

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-6084-2016 (O&M)
Date of decision : 04.11.2024

Gauri Devi and another Appellants

versus

Union of India Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ujval Mittal, Advocate
for the appellants.

Ms. Anita Balyan, Advocate
for the respondent-UI.

PANKAJ JAIN, J. (Oral)

1. Challenge is to the award dated 08.08.2016 passed by RCT, Chandigarh Bench, whereby the claim petition filed by the appellants stands dismissed.
2. Claim petition was filed by Gauri Devi and Niranjan Kumar Mahto-the appellants (widow and son of the deceased Chhabi Lal Mahto) claiming that Chabbi Lal died in an untoward incident while travelling by railways. It was claimed that he boarded the train for Ludhiana from his hometown in Jharkhand on 09.12.2012. He was travelling alone. On 09.12.2012, he reached Jasidih railway station, purchased a railway ticket from Jasidih to Ludhiana and boarded Amritsar-Hawrah Express train. When the train reached between Sanewal and Doraha railway station, he accidentally fell down. The claim petition was resisted by the railway department claiming that the



deceased was not a bonafide passenger as no ticket was recovered during his jamatalashi. It was further claimed that the injury suffered by the deceased was a self-inflicted injury on account of criminal negligence on his part.

3. On the basis of pleadings, following issues were framed:-

- “1. Whether the deceased was a bonafide passenger of train at the time of incident?
2. Whether the allege incident is covered within the ambit of Section 123(c)(2) read with Section 124-A of the Railways Act?
3. Whether the applicant(s) is/are the sole dependent(s) of the deceased?”

4. Tribunal came to the conclusion that since Gauri Devi was not accompanying the deceased, her statement to the effect that the deceased purchased ticket cannot be read to hold that the deceased was a bonafide passenger. On issue No.2, the Tribunal further held that there being no evidence to prove that the deceased fell down from the train, the deceased cannot be held to be a victim of an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 and thus dismissed the petition.

5. Counsel for the appellants while assailing the impugned award submits that the Tribunal misdirected itself in misreading vital piece of evidence that has come on record which has led to perversity in the findings, pleading to an award which cannot be sustained. Counsel refers to statement made by Puran Chand key-man, who was the first to discover the body of the deceased. He submits that Puran Chand suffered a statement to the effect that he found body of an unknown person on up line between Sanewal and Doraha railway stations. The

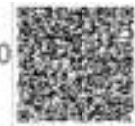


body was lying upside down with his back facing upwards. The head, face and the eyes crushed. He thus specifically stated that the cause of death seems to be falling from an unknown train.

6. Counsel for the appellants has further taken to this Court to the inquest proceedings wherein the police official also find that the cause of death in this case is due to railway accident and nobody is to be blamed. Further reference is being made to the post mortem report wherein the medical expert opined as under:-

“The cause of death in this case in my opinion is due to hemorrhage and shock as a sign of head injury (crush) which is sufficient to cause death in ordinary course of nature. All the injuries are ante mortem in nature, it could be due to railway accident.”

7. He thus submits that from the overwhelming evidence that has come on record and that too in the form of opinion made by the concerned police authorities, the medical expert as well as the first person who discovered the body, it is evident that the cause of death of the deceased was on account of an untoward incident i.e. after falling from the train. He further refers to affidavit tendered by Gauri Devi before the Tribunal wherein she specifically stated that the deceased travelled on the train after purchasing ticket. It is being claimed that after Gauri Devi tendered the aforesaid statement in evidence, initial burden was discharged and thereafter onus led heavily upon the railways department to rebut the same by leading cogent evidence. There being no evidence on record to rebut the statement made by Gauri Devi, the findings recorded by the Tribunal cannot be sustained.



8. *Per contra*, counsel appearing for UOI submits that statement of Gauri Devi cannot be relied upon, once she specifically admitted in the cross-examination that she was not accompanying the deceased. She further submits that there is no eye witness who has seen the deceased falling from the train and thus, the Tribunal rightly held that the deceased cannot be held to be a victim of an untoward incident as contemplated under Section 123(c)(2) of the 1989 Act.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. Supreme Court in the case of ***Union of India vs. Rina Devi*** reported as ***2018 AIR (SC) 2362***, laid down the test with respect to the victim being a bonafide passenger observing as under:-

“17.4 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.”

11. Applying the aforesaid test, counsel for the appellants is right in submitting that after Gauri Devi tendered her affidavit and discharged the initial burden, it was for the railways to rebut the same as the burden shifted on the respondent. Admittedly, no cogent evidence was led to dislodge the testimony of Gauri Devi. Thus, in view of the law laid down by Supreme Court in the case of ***Rina Devi (supra)***,



further following in the case of *Doli Rani Saha vs. Union of India, Civil Appeal No.8605 of 2024 (Arising out of SLP (C) No.32962 of 2018)*, the deceased is held to be a bonafide passenger.

12. Next issue is regarding untoward incident. From inquest proceedings as well as postmortem report, it is evident that investigating agency as well as medical experts opined that the possible cause of death is fall from train. In view thereof in the absence of any evidence suggesting that there was a criminal act that too intentional on part of the deceased, the findings recorded by Tribunal cannot be sustained.

13. Consequently, the present appeal is allowed.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

04.11.2024
Dinesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No