

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

FAO No.8076 of 2014 (O&M)

Decided on:13.10.2023

Union of India

... Appellant

Versus

Renuka and others

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Chander Mohan Sharma, Senior Panel Counsel for Union of India,
for the appellant.

Mr. Lovish Rattan, Advocate for
Mr. Surinder Sharma, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The appellant-Union of India is in appeal before this Court aggrieved against the award dated 13.12.2013 passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Railway Tribunal) whereby a compensation of ₹4 lakhs has been awarded in favour of the respondents-claimants along with simple interest @6% per annum from the date of filing of the claim petition i.e. 29.08.2012 till the date of award, on account of death of the deceased-Arvind Sharma in an untoward incident on 22.01.2012. The said amount was ordered to be deposited in the accounts of the respondents-claimants within a period of 60 days, failing which the appellant was liable to pay interest @9% per annum from the date of passing of the award till its realization.

2. In brief, the facts are that on 22.01.2012, the deceased-Arvind Sharma, who was serving as Naib Tehsildar in the Election Department of Haryana at Panchkula, had fallen down from the Himalayan Queen train in an attempt to

board the train, which was in motion at the relevant point in time and died on the spot. The respondents-claimants had approached the learned Railway Tribunal for grant of compensation by way of claim petition, which was found meritorious by the learned Railway Tribunal and an amount of Rs.4 lakhs was awarded as compensation in their favour. Aggrieved against the award passed by the learned Railway Tribunal, the appellant-Union of India has preferred the instant appeal.

3. Learned counsel appearing for the appellant-Union of India submits that the deceased was not found in possession of a valid train ticket and the Monthly Season Ticket (in short MST), which was recovered from the dead body was not issued in the name of the deceased rather it was issued in the name of one S. Singh. Therefore, the learned Railway Tribunal has gravely erred in holding that the deceased was a *bona fide* passenger. It is argued that the deceased had died in an attempt to board the moving train and therefore, he died due to his own negligent act, which cannot be termed as an ‘untoward incident’ as per Section 123 (c) (2) read with Section 124-A (c) of the Railways Act, 1989 (hereinafter referred to as the Act of 1989). It is also argued that the ingredients i.e. ‘*bona fide* passenger’ and the ‘untoward incident’ were not fulfilled to make the respondent-claimants entitled for grant of compensation and therefore, the impugned award passed by the Railway Tribunal is liable to be set aside.

4. Per contra, learned counsel appearing for the respondents-claimants supports the award passed by the learned Railway Tribunal by contending that while passing its award, the Railway Tribunal has rightly appreciated the evidence led by the parties and therefore, there is no scope for interference by this Court.

5. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

6. The argument of learned counsel appearing for the appellant-Union of India that the deceased was not a *bona fide* passenger does not find merit. Admittedly, one MST No.20184791, which was valid from 05.01.2012 to 04.02.2012 Ex. Dhulkot to Chandimandir was recovered from the person of the deceased, which was issued in the name of one S. Singh but the relevant data generated by the system as claimed to be Annexure 'A' was not annexed with the letter dated 04.03.2013 issued by the Deputy Chief Project Manager/UTS, New Delhi to corroborate the fact that the so-called MST was not issued in the name of deceased-Arvind Sharma. On the other hand, the respondent-claimants by way of affidavit AW-1 and inquest proceedings had discharged their burden of proof by establishing that the deceased was a *bona fide* passenger, shifting onus on the appellant to disprove the said fact, which it failed to do. The contention of the appellant that during the search conducted on the dead body of the deceased, no ticket was found has no force either, as mere absence of train ticket with the deceased will not negate the claim that he was a *bona fide* passenger and the same has to be examined on case to case basis.

7. The second limb of argument of the counsel appearing for the appellant-Union of India that the deceased had died due to his own negligence also pales into insignificance, as death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling the victim to compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor. A two Judge Bench of the Hon'ble Supreme Court in *Union of India v. Rina Devi (2019) 3 SCC 572*, speaking through Justice A.K. Goel, has held as under:-

"25. We are unable to uphold the above view as the concept of "self-inflicted injury" would require intention to inflict such injury and not mere

negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on “no fault theory”. We may in this connection refer to the judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar [United India Insurance Co. Ltd. v. Sunil Kumar, (2019) 12 SCC 398 : 2017 SCC OnLine SC 1443 : (2017) 13 Scale 652] laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an “untoward incident” entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.”

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29. 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.”

8. In view of the aforesaid facts and circumstances, this Court finds no ground to interfere with the award passed by the learned Railway Tribunal. Resultantly, the present appeal stands dismissed.
9. Application pending, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

October 13, 2023

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No