

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO-5842-2014

Reserved on 16.11.2023

Date of Decision: 23.11.2023

Gyano and others

....Appellants

VERSUS

Union of India

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Surinder Sharma, Advocate, for the appellant.

Mr. S.K. Sharma, Sr. Panel Counsel, for the respondents.

KARAMJIT SINGH, J.

This appeal has been filed by the appellants against judgment dated 24.1.2014 passed by Railway Claims Tribunal, Chandigarh Bench (in short, “the Tribunal”) whereby the claim application filed by the appellants for grant of compensation was dismissed.

2. The facts of the case of the appellants in nutshell are that appellant No.1 is widow while appellants No.2 to 4 are sons of deceased-Bishamber; that on 15.7.2010, deceased-Bishamber had gone to Ballabgarh for purchase of buffaloes. On the next day, the deceased went to village Nekpur, Tehsil Ballabgarh to meet his cousin Bedan and thereafter, the deceased along with Bedan reached New Town, Faridabad Railway Station to board a train to go to Palwal to meet his other relations. The deceased purchased train ticket and boarded EMU Train No. SNP 4. There was heavy rush in the train and during the said journey, the deceased fell from the running train just near Ballabgarh Railway Station and sustained multiple injuries and died at the spot. On receiving the information, the officials of GRP inspected the spot and conducted inquest proceedings and the post mortem examination of the dead body was conducted on 17.7.2010. Later

on, the appellants came to know about the said incident on 24.7.2010 and appellant No.2 went to Police Station GRP Faridabad and they identified the dead body from the photographs to be that of Bishamber. However, the train ticket was misplaced at the time of the aforesaid untoward incident.

3. The claim petition was contested by the respondent by filing written statement wherein it was pleaded that no such untoward incident had taken place as has been alleged by the appellants. It was further pleaded that in the absence of any travelling ticket, the deceased could not be termed as a bonafide passenger. The other averments of the claim application were denied and it was pleaded that the claim sought by the appellants be dismissed.

4. On the pleadings of the parties, following issues were framed :
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1. Whether the deceased was a bonafide passenger at the time of incident?
2. Whether the incident is covered within ambit of Section 123 (c)(2) read with Section 124-A of the Railways Act?
3. Whether the applicants are the sole dependents of the deceased?
4. Relief.

5. Appellant No.2-Kiran Pal appeared in the witness box as AW1 and also examined AW2 Bedan. The appellants also placed on record inquest report dated 16.7.2010 Ex.A1, copy of station memo dated 16.7.2010 Ex.A2, death report dated 16.7.2010 Ex.A3, brief history of the case prepared by GRP with regard to site plan and photographs Ex.A5 and Ex.A6, the application moved by GRP, Faridabad with request for post-

mortem examination Ex.A7, post mortem report dated 17.7.2010 Ex.A8, receipt regarding handing over of the dead body Ex.A10, request dated 19.7.2010 made by GRP, Faridabad to Municipal Corporation to perform last rites of the dead body Ex.A11.

6. On the other hand, the respondents examined RW1-O.V.Singh, Dy. SS/Ballabgarh, who at the relevant time, was Station Master, Ballabgarh. The respondent also filed report of DRM.

7. After hearing counsel for the parties, the Tribunal dismissed the claim application filed by the appellants vide impugned order and while doing so, gave findings with regard to issues No.1 and 2 against the appellants. Being aggrieved, the appellants have filed the present appeal.

8. I have heard the counsel for the parties.

9. Counsel for the appellants has contended that from the perusal of testimony of AW1 and AW2 coupled with inquest report, post mortem report and the report of DRM, it stands proved that on the day of incident i.e. 16.7.2010, the deceased boarded a train from New Town, Faridabad Railway Station to go to Palwal after purchasing a travelling ticket and the same was lost at the time of the incident. He has further contended that during train journey from New Town, Faridabad Railway Station to Palwal, the deceased fell from a running train and died at the spot. Counsel for the appellants, while referring to the ratio laid down by Hon'ble Supreme Court in **Union of India v. Rina Devi**; (2019) 3 SCC 572, has contended that the claim application could not be dismissed just on the ground that the travelling ticket of the deceased was not found from the place of incident by the officials of GRP at the time of the spot inspection. He also brought to the notice of this Court the report of DRM as per which the deceased was

standing at the entrance of the compartment of a running train and during the said process, he fell down and died. Counsel for the appellants has further contended that in light of settled law laid down in Rina Devi's case (supra), the respondents are liable to pay compensation to the appellants they being dependents on the deceased.

10. Counsel for the respondent, while supporting the impugned judgment, has argued that the appellants have miserably failed to prove that any such incident as has been alleged by them had taken place; that the story narrated by the appellants was rightly discredited by the Tribunal in the absence of any such travelling ticket. Counsel for the respondents has submitted that the testimony of AW2-Bedan was rightly discarded by the Tribunal as it stands fully proved that he was a made up witness. It has been further contended that even otherwise, AW2-Bedan had not witnessed the alleged incident as he was not travelling along with the deceased in a train at that time and he came to know about the alleged incident on 24.7.2010 as is evident from his testimony. Counsel for the respondent has further contended that in the instant case, there was no eye witness to the alleged incident and further, as per the appellants, the alleged incident took place on 16.7.2010 and the appellants have failed to explain as to why they remained silent for a period of next 10 days and there was also delay in conducting the post mortem examination and cumulative effect of the aforesaid circumstances creates grave doubt with regard to the story putforth by the appellants. Counsel for the respondents has further contended that while taking into consideration all the facts and circumstances of the case, the learned Tribunal rightly dismissed the claim application.

11. I have considered the submissions made by the counsel for the

parties.

12. The case of the appellants is that deceased-Bishamber reached New Town, Faridabad Railway Station along with his relative AW2-Bedan and then he purchased a train ticket in the presence of AW2 to go to Palwal to meet his other relations. AW2-Bedan tendered his affidavit wherein he stated that on 16.7.2010, the deceased came to his house in village Nekpur, Tehsil Ballabgarh, District Faridabad to meet him and they took lunch and then at about 3:15 p.m., he accompanied the deceased to New Town, Railway Station Faridabad from his village and then the deceased purchased a railway ticket from ticket window as he was to go to Palwal and then the deceased boarded a train which was full of passengers. Even in his cross-examination, AW2 specifically stated that on the fateful day, he accompanied the deceased to the railway station and from there, the deceased boarded a train. Testimony of AW2 cannot be brushed aside just on the ground that while appearing in the witness box, he stated that he came to know about the incident in question on 24.7.2010 and has failed to explain as to why earlier he did not inform to the appellants about the fact that the deceased boarded train on 16.7.2010 from New Town, Railway Station Faridabad to go to Palwal in his presence. The reason being the appellants may not be knowing about the visit of the deceased to the house of AW2 situated in village Nekpur as the deceased who was resident of village Jhaloka, Tehsil Sohna, District Gurugram left his house on 15.7.2010 to go to Ballabgarh for the purpose of purchase of buffaloes and the deceased may have not informed the appellants that he was also going to visit the village of AW2 to meet him. Thus, there is nothing on record to suggest that AW2 made false statement to help the appellants who are his

relatives. It being so, the appellants have discharged the initial burden to establish that the deceased purchased a train ticket and then boarded a train from New Town, Faridabad Railway Station on 16.7.2010 to go to Palwal.

13. From the perusal of Ex.A1, it is evident that the police authorities got information that one dead body was found lying near the railway track in the area of Upline Ballabgarh yard. The police officials reached there and prepared inquest report Ex.A1 of the dead body and the same is dated 17.7.2010. Thereafter, the deadbody which was of unknown person was sent for post-mortem examination. From the perusal of post mortem report Ex.A8, it is evident that the post mortem examination was conducted on 17.7.2010. As per inquest report Ex.A1, the deceased sustained injuries as he came into contact with the train. As per post mortem report Ex.A8, the cause of death in this case was due to shock hemorrhage resulting from multiple crushed injuries which were ante mortem in nature and sufficient to cause death in the ordinary course of nature and concerned doctor further opined that the possibility of the above mentioned injuries being caused due to railway accident could not be ruled out. In the instant case, report of DRM Ex.R1 was also produced as per which it was reported that deceased-Bishamber died of his own mistake and carelessness as while travelling in a train, he was standing at the entrance of the compartment of a running train and during this process, he fell down and died.

14. In order to refute the claim of the appellants, the railway authorities examined RW1 O.V. Singh who was on duty as Station Master, Ballabgarh on 16.7.2010 and he stated that the deceased was trespasser and died while crossing the railway track unauthorisedly. However, in his cross-examination, RW1 stated that he is having no personal knowledge with

regard to incident in question. The aforesaid version given by RW1 is contrary to what has been reported by DRM in his report Ex.R1.

15. There is nothing on record to show that it was a case of suicide or self-inflicted injuries or criminal act for which intention is required to commit such act or that at the time of incident, the deceased was under intoxication. Thus, railway authorities have failed to establish that the incident in question is covered by the exception to Section 124-A of Railways Act.

16. Admittedly, no travelling ticket was found from the place of incident. It may have been lost at the time of incident. Section 124-A of Railways Act is based on strict liability or no fault liability in case of a railway accident and if case comes within the purview of Section 124-A of Railways Act, it is totally irrelevant as to who was at fault. In this context, reference be made to **Rina Devi's** case (supra) wherein 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. In the instant case, the appellants have discharged the burden to establish that the deceased boarded a train from New Town, Faridabad

Railway Station to go to Palwal on 16.7.2010 after purchasing a travelling

ticket in the presence of AW2-Bedan. There is no such plea on behalf of the respondent that the inquest report Ex.A1 and post mortem report Ex.A8 are not relating to deceased Bishamber. So, it is also established that crushed dead body of Bishamber was found just near the railway track in the area of Ballabgarh and as per medical evidence, possibility of the injuries found on his dead body due to railway accident could not be ruled out.

18. In view of above discussion, it stands fully proved that the deceased fell from the running train on 16.7.2010 while he was travelling from New Town Faridabad Railway Station to Palwal in a running train and sustained multiple crushed injuries and died at the spot. So, the findings recorded by the Tribunal with regard to issues No.1 and 2 are not sustainable and are hereby set aside while holding that the deceased was a bonafide passenger and he died on account of the aforementioned untoward incident in the area of Ballabgarh while he was travelling in a train. However, the findings of the Tribunal with regard to issue No.3 are hereby affirmed while holding that the appellants were dependent on the deceased.

19. Consequently, the appeal is allowed and impugned judgment dated 24.1.2014 passed by the Tribunal is hereby set aside. The respondent/Union of India is directed to pay ₹ 4 lakh as compensation to the appellants along with interest @ 6% p.a. from the date of claim application till the date of its realization. The amount of compensation is to be deposited within the period of next 3 months and the same is to be disbursed equally to the appellants.

(KARAMJIT SINGH)
JUDGE

November 23, 2023
Paritosh Kumar