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FAO-7663-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-7663-2015

Date of Decision:-01.09.2023

Sunaina and Ors.

... Appellant(s)

Versus

Union of India

... Respondent(s)

-.-

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

-.-

Argued by :-

Mr. Naveen Gupta, Advocate
for the appellants.

Mr. Gaurav Pathak, Advocate
for the respondent.

-.-

KARAMJIT SINGH, J.

1. The present appeal has been filed by the appellants/claimants against the order of the Railway Claims Tribunal, Chandigarh Bench (in short 'The Tribunal') dated 3.6.2015, whereby the claim petition filed by the appellants being dependents of deceased Krishana Ram, has been dismissed.
2. The brief facts of the case of the appellants are that deceased Krishna Ram was husband of appellant No.1-Sunaina @ Kanti while appellants No.2 to 4 are his children. That on 13.11.2012, the deceased along

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with his wife and appellants No.3 and 4 went to Ambala Cantt. to board a train to Mokama Junction and seats for his wife son and daughter were already reserved in the sleeper class. That the deceased purchased a general ticket for himself. There was a great rush at platform as most of the passengers were going to their native place to celebrate Chhatt festival. The deceased helped his family members to enter the reserved sleeper coach and himself boarded the general compartment adjoining to sleeper coach. When the train reached in between Ambala Cantt. and Dukheri, due to sudden jerk given by the train, the deceased fell down and sustained multiple injuries and died at the spot. On 14.11.2012 wife and children de-boarded the train on reaching their destination i.e. Mukama Station and then they came to know about the aforesaid untoward incident and they informed the same to the police and the local police after getting information of the incident came into action and the dead body was recovered and sent for its post-mortem examination and the articles recovered from the dead body were taken into possession by the police. The appellants being dependents of the deceased filed claim application before the Tribunal.

3. On notice, the claim application was contested by respondent, who filed written statement. The respondent denied happening of any untoward incident as alleged by the appellants. It was also denied that the deceased was travelling in a train when the alleged incident took place. It was further pleaded that the deceased was not bona fide

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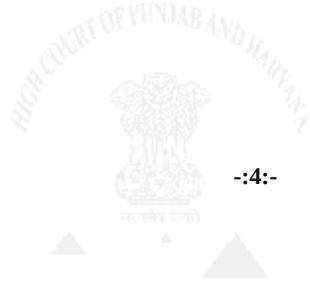
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passenger as no journey ticket was recovered from the dead body. It was pleaded that the claim application be dismissed.

4. On the pleadings of the parties, following issues were framed:-
 - i. Whether the deceased was a *bona fide* passenger at the time of incident?
 - ii. Whether all alleged incident is covered within the ambit of Section 123(c)(2) read with Section 124-A of the Railways Act?
 - iii. Whether the applicant(s) is/are the sole dependents(s) of the deceased?
 - iv. Relief.
5. The appellants led evidence and examined AW-1 Jai Prakash son of deceased, AW-2 Sarovar another son of deceased. The appellants also placed on record inquest report Ex.A-1, post-mortem report Ex.A-2, memo of jamatalashi Ex.A-3, memo regarding production of railway ticket Ex.A-4, Railway ticket Ex.A-5, Railway station memo to GRP Ex.A-7 and receipt of dead body Ex.A-8 and documents Ex.A-9 to Ex.A-20.
6. On the other hand respondent examined RW-1 Satpal Station Master Barara and also produced inquiry report of DRM Ex.R-1 and some other documents.
7. After hearing the counsel for the parties the Tribunal decided issues No.1 and 2 against the appellants and consequently did not record any findings regarding issue No.3 and resultantly dismissed the claim application.

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7. The Tribunal while passing the impugned order, gave its findings that the appellants failed to discharge the initial burden to show that the deceased was a *bona fide* passenger. The Tribunal further observed that no journey ticket was found from the dead body or from nearby the spot of incident by the police and the tickets which were produced were that of appellant No.1 and her children. The Tribunal further observed that the act and conduct of the other members of the family of deceased also create doubt with regard to untoward incident as has been alleged by the appellants as immediately after the alleged incident, no one reported to the police or railways authorities about any such incident till the next date i.e. 14.11.2012. The Tribunal further while relying upon the statement of RW-1, decided issues No.1 and 2 against the appellants.
8. The counsel for the appellants while assailing the impugned order has argued that there is ample evidence available on the record in order to prove that untoward incident took place while the petitioner was travelling in the train and he fell down from a running train and died at the spot and his dead body was recovered from the railway track. The counsel for the appellants while placing reliance on the judgment rendered by Hon'ble Supreme Court in Union of India vs. Rina Devi, (2019) 3 SCC 572, submits that the claim application could not be declined merely on the ground that journey ticket was not found at the spot of incident.
9. The counsel for the Railways on the other hand while supporting the impugned order has argued that there is not illegality or infirmity in

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the impugned order passed by the Tribunal. It has been further contended that appellants failed to prove that the deceased was bona fide passenger or that the untoward incident took place while the deceased was travelling in a train. It is further contended that as per appellants, they boarded train on 13.11.2012 and the alleged incident also took place on the same very day, but no one informed to the police till the next day i.e. 14.11.2012. The counsel for respondent further submits that this delay in reporting the matter by the family members of the deceased, further raises doubt regarding the alleged untoward incident. The counsel for the respondent further submits that it appears to be case of self-inflicted injuries or suicide and thus is covered under the exceptions carved out in Section 124-A of Railways Act and thus the Tribunal rightly dismissed the compensation application.

10. I have considered the submissions made by counsel for the parties.
11. The case of the appellant is that appellant No.1 and her two children were having reserved seats in the sleeper class for 13.11.2012 while deceased Krishan Ram husband of appellant No.1 purchased general ticket to board the same train. After purchase of the ticket, appellant No.1 and her two children boarded reserved sleeper coach train from Ambala Cantt, Railway Station to go to their native place, on 13.11.2012 while deceased boarded general compartment of the said train. The joint journey ticket of appellant No.1 and her two children is Ex.A5 and same was taken into possession by the officials of GRP vide memo Ex.A4 on 15.11.2012. It is further the case of the appellant

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that deceased Krishana Ram fell from the running train in between Ambala Cantt. and Dukheri as the train suffered sudden jerk and due to said fall, deceased suffered multiple injuries and died. However, appellant No.1 came to know about the said untoward incident on reaching her destination i.e. Mokama Railway Station on 14.11.2012.

12. From the perusal of the record, it is evident that dead body of deceased was found lying near the railway tracks on 13.11.2012 and the GRP officials prepared the inquest report Ex.A1 as per which, it appeared to be a case of railway accident. The post-mortem examination of the dead body was conducted on 14.11.2012 and even as per the post-mortem report Ex.A2 the probable cause of death in this case was due to railway accident and crushed injuries on legs and back were found with grease marks and all the injuries were found to be ante-mortem in nature.
13. The Hon'ble Supreme Court in *Union of India vs. Prabhakaran Vijay Kumar and others* (2008) 9 SCC 527, observed that Section 124-A of Railways Act lays down strict liability or no fault liability in case of railway accident. When principle of strict liability applies, proof of negligence is not required. Once initial burden is discharged, it is the strict liability of railways to pay compensation.
14. Further in *Union of India vs. Rina Devi*, (2019) 3 SCC 572 case (supra), the Hon'ble Supreme Court explained the concept of self-inflicted injury and held that principle of contributory negligence cannot be invoked in case of liability based on no fault theory. The Court further held that 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 the ticket was purchased but it was lost.

15. The underlying object of Section 124-A of Railways Act is to compensate a *bona fide* victim of an untoward incident. Proviso to Section 124-A has carved out circumstances under which victim is not entitled for compensation.
16. In the instant case from the perusal of testimony of AW-2 Soraver (Appellant No.3), who is son of the deceased, it is evident that on 13.11.2012, he along with his mother Sunaina and sister Neetu Kumari boarded reserved compartment of a train from Ambala Cantt. Railway Station to go to their native place and their travelling ticket is Ex.A5. AW-2 also deposed that at the same time his father Krishna Ram also boarded the general compartment of the same train as he was having no reservation but was having general ticket. In order to rebut the aforesaid evidence there is sole statement of RW-1 Satpal, who was on duty as a Station Master, Railway Station Dukheri on 13.11.2012 and he on getting information from Dharminder Gangman gave further information to the police authorities and higher railways authorities.
17. In the given circumstances the appellants are able to prove that the deceased boarded train from Ambala Cantt. Railway Station on 13.11.2012 after purchasing general ticket, to go to his native place i.e. Mokama (Bihar). From the perusal of inquest report Ex.A1 and post-mortem Ex.A2 it is evident that deceased sustained ante-mortem injuries in a railway accident, as a result of which he died. Thus making it ample clear that untoward incident took place while the

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deceased was traveling in a train on 13.11.2012, as a result of which the deceased fell from running train in the area between Ambala Cantt. and Dukheri and died at the spot after being crushed under the train. On the other hand the respondent has failed to prove that the deceased died on account of self-inflicted injuries or committed suicide or died due to his own criminal act or was under the state of intoxication or insanity at the time of incident.

18. In the light of the above, the findings given by the learned Tribunal with regard to issues No.1 and 2 are not sustainable and are hereby set aside. Both the issues are decided in favour of appellants.
19. There is ample evidence available on the record that appellant No.1 is widow while appellants No.2 to 4 are children of deceased Krishna Ram and all of them have claimed that they were dependent on the deceased. Even otherwise the aforesaid facts are not rebutted by the respondents in any manner. Thus it stands proved that appellants were dependent on the income of the deceased. Consequently issue No.3 is hereby decided in favour of the appellants and against the respondent.
20. In the light of the above discussion, the present appeal is hereby allowed and the impugned order dated 3.6.2015 passed by the learned Tribunal is set aside. Consequently the claim application is allowed. The appellants are held entitled to compensation to the tune of ₹4 lacs along with interest at the rate of 7% per annum from the date of filing of claim application, till its realization. Out of the total awarded amount 30% each is to be given to appellant No.1-Sunaina and appellant No.4 Neetu Kumari and remaining 20% each is to be given

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to appellants No.2 and 3. The share of appellant No.4, who is stated to be minor is to be deposited in some Nationalized Bank in the shape of FDR, which she will be entitled to get encashed on attaining the age of majority.

01.09.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No