



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

**FAO No.338 of 2015
Date of decision : 18.02.2025**

Gyatri Devi and others

....Appellants

Versus

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vipul Sharma, Advocate
for the appellants.

Ms. Bhawna Thakur, Senior Panel Counsel
for respondent/UOI.

PANKAJ JAIN, J. (ORAL)

1). This appeal is directed against order dated: 23.10.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh vide which claim application seeking compensation of Rs.6,00,000 on account of death of Suresh Kumar in an untoward incident involving the Railways.

2). The pleaded facts of the case are that on 15.06.2008, the deceased was travelling from Ballabgarh to Banchari and was having MST No.5525 issued on 09.06.2008 valid upto 08.07.2008. When the said train halted at Banchari railway station and passengers were de-boarding, it started moving suddenly and due to push, the deceased fell on the offside. Another train was coming from the opposite direction, he was thrown by that train and he died instantly.



3). The respondent-railways resisted the claim by way of written statement and preliminary objections were raised that the alleged incident does not fall within the provisions of Section 123(c)(2) read with Section 124-A of the Railways Act and no untoward incident causing the death of the deceased occurred on 15.06.2008. If any incident, occurred resulting into his death must have occurred due to his own negligent and criminal act. As per the DRM report, the cause of the death of the deceased is being run over by 2001-Dn Shatabdi Express Train and the deceased was not a *bonafide* passenger of the train as no valid ticket was recovered from him at the time of the incident.

4). After hearing the rival contentions, the Tribunal framed the following issues:

- “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 applicant(s) is/are the sole dependents of the deceased in this case?*
4. *Relief.”*

5). The Ld. Tribunal rejected the claim of the claimants on the ground that the travel of the deceased on the passenger train, is not proved on record as from his personal search, no MST was recovered. Further it was held that it cannot be believed that the deceased fell from one train and got



struck with the train coming from the other side as there is distance between the two tracks. Thus, it was held that the deceased was neither travelling in the train nor did he fall from the train. It is a proven case of hit of deceased by 2001 Shatabdi Express and Down Main Line while crossing the railway track.

6). Counsel appearing for the applicant-appellant submits that wife of the deceased appeared as AW-1 and filed affidavit. She was cross examined wherein she reiterated the averments made in the claim application. The Tribunal wrongly rejected the testimony of AW-1 and AW-2. AW-2 was the eyewitness of the incident. He was not even examined by the railways to disprove his version, but Tribunal relied upon the statement of Khem Singh who was not even a witness to the incident. It was further averred that the applicants placed on record MST No.5525 issued on 09.06.2008 valid from 09.06.2008 to 08.07.2008 along with Identity Card of the deceased issued by the railway authorities to prove that the deceased was a *bonafide* passenger which was not disputed by the railway.

7). Counsel appearing for the respondent-railways submits that from the personal recovery of the deceased no ticket or MST was recovered and it was placed on record later on which goes onto show that it was a procured one. Further the cause of the death of the deceased is due to his own criminal negligence as he was run over by a train while he was crossing the railway track.



8). I have heard counsel for the parties and gone through the records of the case.

9). The first issue raised by the Tribunal was that the deceased was not a victim of the untoward incident as there was a lot of distance between the two tracks and it is not possible that he fell from one train and was run over by the other. Body of the deceased was found on the track. There is affidavit/testimony of AW-2, who was the eyewitness to the incident that he saw a person fall from the train and the moment he tried standing up, he was run over by the other train. There is nothing on record to show that the deceased died due to his own criminal negligence, mere assertion is not enough to prove criminal negligence. Thus, the Tribunal ought not have non-suited the claim without there being substantial evidence on record.

10). The respondent railways neither pleaded nor proved on record that the case of the deceased falls within any of the five exceptions provided under the Railways Act. The respondents cannot avoid their liability merely based on DRM report. Further no passenger or railway official or police official was examined by the railways to prove DRM report.

11). The Tribunal further dismissed the claim on the ground that the deceased was not a *bonafide* passenger as no ticket was recovered from his body. The non-production of railway ticket cannot necessarily lead to the conclusion that the deceased was intending to travel without the train ticket. The MST was placed on record by applicant-appellants. It is settled law that



once the applicants have discharged the initial burden of proving the ticket, it is for the railways to rebut the same. The same gone unrebutted.

12). In view of above, the appeal is allowed. The accident relates to the period prior to amendment of 2017. Thus compensation shall be payable as per un-amended schedule appended to the Railway Accident and Untoward Incidents (Compensation) Rules 1990. Compensation of Rs 4,00,000 along with interest @ 9% per annum or Rs.8,00,000 whichever is higher is payable for the period from the date of application till the date of actual realization.

February 18, 2025

Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No