

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

FAO-2537-2016

Reserved on : 13.7.2023

Date of Decision:- 18.9.2023

Rukmani

... Appellant

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :- Mr. Balkar Singh, Advocate,
for the appellant.

Mr. Shivoy Dhir, Sr. Panel Counsel,
for the respondent-UOI.

KARAMJIT SINGH, J.

Present appeal has been filed by the appellant against the order of Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, “the Tribunal”) dated 21.7.2015 whereby the claim application filed by the appellant being mother of the deceased-Ramesh Chand has been dismissed.

2. Brief facts of the case of the appellant are that the appellant was dependent on deceased-Ramesh Chand; that on 11.12.2011, the deceased bought ticket from Railway Station, Gurgaon and boarded Mandore Express train to go from Gurgaon to Bandikui junction and the journey ticket was bearing No.93728632. When the train reached at KM No.32/01-02 in between Gurgaon railway station and Basai Dhankot, due to sudden jerk given by the train, the deceased fell down and sustained

multiple injuries and died at the spot. The local GRP was informed about the said untoward incident and then the police reached the spot and recovered the dead body and the same was sent for its post mortem examination and the articles recovered from the dead body were taken into possession by the police. No journey ticket was recovered from the dead body or its surroundings by the police at the time of spot inspection. As per the appellant, the journey ticket was later on found from the belongings of the deceased which were handed over by the police to the family members of the deceased, after post mortem examination of the dead body. The appellant being mother/dependent of the deceased, filed claim application before the learned Tribunal.

3. The claim application was contested by the respondent and the written statement was filed. The respondent denied any such occurrence or untoward incident as alleged by the appellant. It was also denied that the deceased was travelling in Mandore Express train on 11.12.2011 when the alleged incident took place. It was further pleaded that the deceased was not a bonafide passenger as no journey ticket was recovered on the search of the dead body or its surroundings. It was pleaded that the claim application be dismissed.

4. On the pleadings of the parties, following issues were framed by the learned Tribunal : -

1. Whether the deceased was a bonafide passenger at the time of incident?
2. Whether the death of the deceased occurred in an untoward incident within the ambit of Section 123 (C) (2) read with Section 124-A of the Railway Act?

3. Whether the applicant(s) is/are the sole dependant(s) of the deceased?

4. Relief.

5. In support of her claim, the appellant herself appeared in the witness box as AW1, while Ratti Ram brother of the deceased appeared as AW2. The appellant also produced documents Ex.A1 to Ex.A26 which include inquest report Ex.A3, memo of personal search Ex.A7, post mortem report Ex.A15 and journey ticket No.93728632 Ex.A21.

6. On the other hand, the respondent examined RW1 Samarth Lal Meena, Station Master, Gurgaon and RW2-Vijay Singh, Railway Guard and tendered report of DRM.

7. After hearing counsel for the parties, the learned Tribunal decided issues No.1 and 2 against the appellant while observing that no travelling ticket was found from or near the dead body and that nature of the injuries as stated in the post mortem report go on to establish that it is a case of unauthorized crossing of railway track by the deceased. However, issue No.3 was decided in favour of the appellant. Resultantly, the claim petition was dismissed by the learned Tribunal vide order dated 21.7.2015.

8. Counsel for the appellant, while assailing the impugned order, has argued that the claim application of the appellant was dismissed by the learned Tribunal primarily on the ground that the appellant failed to prove that the deceased was bonafide passenger and was travelling in Mandore Express train at the time of the alleged accident on the ground that no journey ticket was found on the search of the dead body or its surroundings by the officials of GRP. He has further contended that it is evident that the concerned travelling ticket Ex.A21 was recovered by AW2 brother of the deceased when he thoroughly checked the belongings of the deceased

which were handed over to him by the police after the post mortem examination of the dead body and the said travelling ticket which was produced before the learned Tribunal was admitted in evidence without any objection from the other side. It has been further contended that in his cross-examination, no suggestion was put to AW2 that said traveling ticket Ex.A21 was later on procured by him from some other passenger of the train. Counsel for the appellant while referring to inquest report Ex.A3, post mortem report Ex.A15 and report of DRM has further submitted that perusal of the said documents also establishes that the deceased died due to railway accident as he fell from the running train on 11.12.2011. Counsel for the appellant while referring to ratio laid down by Hon'ble Supreme Court in **Union of India v. Rina Devi** (2019) 3 SCC 572 has vehemently contended that the claim of the appellant could not be declined merely on the ground that the journey ticket was not found by the officials of GRP from the spot of accident.

9. On the other hand, counsel for the railways while supporting the impugned order has argued that there is no illegality or perversity in the impugned order passed by the learned Tribunal. It has been further contended that there is no evidence available on record to prove that the deceased ever purchased alleged journey ticket Ex.A21 on 11.12.2011 or that he boarded Mandore Express train or that he fell from the said running train. It has been further argued that actually the deceased who was working in Gurgaon tried to cross the railway track in an unauthorized manner and while doing so, he struck against the running train and died at the spot and to this effect, ample evidence is available on record in the shape of inquest report Ex.A3, post mortem report Ex.A15 and report of DRM. Counsel for the respondent has further argued that on receiving the information with

regard to the aforesaid accident, the officials of GRP immediately reached the spot and prepared the inquest report of the dead body and recovered certain articles belonging to the deceased from the spot as are detailed in memo Ex.A7 but no journey ticket was found on the personal search of the dead body or its belongings, thus, making it clear that the deceased was not travelling in a train at the time of the alleged incident. Counsel for the respondent has further contended that the alleged journey ticket Ex.A21 was later on manipulated by the appellant and AW2 by procuring the same from some other passenger and the same was never handed over to the officials of the GRP by them before filing of the claim application; that in the given circumstances, the learned Tribunal rightly disbelieved the journey ticket Ex.A21. Counsel for the respondent further submitted that it appears to be a case of self-inflicted injuries or suicide and thus, is covered under exceptions carved out in Section 124-A of Railways Act and thus, the learned Tribunal rightly dismissed the compensation application.

10. I have considered the submissions made by the counsel for the parties.

11. Case of the appellant is that her son was doing work of polishing of stones in Gurgaon and on 11.12.2021, her son Ramesh Chand went to Railway Station Gurgaon and purchased journey ticket Ex.A21 and boarded Mandore Express train on the same very day to reach Bandikui junction but on the way, untoward incident took place in between Gurgaon railway station and Basai Dhankot and Ramesh Chand fell from running train and died at the spot.

12. Admittedly, AW1 and AW2 had not witnessed the aforesaid untoward incident and they were not present even at the time when the

deceased purchased travelling ticket Ex.A21 which was not found by the police from the place of accident on 11.12.2011.

13. The respondent has raised grave doubt with regard to the authenticity of the travelling ticket as Ex.A21 which was produced, for the first time, by the appellant at the time of filing of the claim application before the learned Tribunal on 1.6.2012. There is no doubt regarding the fact that no such travelling ticket was found by the police officials at the time of spot inspection and this fact is also proved from the perusal of memo of personal search Ex.A7. During proceedings of the claim application, AW2 Ratti Ram brother of the deceased produced his affidavit while appearing in the witness box as AW2 wherein he specifically stated that he was in shock due to untimely death of his younger brother and after few days of the last rites when he checked the belongings of the deceased, he found the journey ticket bearing No.93728632 dated 11.12.2011 in the bag belonging to the deceased and he informed about the same to the investigating officer who showed his helplessness and advised him to produce the said journey ticket in the concerned Court. Even in his cross-examination, AW2 clarified the aforesaid facts. In the cross-examination of the witness, no suggestion was put to him that the said travelling ticket Ex.A21 was later on manipulated/procured by him to strengthen the claim of the appellant. Even no objection was raised by the counsel for the respondent when the said journey ticket Ex.A21 was admitted in evidence by the learned Tribunal. Further, from the perusal of the record of the learned Tribunal, it is evident that on request for verification made by the officials of the Railway Protection Force, travelling ticket Ex.A21 bearing No.93728632 was found to be genuine and was issued from 0000 hours to 0008 hours on 11.12.2011 by Gurgaon booking office. So, one thing is clear

that the traveling ticket Ex.A21 was not a bogus document and rather it was found to be issued on 11.12.2011 from Gurgaon Railway Station booking office. The clarification given by AW2 that he found the said travelling ticket on proper checking of the belongings of the deceased after performing last rites of the deceased, appears to be probable and realistic. Further, in **Rina Devi's** case (supra), Hon'ble Supreme Court while explaining the concept of 'self-inflicted injury' and strict law (no fault liability) in case of railway accident, held that onus to prove that the deceased/injured was a bonafide passenger can be discharged even in absence of journey ticket if relevant facts are shown that the ticket was purchased but it was lost.

14. As per inquest report Ex.A3, the dead body was found lying near the railway track and the deceased appeared to have died by coming into contact with the running train. As per post mortem report Ex.A15, the deceased died as a result of head injury following ante mortem blunt force impact consistent with railway track accident. Even as per report of DRM, the deceased died due to his own mistake as a result of accident by a train. Thus, making it clear that the deceased died due to railway accident. The plea of the railways is that the deceased struck against the running train while crossing the railway track in an unauthorized manner. In order to establish the said plea, RW1 and RW2 appeared in the witness box on behalf of the respondent. RW1 Samarth Lal Meena was Station Master, Gurgaon on 11.12.2011 when the accident in question had taken place. In his cross-examination, said witness clearly stated that he was having no personal knowledge with regard to the present case. Even RW2 Vinay Singh who was on guard duty in Train No.12461 going from Delhi to Jaipur i.e. Mandore Express train on 11.12.2011 admitted in his testimony that he

did not see the dead body lying on the railway track, meaning thereby that even he did not witness the incident in question and rather the driver of the aforesaid train informed him that one dead body was lying by the side of the track and on getting the said information, he informed the Station master. However, in the present case, the respondent failed to examine the driver of the aforesaid train in order to prove its defence. Nothing is there on the record to prove that the deceased-Ramesh Chand died due to suicide, self-inflicted injury, his own criminal act or any act committed by him in a state of intoxication, insanity or any natural cause or disease. So, in the present case, the respondent is unable to prove that the case of the appellant is covered under the exceptions carved out in Section 124-A of Railways Act. Further, from the perusal of inquest report Ex.A3, post mortem report Ex.A15 and report of DRM, it is evident that the deceased sustained ante mortem injuries in a railway accident, as a result of which, he died at the spot.

15. In light of above discussion, the appellant is able to prove that the deceased purchased journey ticket Ex.A21 from Gurgaon Railway Station to go to Bandikui junction on 11.12.2011 and thereafter, he boarded Mandore Express train and accidentally fell from the said running train in the area between Gurgaon Railway Station and Basai Dhankot on 11.12.2011. As principle of strict law is applicable in the instant case, proof of negligence is not required and once initial burden is discharged, it is the strict liability of the railway to pay compensation as has been held by the Hon'ble Supreme Court in **Union of India v. Prabhakaran Vijaya Kumar and others** (2008) 9 SCC 527.

16. In view of above, the findings recorded by the learned Tribunal with regard to issues No.1 and 2 are not sustainable and are hereby set

aside. Both the issues are decided in favour of the appellant and against the respondent. The findings recorded by the learned Tribunal with regard to issue No.3 are not assailed in any manner by the counsel for the respondent. Thus, it stands established on record that the appellant who is mother of the deceased was dependent on the deceased.

17. For the foregoing reasons, the present appeal is hereby allowed and impugned order dated 21.7.2015 passed by the learned Tribunal is set aside. Consequently, the claim application is allowed. The appellant is held entitled to compensation to the tune of Rs.4 lakh along with interest @ 7% per annum from the date of filing the claim petition till its realization. The said compensation is to be paid by the respondent to the appellant.

September 18, 2023
Paritosh Kumar

(KARAMJIT SINGH)
JUDGE

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