



215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6176-2019 (O&M)
Date of decision : 28.02.2025

Smt. Guddi & ors. Appellants

Versus

Union of India Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- None for the appellants.

Ms. Amrita Singh, Advocate
for the respondent-UOI.

PANKAJ JAIN, J. (ORAL)

CM-20511-CII-2019 & CM-20512-CII-2019

Present applications have been filed for condonation of delay of 407 days in re-filing and 96 days in filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants-appellants have shown sufficient cause to condone the delay in re-filing and filing the appeal.

Applications are allowed. Delay in re-filing and filing the appeal is condoned.

Main case

1 This is an appeal against the order dated 03.11.2017 passed by the Railway Claims Tribunal, Chandigarh, Chandigarh Bench vide which claim application filed by the claimants seeking compensation of Rs.10,00,000 on account of death of Rahul in an untoward accident involving railways has been dismissed.



2 The pleaded facts of the case are that on 22.06.2014 the deceased came from Kurukshetra to Panipat and there his father accompanied him who had come from Bhiwani. The deceased purchased two tickets for himself and his father. When he tried to board the train at Panipat to go to Bhiwani, due to heavy rush and sudden jerk, he accidentally fell on the track and received injuries all over his body. On 23.06.2014, he succumbed to his injuries. It was claimed by the claimants that the deceased was possessing a 2nd class general railway ticket No.C26032978 dated 22.09.2014 from Panipat to Bhiwani.

3 Respondent-railways filed written statement and contested the claim denying and disputing various averments in the claim application. It was averred that he was not a passenger of the train much less a bonafide passenger. It was further held that neither train number nor name of the train or the time of start of alleged train journey has been mentioned in the claim application, therefore the whole story is a concocted and false.

4 After hearing the rival contentions, the 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 are the sole dependents of the deceased?*
- 4. Relief.”*

5 The Tribunal rejected the claim of the claimants on the ground that the deceased tried boarding the train from the off side and hence falls



within the exceptions of Section 124-A of the Railways Act (for short 'the Act').

6 Counsel appearing for the railways while relying upon the DRM's enquiry report contends that in the *fard jamatalashi*, no train ticket was recovered by the police from the person of the deceased. As per the statements of the guard and driver of the train, the deceased got injured while boarding a moving train from offside became victim of the incident due to his own negligence and carelessness.

7 I have heard counsel for the respondent and carefully gone through the records of the case.

8 While deciding the issue No.1, it has been held by the Tribunal while dismissing the claim that the father of the deceased spoke different languages in the affidavit and during the cross examination before the bench. Contradictions in the statements cannot be a sufficient ground for the Tribunal to dismiss the claim as witness is not expected to restate the facts in parrot like fashion. Contradiction needs to be major and material. In claims involving untoward incidents under Railways Act, standard is preponderance of probabilities not proof beyond reasonable doubt. It was further averred that the deceased was not a bonafide passenger as no ticket was recovered from the person of the deceased. This issue is no more *res-integra*. It has been held that once the claimants have discharged the initial onus by filing of an affidavit, the onus shifts upon the railways. In this case, the railways have not brought anything on record to rebut the same. The issue is now settled as per the law laid down in ***Rina Devi's case (supra)*** wherein it has been observed 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.”

9 The Tribunal dismissed the claim holding that since he was trying to board the train from the off side which resulted into his death, the same would not be an untoward incident and would fall within the exceptions to Section 124-A of the Act. The issue is no longer res-integra as the Supreme Court has held that whether the deceased was trying to board the train or was inside the train, both would constitute as accidental falling from the train and would come within the ambit of untoward incidents. The same was held in the case of ***Union of India vs. Rina Devi, 2018 SCC Online SC 507*** wherein it has been observed as under :-

*“16.6 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 judgment of this Court in ***United India Insurance Co. Ltd. v. Sunil Kumar, 2018(1) RCR (Civil) 680 : 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 163A 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 124A merely on the plea of negligence of the victim as a contributing factor.”*



10 This Court holds that the deceased was a bonafide passenger and the incident in an untoward incident as enumerated under the definition of Section 123(c)(2) of the Act and claimants would be entitled for compensation under Section 124A of Act.

11 The accident relates to the period prior to the Amendment of 2017 which came into effect w.e.f. 01.01.2017. Thus, the compensation payable shall be 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.

12 Appeal stands allowed.

13 Pending miscellaneous application, if any, also stands disposed off.

28.02.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No