



216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1707-2022 (O&M)
Date of decision : 28.02.2025

Madhu Devi & ors. Appellants

Versus

Union of India Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Narender Kaajla , Advocate
for the appellants.

Mr. Amit Sharma, Sr. Panel Counsel
for respondent-UOI.

PANKAJ JAIN, J. (ORAL)

1 This is an appeal against the order dated 02.07.2019, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh whereby the application filed by the appellants/claimants seeking compensation of Rs.8,00,000/- on account of death of one Domi Ram in an alleged untoward incident.

2 Pleaded facts of the case are that on 16.04.2017, the deceased had gone to Punjab and he came back to Delhi. He was going to Gurgaon from Delhi where he was residing. On 16/17.4.2017, he purchased a journey ticket from Delhi to Gurgaon. While de-boarding, he accidentally fell down from the train; sustained serious and grievous injuries all over his body and died on the spot.



3 The respondent-railways contested the claim by raising preliminary objections averring that no such incident causing the death of the deceased within the meaning of Section 123(c) read with Section 124-A of the Railways Act, 1989 (for short 'the Act'). It was further averred that the deceased was not a bonafide passenger of the train and as per column No. 22 of form 2535, nothing was recovered from the deceased and the details of articles are mentioned later on in handwriting, which shows that the document was procured later on.

4 The following issues were framed by the Tribunal :

- “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 Sec. 123(c)(2) read with Section 124-A of the Railways 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 no journey ticket for the alleged journey from Delhi to Gurgaon was recovered from the person of the deceased and in these circumstances he cannot be said to be a bonafide passenger. Hence the accident cannot be said to be an untoward accident.

6 Counsel appearing for the appellants contends that appellant No.1, appeared as AW-1 and filed an affidavit stating that deceased was a bonafide passenger. The appellant No.1 was also cross examined by the respondent-Railways. The appellants have placed on record *fard jamatalashi*, which shows that in the personal search of the deceased one



railway ticket ex- Ludhiana to Delhi dated 16.04.2017 was recovered. The journey ticket from Delhi to Gurgaon was lost during the accident.

7 He further contends that the claim was rejected merely on the ground that coloumn No.22 & 23 of Form No.2535 wherein details regarding recovery of articles from and near the dead body of deceased are to be mentioned, nothing was mentioned drawing inference that nothing was recovered from or near the dead body. Once ticket from Ludhiana to Delhi was recovered, RCT ought to have drawn inference in favour of the appellants.

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

9 Once the claimants/appellants stated on oath that deceased purchased ticket by giving details, burden shifted upon the Railways to prove that the deceased was not a bonafide passenger. The evidence adduced by claimants has remained unrebutted.

10 In ***Union of India vs. Rina Devi, 2018 SCC Online SC 507*** Supreme Court held as under :-

“Re: (iii) Burden of Proof When Body Found on Railway Premises - Definition of Passenger:

17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a 'passenger'. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an



inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in Gurcharan Singh (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows :

"3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a leaned Single Judge of this Court in the case reported as Pyar Singh v. Union of India,



2007 (8) AD Del. 262 which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of Leelamma (supra)."

17.2 In Jetty Naga Lakshmi Parvathi (supra) same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows :

"22. So, from section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. section 114(g) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal."

17.3 In Kamrunnissa (supra), from the circumstances appearing in that case it was held that there was no evidence that the deceased



had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of 'untoward incident' but a case of run over. It was observed :

"7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train. 8. In addition to the factual position emerging out of a perusal of paragraphs 7 & 8 extracted hereinabove, the report also reveals, that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station."

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

12 The accident relates to the period post the Amendment of 2017 which came into effect w.e.f. 01.01.2017. Thus, the compensation payable shall be as per amended Schedule appended to the Railway Accident & Untoward Incidents (Compensation) Rules 1990. Compensation of Rs.8,00,000/- along with interest @ 9% per annum is payable for the period from the date of application till the date of actual realization.

13 Appeal stands allowed.

28.02.2025

Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No