

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1075-2014
Date of Decision:-16.08.2023

ASH MOHD. & ORS

... Appellants

Versus

UNION OF INDIA

... Respondent

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Balkar Singh, Advocate
for the appellants.

Mr. Chander Mohan Sharma, Senior Panel Counsel,
for the respondent-UOI.

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KARAMJIT SINGH, J. (Oral)

1. The present appeal has been filed by the appellants against the order dated 24.10.2013 passed by the Railways Claims Tribunal, Chandigarh Bench (in short 'the Tribunal'), whereby the claim petition filed by the appellants/dependents of Smt. Rajdari, has been dismissed.
2. The brief facts of the case of the appellants are that deceased Rajdari was mother of all the appellants. On 10.12.2011, deceased who was aged about 59 years came to Faridabad along with appellant No.1. From Faridabad, the deceased purchased 2 tickets and then the deceased and appellant No.1 boarded train from Faridabad Railway

Station for Hodal and the deceased boarded ladies compartment while appellant No.1 boarded the compartment which was next to ladies compartment. Due to heavy rush the deceased was standing on the gate of the compartment and suddenly the train suffered a heavy jerk due to which deceased fell from running train in between Solaka and Hodal. Appellant No.1 came to know about the said incident when he got down at Railway Station Hodal, where he did not find his mother. The matter was reported to the Railway Authorities and then appellant No.1 reached the place of incident, whereby the dead body of Rajdari was found lying. Officials of GRP also reached the spot and on checking the dead body, joint train ticket was found from the person of the deceased along with some other articles. The dead body was sent to General Hospital, Palwal whereby post-mortem examination was conducted and thereafter dead body was handed over to the appellants.

3. The claim petition was contested by respondent and the Tribunal framed the following issues:-
 - i. Whether the deceased was a bona-fide passenger of the train at the time of incident.
 - ii. Whether the incident is covered within ambit of Section 123(c)(2) read with Section 124-A of the Railways Act.
 - iii. Whether the applicants are the sole dependents of the deceased.
 - iv. Relief.
4. The appellants adduced evidence by way of affidavit of appellant No.1-Ash Mohamad, son of the deceased, who appeared in the witness-box as AW-1. The appellants also produced inquest report

prepared by GRP, railway ticket No.33547346 Faridabad to Hodal meant for 2 passengers, voter ID card of Rajdari and some other documents.

5. On the other hand the respondent examined RW-1 Charanpal, Railway Gateman, RW-2, G. Gautam retired railwaygaurd, RW-3 Dharminster Singh Tomar, Station Master, Hodal and RW-4 Umesh Chand R. Gupta Loco Pilot along with DRMs inquiry report.
6. After hearing the counsel for the parties, the Tribunal rejected the claim of the appellants.
7. The Tribunal came to said conclusion on the ground that the deceased died due to hit and run over by train No.12954 near gate No.553 of Hodal Railway crossing, while she was crossing the railway track in a negligent manner. In this regard the Tribunal referred to deposition of RW-1 Charanpal Gateman and statement of RW-3 Dharminster Singh Tomar, Station Master Hodal. The Tribunal further came to conclusion that from the entire evidence available on the record, which has been led by the Railways, it is proved that deceased was not travelling in the train along with her son, which was going from Faridabad to Hodal and actually she met with an accident when she was crossing the Railway line near gate No.553.
8. However, the Tribunal while deciding issue No.3 held that the appellants along with 5 daughters of the deceased are her only dependents.

9. The counsel for the appellants while assailing the impugned order has argued that sufficient evidence is available on record to establish that the deceased boarded train from Faridabad to Hodal and untoward incident took place in between Solaka and Hodal and the deceased fell from running train and she died at the spot. That the deceased was travelling in ladies compartment while her son was sitting in another compartment of the said train and the joint ticket was found from the body of the deceased by the officials of GRP.
10. The counsel for the Railways on the other hand while supporting the impugned order has argued that there is no illegality or perversity in the impugned order. It has been further contended that actually deceased was hit by running train when she was trying to cross railway track in an illegal and negligent manner. That this fact is established from the perusal of testimony of RW-1 Charanpal, who at the relevant time was on duty as a gateman on gate No.553. That the testimony of RW-1 further finds corroboration from the deposition of other official witnesses, who appeared on behalf of the respondent.
11. I have considered the submissions made by counsel for the parties.
12. It is the specific case of the appellants that their mother namely deceased Rajdari along with appellant No.1 boarded train from railway station Faridabad to go to Hodal on 10.12.2011 and before doing so joint ticket was purchased by the deceased and on way to Hodal, deceased fell from running train and died at the spot and appellant No.1, who travelling in separate compartment came to know about the said incident on reaching Hodal. From the perusal of the memo of

Jamatalashi prepared by officials of GRP, it is evident that travelling ticket dated 10.12.2011 bearing No.33547346 was recovered on checking of the dead body of the deceased. Even as per the inquest report as well as the post-mortem report, death in this case occurred due to train accident. As per the testimony of RW-1 Charanpal, it is evident that he did not give any information in writing regarding the incident in question and he further admitted that police or GRP officials did not record his statement. The respondent failed to produce any document or record in order to establish that at the relevant time, RW-1 Charanpal was on duty as a gateman on gate No.553, which was near the place of incident. In the given circumstances, much reliance could not be placed on the deposition of RW-1 Charanpal, who stated that he saw one woman coming from side of Hodal and going towards Hasanpur and she tried to cross the railway line and in the meantime, Rajdhani Express came there and she was crushed by the said train. The Guard and Driver of Rajdhani Express while appearing in the witness box as RW-2 and RW-4 stated that on 10.12.2011, no such untoward incident had taken place. RW-3 Dharminder Singh Tomar, Station Master Hodal admitted in his testimony that he did not give any information in writing with regard to incident in question to his senior officials and he further stated that he is having no personal knowledge regarding the incident in question. There is nothing on the record to establish that appellant No.1 later on procured the aforesaid traveling ticket No.33547346 from some other passenger in order to strengthen his claim. It is fully proved on the

record that at the time of search of the dead body of the deceased the aforesaid ticket was found from her person along with some other articles by the GRP officials. Thus the respondent has failed to prove that the present case comes under proviso to Section 124-A of the Railways Act.

13. The underlying object of Section 124-A of the Railway Act is to compensate a bona fide passenger holding a journey ticket, if he becomes a victim of untoward incident.
14. As held in **Union of India (UOI) v. Prabhakaran Vijaya Kumar and others (2008) 9 SCC 527**, Hon'ble Supreme Court observed that Section 124-A of Railways Act lays down strict liability or no fault liability in case of railway accident. When principle of strict liability applies, proof of negligence is not required. Once initial burden is discharged, it is the strict liability of railways to pay compensation.
15. In case of **Union of India v. Rina Devi; AIR 2018 S.C. 2363**, Hon'ble Supreme Court explained the concept of self-inflicted injury and held that principle of contributory negligence cannot be invoked in case of liability based on no fault theory. The Court further held that onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that the ticket was purchased but it was lost.
16. In the present case, it stands proved that the deceased was having travelling ticket which was valid for 10.12.2011. So it further stands proved that the deceased was bona fide passenger and the untoward

incident took place and the deceased fell from a running train and died at the spot.

17. In view of the ratio laid down by Hon’ble Supreme Court in **Rina Devi’s** case (supra) and reiterated in **Kamukayi and others v. Union of India and others; Civil Appeal No.3799 of 2023** decided on 16.5.2023, the findings given by the learned Tribunal with regard to issues No.1 and 2 are not sustainable and are hereby set aside.
18. The findings given by the learned Tribunal with regard to issue No.3 are hereby affirmed being not challenged by anyone.
19. In light of above discussion, the present appeal is allowed and the impugned judgment/order dated 24.10.2013 passed by the learned Tribunal is set aside. Consequently, the claim application is allowed. The appellants and 5 daughters of the deceased are held entitled to compensation to the tune of ₹ 4 lakh along with interest @ 7% per annum from the date of filing the claim application till its realization in equal shares.

16.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

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