

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.386 of 2019 (O&M)

Date of Decision: 28.05.2019

Union of India

.....Appellant

Vs.

Parveen Kumar and another

.....Respondents

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

Present:- Mr.Neeraj Madan, Advocate, for the appellant.

Mr.Upender Prasher, Advocate, for the respondents.

DR. RAVI RANJAN, J. (Oral Judgment)

I have heard learned counsel for the appellant and the respondent and perused the records of the case.

This appeal is directed against the decision dated 25.09.2018 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by which the Tribunal has awarded an amount of Rs.8 Lacs as compensation to the claimants holding that the deceased was a *bona fide* passenger and the accident would be covered within the meaning of “untoward incident” in terms of the provisions contained in Section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as “an Act”).

At the time of hearing, chiefly two grounds have been raised by the learned counsel for the appellant for the purpose of assailing the judgment of the Tribunal. First and foremost is that, the admitted situation being that the deceased was trying to board a moving train on the concerned platform and in that process the accident took place, this has to be held that

Section 124-A of the Railways Act, 1989, which provides that no compensation shall be paid under such provision by the railway administration if the passenger dies or suffers self inflicted injury. The second issue which has been raised by the learned counsel is that the railway ticket not having been found in the *Jamatalashi* of the deceased, he cannot be held to be a *bona fide* passenger and as such would not be entitled for any compensation.

However, in my view both the grounds raised by the appellant are not tenable for the following reasons:

The Tribunal has accepted the case of the claimants that the deceased met with the accident on falling from the moving train due to push and pull of the passengers and jerk of the train whereas the case of the railway was that, as per statement of father of the deceased recorded by the GRP under Section 174 of Cr.P.C., his son was trying to board a moving train and in that process he slipped and met with the accident. Even assuming the aforesaid stand of Railway to be correct, that would make no difference as in **Union of India Vs. Rina devi 2018 (3) R.C.R.(Civil) 40.**, the Apex Court has held that unless it is proved that the intention of the deceased was to inflict such injury upon himself, mere negligence of any particular degree would not bring the case under the concept of “self inflicted injury” as negligence of victim cannot be allowed in the claims based on “no fault theory” akin to Section 163A of the Motor Vehicles Act, 1988. Accordingly, the Apex Court has held that the death or injury in course of boarding or de-boarding the train would come under the definition of “untoward incident” entitling the claimants compensation and will not fall

victim as a contributory factor. Accordingly, in the absence of any evidence that deceased went with an intention of inflicting injury upon him, such plea of railway cannot be accepted in view of the aforesaid decision of the Apex Court. In the result, the aforesaid issue raised by the learned counsel for the appellant is held to be not tenable.

The second issue raised by the appellant-railways is that the deceased cannot be held to be a *bona fide* passenger as no railway ticket could be found from the possession of the deceased. In the *Jamatalashi*, though it is stated that ticket was not found but some pieces of papers were found which appeared to be pieces of any railway ticket or a railway pass. However, it is urged that it would not be conclusive proof of the ticket purchased by the concerned passenger. In my considered view, this limb of argument also has to be noted only to be rejected for the reason that in **Rina Devi (Supra)**, the Apex Court has held that mere absence of ticket with such injured or deceased will also not negate the claim that he was a bona fide passenger. The initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts then burden will shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. In the present case, the claim-applicants have started in categorical term that the deceased was a *bona fide* passenger and in *Jamatalashi* certain pieces of papers indicating railway pass or ticket were recovered. It is admitted on part of the railway authorities that the deceased was trying to board the moving train. In such situation, it would be very difficult to hold that a law abiding citizen or a person would travel ticketless unless contrary is proved. It has also come to the notice that deceased used

circumstances, such limb of argument cannot be accepted.

Accordingly, this appeal, being devoid of any merit is dismissed.

(DR. RAVI RANJAN)
JUDGE

28.05.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No