



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

FAO-4925-2019

Date of decision : 14.02.2025

MEENA KUSHWAH AND ANR

....Appellants

Versus

UNION OF INDIA

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Subhash Chander Sachdeva, Advocate
 for the appellants.

 Mr. Anil Chawla, Advocate and
 Ms. Monica Chawla, Advocate for respondent/IOI.

PANKAJ JAIN, J. (ORAL)

Challenge is to the Award dated 08.04.2019 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh whereby the claim application filed by the claimants seeking compensation on account of death of Rahul Kushwah who died of fall from Mail Express Train (Ex.Amritsar to New Delhi), stands dismissed.

2. Claimants claimed that on the fateful day, deceased was travelling after purchasing a valid ticket. Accidentally, he fell down near starter signal of Bazidan Jatan due to jerk and sustained grievous injuries. He was rushed to Kalpana Chawla Medical College, Karnal where he succumbed to his injuries.



3. The claim was contested by the Railways denying that the deceased was a *bona fide* passenger. It was claimed that no journey ticket was recovered during physical search of the dead body of the deceased. Hence, he was not a *bona fide* passenger.

4. Tribunal framed the following issues:

- “1) Whether the deceased was a bonafide passenger of train at the time of incident?
- 2) Whether the alleged incident is covered within the ambit of Section 123(c)(2) read with section 124-A of the Railway Act?
- 3) Whether the applicants were the sole dependents of the deceased?
- 4) Relief.”

5. While returning finding on issue No.1, Tribunal observed as under :

6.1) These issues are inter-connected, hence, these are disposed off simultaneously.

6.2) It needs to be mentioned here that Section 124-A of the Railway Act, 1989(for short, "the Act") entitles a passenger to claim compensation, who has been injured or the dependants of the deceased, who has been killed in an untoward incident, as defined under section 123(c) of the Act *ibid*. The word 'passenger' has been defined under section 2(29) of the Act as 'a person travelling with a valid pass or ticket'. It is only when the fact of the injured or the deceased being a bonafide passenger of train is established; the question of payment of compensation arises in case the incident is held to be an untoward incident.

6.3) Therefore, the first requirement for the applicants is to prove that the deceased was a bonafide passenger of the train. Admittedly, neither any journey ticket was recovered from the



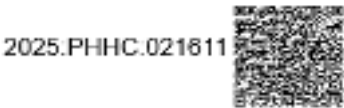
possession of the deceased, nor the applicants put- forth any plausible explanation in this regard. In these circumstances, he cannot be considered to be a bona fide passenger. There is a complete lack of evidence, which could show that the deceased had been on the travel in a particular train, after due purchase of ticket. The reason for forming this view is that there is no ocular evidence in this regard.

Thus, it is held that the deceased was not a bona fide passenger.

5. Counsel for the respondent is not in position to dispute that AW-1 Meena Kushwah appeared and stated on Oath by way of affidavit that the deceased was travelling after purchasing a valid ticket. The said evidence has gone rebutted. Thus, finding on issue No.1 cannot be sustained in view of ratio of law laid down by Supreme Court in the case of **Union of India vs. Rina Devi, (2019) 3 SCC 572**.

6. Tribunal further held on issue No.2 that there is no evidence on record on the basis of which inference can be drawn that the injuries sustained by the deceased were due to fall from the train.

7. Counsel for the claimants has drawn attention of this Court to the statement of gangman wherein he stated that as per the co-passengers of the train, one passenger fell down from the train on the location from where the injured was found i.e. near Bazidan Jatan Railway Station. Same was the conclusion of the police authorities who conducted inquest proceedings. The same has been proved on record as AW1/20. However, in the conclusion of DRM report though the statement of gangman was reproduced



but the portion w.r.t. information given by the co-passengers w.r.t. fall of a passenger was deleted.

8. Having heard counsel for the parties, this Court finds that there being overwhelming evidence w.r.t. fall of the deceased from the train, Tribunal erred in returning finding on issue No.2 also. Resultantly, the award passed by the Tribunal is hereby set aside. Instant Appeal is allowed.

Relief

9. The accident is dated 05.07.2017. The claim has to be governed by amended schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Resultantly, the claimants are entitled to compensation of Rs.8.00 lacs along with interest @ 9% per annum from the date of filing of claim application till the date of actual realization.

February 14, 2025			(Pankaj Jain)
Dpr			Judge
	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No