the impugned decision dated 27.04.2016 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh is hereby quashed and set aside. It is held that the deceased was a *bona fide* passenger and victim of accidental fall from the train and, as such, it would come within the meaning of the untoward incident as envisaged under Section 123(c)(2) of the Act. It has to be further held that the claimants appellants are entitled for grant of statutory compensation in terms of section 124-A of the Act read with provisions contained in Schedule attached to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, in particular, Part-1 thereof. Learned counsel for the railways has submitted that the compensation amount should be ₹4.00 lakh only because the date of accident is in the year 2013 whereas the schedule was amended and statutory amount of compensation was raised from ₹4.00 lakh to ₹8.00 lakh in case of death from January, 2017. This limb of argument is also been noted only to be rejected in as much as the Hon'ble Supreme Court has held in **“Union of India Vs. Rina Devi” AIR 2018 SC 2362** that, being a beneficial legislation, the enhanced amended amount of compensation can also be granted even if it was not applicable on the date of accident, if the same is higher than the compensation available on the date of accident along with interest on the date of the Award by the Tribunal. In this case, there is no Award of the Tribunal rather the tribunal has dismissed the case of the claimant. Compensation is being allowed in terms of the present order. As such, in my view, date of the present order would be relevant and serve the purpose.

15 Admittedly, if Award of ₹4.00 lakh is allowed alongwith 9% per annum interest on the date of accident, the sum total would be less than ₹8.00 lakh (the amended compensation amount on the date of present order). In such a

situation, this Court would allow compensation amount of ₹8.00 lakh alongwith interest @ 9% per annum to be would be calculated from the date of passing of the present judgement till the final payment of the compensation amount.

The parties will bear their own costs.

**(DR.RAVI RANJAN)**  
**JUDGE**

**25.03.2019**  
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Whether speaking/reasoned : Yes  
Whether reportable : Yes