

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

FAO-2437-2008 (O&M)
Reserved On :- 02.11.2023
Date of Decision:-17.11.2023

Santosh and Ors.

.... Appellants

Versus

Union of India

.... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-
Mr. Vipul Sharma, Advocate
for the appellants.

Mr. Shiv Kumar Sharma, Senior Panel Counsel
of the respondent-UOI.

KARAMJIT SINGH, J.

1. This appeal has been filed by the appellants against the judgment dated 18.12.2007 passed by the Railway Claims Tribunal, Chandigarh Bench (in short 'the Tribunal'), vide which the claim application filed by the appellants for grant of compensation was dismissed.
2. The brief facts of the present case as alleged by the appellants are that appellant No.1 is widow and appellants No.2 to 4 are children while appellant No.5 is mother of deceased Jai Singh. That on 24.12.2002,

at about 7:30 pm, the deceased aged about 40 years, purchased a passenger ticket from Subzi-Mandi Railway Station, Delhi to go to Sonipat and he boarded MEMU-7DPM Passenger Train and when the said train reached between Pole No.14/19 and Pole No.14/21, the deceased fell from the running train and sustained multiple injuries and died at the spot. The train ticket was misplaced at the time of aforesaid incident along with tiffin, handbag and some cash, which the passenger was carrying with him.

3. The claim petition was contested by respondent and written statement was filed on its behalf, wherein, it was pleaded that no such incident was reported by the Railway officials as has been alleged by the appellants. It was further pleaded that mere recovery of the dead body near the railway track is not sufficient to prove the alleged incident. It was further pleaded that no travelling ticket of the deceased was recovered from the place of incident and the fact that the same was misplaced or lost at the time of incident is totally false and it was pleaded that claim petition be dismissed.
4. The appellants filed replication controverting the averments made in the written statement.
5. On the pleading of the parties, the Tribunal framed the following issues:-
 - i. Whether the deceased was a bona-fide passenger?
 - ii. Whether the incident in question falls within the ambit of Section 123(c) read with Section 124-A of the Railways Act?

- iii. Whether the applicants are the only dependents of deceased?
 - iv. To what amount of compensation, if any, the applicants are entitled?
 - v. Relief.
6. The appellants adduced evidence by way of affidavit of appellant No.1-Santosh, who appeared in the witness-box as AW-1 and also examined AW-2 Rishi Parkash and produced Inquest Report Ex.A1, application Ex.A2, site inspection report Ex.A3, memo with regard to belonging of the deceased Ex.A4, copy of ration card Ex.A5, school transfer certificate Ex.A6, school certificate Ex.A7, post-mortem report Ex.A8 and death certificate Ex.A9.
7. On the other hand the Railway Authorities examined RW-1 Surjan Singh, who was on duty as a guard in train No.7DPM on 24.12.2002.
8. After hearing the counsel for the parties, the Tribunal dismissed the claim application filed by the appellants.
9. Being aggrieved the appellants have filed the present appeal.
10. I have heard the counsel for the parties.
11. The counsel for the appellants while assailing the impugned order of the Tribunal has contended that the Tribunal disbelieved the testimonies of AW-1 and AW-2 on the ground that no traveling ticket was found from the place of incident and that the only injuries found were on the head of the deceased. The counsel for the appellants while referring the law laid down by the Hon'ble Apex Court Union of India vs. Rina Devi, (2019) 3 SCC 572 has contended that appellants could not be non-suited simply because the traveling ticket

of the deceased was not found from the place of incident by the concerned police officials at the time of spot inspection. The counsel for the appellants has further contended that from the perusal of the testimony of AW-2 Rishi Parkash, it is evident that he gave lift to the deceased upto Subzi-Mandi Railway Station, Delhi and the deceased was having ₹100/- with him and the borrowed ₹10/- from him as the counter-clerk was not having loose change and then deceased purchased ordinary second class train ticket to go to Sonipat. The counsel for the appellants has further submitted that from the perusal of testimony of AW-2, it stands proved that the deceased was *bona-fide* passenger, who boarded train from Subzi-Mandi Railway Station to go to Panipat on 24.12.2002. The counsel for the appellants has further argued that ample evidence is available on the record that during the said train journey, the deceased fell from a running train and died and copy of his post-mortem report is Ex.A8, which also corroborates the case of the appellants.

12. The counsel for the respondent on the other hand while supporting the impugned order has argued that no such incident as has been alleged by the appellants had taken place. That the story put forth by the appellants could not be believed in the absence of any such traveling ticket. It is further submitted that in case some one had fallen from running train, it is natural that such a victim would sustain multiple injuries all over his body. That however, in the present case the injuries were found only on the head of the deceased and this fact also falsifies the claim of the appellants. The counsel for the respondent

has further contended that there was no eye-witness to the alleged occurrence as AW-1 and AW-2 were not present when the alleged occurrence took place. It is further submitted that AW-3 Sunil Kumar was not tendered for his cross-examination and as such his affidavit cannot be taken into consideration.

13. I have considered the submissions made by counsel for the parties.
14. Widow of deceased Jai Singh while appearing in the witness-box as AW-1 deposed that she is resident of Sonipat and on 24.12.2002 her husband went on a train to Delhi for some work, but he did not return and the person to whom her husband met in Delhi on 24.12.2002 told her that after completion of her work on 24.12.2002 Jai Singh went from his mechanic shop with Rishi Pal Parkash in his car. Then she approached said Rishi Parkash, who informed her that on 24.12.2002 he accompanied Jai Singh to Subzi-Mandi Railway Station, where Jai Singh purchased train ticket and for that purpose he borrowed change of ₹10/- from him. That after getting the said information, she along with other family members kept on searching Jai Singh and then visited Badli Railway Station and the police officials informed them about recovery of 1 dead body from near railway track in the area of Sirspur railway crossing.
15. It is the specific case of the appellants that deceased Jai Singh reached Subzi-Mandi Railway Station on 24.12.2002 and then purchased train ticket in the presence of AW-2 Rishi Parkash to go to Panipat. Admittedly, AW-2 stated that the deceased did not board the train in

his presence. However, AW-2 specifically stated that the deceased purchased a passenger train ordinary second class ticket from Railway Station Subzi-Mandi Delhi for Sonipat and for that purpose the deceased also took ₹10/- from him as the counter-clerk was not having loose change. From the aforesaid deposition of AW-2, it could be easily inferred that after purchase of the train ticket, the deceased boarded the concerned train to reach Panipat. Thus the appellants have discharged the initial burden to establish that the deceased purchased train ticket and then boarded the train to go to Sonipat. From the perusal of Ex.A2, it appears that the police authorities received information that one dead body was found lying near the railway track in the area of railway crossing of village Sirspur. The police officials reached there and prepared inquest report Ex.A1 of the dead body and the same is dated 25.12.2002.

16. Admittedly no travelling ticket was found from the place of incident. The traveling ticket may have been lost during the accident. Section 124-A of Railways Act is based on strict liability or no fault liability, in case of a railway accident and if the case comes within the purview of Section 124-A of Railways Act it is wholly irrelevant, as to who was at fault. In this context reference be made to **Rina Devi's** case (supra), wherein the Hon'ble Apex Court has observed as follows:

“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.”

17. Inquest report Ex.A1, which was of unknown dead body is dated 25.12.2002. No doubt, there is delay in conducting post-mortem examination of the death body, which was conducted on 31.12.2002 and the dead body was sent by SI Sube Singh to the concerned hospital for post-mortem examination and as per post-mortem report Ex.A8, the dead body was found near railway line on 25.12.2002. In the given circumstances delay, if any in conducting post-mortem examination is to be explained by the police officials concerned and the claim of the appellants cannot be disbelieved on account of delay in post-mortem examination. As per inquest report Ex.A1, the person who died, struck against a train. As per post-mortem report Ex.A8, it is evident that the injuries found on the dead body were ante-mortem in nature. There is no plea of respondent that the aforesaid inquest report and post-mortem report are not relating to deceased Jai Singh.
18. There is no doubt that the deceased sustained injuries only on his head as is evident from inquest report Ex.A1 and post-mortem report Ex.A8. However, the claim of the appellant could not be thrown out just on the ground that except for head no injury was found on any other part of the body of the deceased. There is no specific medical

opinion available to suggest that it was not a railway accident. As per post-mortem report viscera was sent for chemical analysis. However, the report of chemical analysis was not produced to establish that it was a case of intoxication or poisoning.

19. In order to refute the claim of the appellants, respondent examined RW-1, who was on duty as a Guard in Train No.7DPM, on the day of incident. RW-1 simply stated that no such incident as alleged by the appellants had taken place and he produced Guard Memo Book (Annexure RW1/A). In his cross-examination, RW-1 admitted that it was a foggy weather on that day and visibility was not proper.
20. In the light of the above evidence, this Court is of the view that the respondent failed to establish that the incident in question is covered by the exception to Section 124-A of the Railways Act. There is nothing on the record to show that it was a case of suicide or self-inflicted injury or criminal act for which intention is required to commit such act. Even there is no plea on behalf of the respondent that at the time of incident the deceased was under intoxication.
21. In the light of the above, it stands proved that the deceased fell from a running train and sustained multiple injuries and died at the spot. Thus the findings recorded by the Tribunal with regard to issues No.1 and 2 are hereby set-aside while holding that the deceased was a *bona fide* passenger and he died on account of an untoward incident, while he was traveling in a train going from Subzi-Mandi Railway Station, Delhi to Sonipat. The findings of the Tribunal with regard to issue

No.3 are hereby affirmed while holding that the appellants were dependent on the deceased.

22. Consequently, the appeal is allowed and the impugned judgment dated 18.12.2007, passed by the Tribunal is hereby set-aside. The respondent/Union of India is directed to pay ₹4 lacs as compensation to the appellants. The amount of compensation is to be deposited within a period of next 3 months. After deposit of the compensation amount, it shall be disbursed equally in favour of the appellants.

17.11.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

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