

Before Dr. Ravi Ranjan, J.

RESHU AND OTHERS—Appellants

versus

UNION OF INDIA—Respondent

FAO No.1336 of 2012

May 31, 2019

Railway Tribunal Act, 1987—Bona fide passenger—Death by accidently falling from train at Ambala Cantt.—Tribunal denied compensation on the ground that deceased was ticketless passenger as he did not have ticket for travel from New Delhi to Ambala Cantt. — Since deceased had purchased railway ticket from Ambala Cantt. to Mujaffar Nagar and no record was on the case file regarding extensive search for the recovery of belongings of the deceased, it could not be held that deceased was a ticketless traveler as he has already purchased ticket from Ambala Cantt. to Mujaffar Nagar.

Held that, under such circumstances, it would be very harsh to presume that while going from Ambala Cantt. to Mujaffar Nagar along with his spouse, the deceased would purchase tickets but for journey from New Delhi to Ambala Cantt. he would not purchase any ticket for himself even though he was having the sufficient money. There is no presumption that a person would be a ticketless passenger rather his aforesaid conduct shows that he always was inclined to purchase the ticket. Having said so, there would always be a possibility of losing the ticket in such nature of railway accident resulting in loss of life.

(Para 9)

Further held that, apart from the above, it cannot be found from the materials available on record including the DRM's report that extensive search was made on the spot of accident or the nearby area to recover or find out the belongings of the deceased. In such a situation, the attending circumstances show that the deceased was not such a person who used to travel ticketless as he had purchased ticket for his journey on 12.05.2010 from Ambala Cantt. to Mujaffar Nagar and there would always be a possibility of losing such ticket in this nature of serious accident but no extensive search was made to find out the belongings of the deceased.

(Para 10)

Further held that, as per the discussion held above, the deceased would have to be held to be a *bona fide* passenger.

(Para 11)

Further held that, ordinarily, the compensation amount available on the date of accident as per the Railway Accident and Untoward Incident (Compensation) Rule, 1990, a sum of Rs.4 Lakhs would be such amount. However, in the case of *Rina Devi* (supra), the Apex Court has held that, if on the date of Award, the amount enhanced as per the amendment made in the aforesaid rules having made effective from January 1, 2017, was available and if the enhanced amount would be greater than the amount available under the earlier provision even after adding reasonable interest, then higher of the two would be just and proper compensation. However, in the present case, though the Tribunal has decided the matter on 29.09.2011 on which date the amendment in the aforesaid rules was not available but at the same time it is also admitted position that the Tribunal has not pronounced any Award rather it has dismissed the claim application and the compensation amount is being awarded to the claimants or appellants vide the present decision of this Court. Thus, in my considered view, the higher amount which would be available as on the date would be just and proper compensation amount. If Rs.4 Lakhs, which was available as per the rules prior to the aforesaid amendment is added with interest at the rate of 9 per cent per annum, even then it would come to about Rs.7,24,000/- which would be lesser than the amount enhanced after the aforesaid amendment in the rules, i.e., Rs.8 Lakhs. Thus, the higher of the two, i.e., a sum of Rs.8 Lakhs would be just and fair compensation in the present case. The said compensation amount would also carry interest at the rate of 9 per cent per annum to be calculated from the date of the present order till the date of its payment in favour of the claimants or appellants.

(Para 17)

Somesh Gupta, Advocate
for the appellants.

R.K. Vashishtha, Advocate
for the respondents-UOI

DR. RAVI RANJAN, J. oral

(1) This appeal is directed against the Judgment dated 29.11.2011 passed by the Railway Claim Tribunal, Chandigarh in Case

No.OA-II- 140/2010, by virtue of which the claim application filed by the applicants/appellants under Section 16 of the Railways Claims Tribunal Act, 1987, has been dismissed by the Tribunal.

(2) The claimants filed the application under Section 16 of the Railways Claims Tribunal Act, 1987, disclosing that the deceased was coming from New Delhi to Ambala Cantt. on 14/15.05.2010 as he was working as a labourer there. On 14.05.2010, he reached New Delhi from Muzaffar Nagar in search of some work of security guard. In the evening he reached New Delhi Railway Station and purchased a ticket from New Delhi to Ambala Cantt. Railway Station, however, when the train reached in between Mohri and Ambala Cantt. Railway Stations, he had an accidently fall from the train, resulting in his death on the spot. The Gateman, gave information to the Station Master who issued memo to the GRP, Ambala Cantt. The GRP personnel reached at the spot and prepared the report. The GRP recovered two railway tickets from Ambala Cantt. to Mujaffar Nagar, Rs.1580/- cash and one identity card from the search of the dead body. Both the tickets issued from Amabala Cantt. to Mujaffar Nagar on 12.05.2010. The stand of the claimants is that the ticket from New Delhi to Ambala Cantt. was lost in railway accident. It is further averred that the claimants/appellants came to know about the accident on information having been received from the GRP, Ambala Cantt. and then they reached Civil Hospital, Ambala and identified the dead body.

(3) The respondent-Railways contested the claim by filing the written statement taking a stand that the incident would not be covered within the meaning of untoward incident as envisaged under Section 123(c) of the Railway Act, 1989 (hereinafter to be referred as the 'Act'), as such, in view of certain provisions of Section 124-A of the Act, the claimants/ applicants should not be entitled for any compensation amount also for the reason that no ticket having been found for the journey from New Delhi to Ambala Cantt. from the dead body, the deceased cannot be held to be a *bona fide* passenger.

(4) The Tribunal, considering the pleadings of the parties, framed following issues:

1. Whether the deceased was a *bona fide* passsenger, as alleged?
2. Whether the alleged incident is covered within the ambit of Section 123(c) read with Section 124-A of the Railway Act?

3. Whether the applicants are the only dependents of the deceased?
4. Relief

(5) The issues no.1 and 2 being intertwined, were taken up together for consideration by the Tribunal.

(6) The Tribunal rejected the claim application on the ground that it is startling as two railway tickets purchased earlier from Ambala Cantt. Railway Station to Mujaffar Nagar Railway Station were found in search of the body of the deceased but strangely no ticket for the journey from New Delhi to Ambala Cantt. could be recovered. Accordingly, the Tribunal, it clearly indicates that the deceased did not purchase any ticket and therefore, he cannot be held to be a *bona fide* passenger.

(7) That apart, the Tribunal has also found that the Gateman of Gate No.102 has merely informed that a dead body was lying in the Up Railway Line at KM 196/22-24 and though there is no positive evidence on record that the deceased was hit or run over by a train, the circumstances alongwith the *post mortem* report indicates the same as there is nothing on record to show that he there was any accidental fall. While holding that, the Tribunal has also noticed that there was no possibility of the dead body being found in middle of railway track as shown in the site-map, as in the case of accidental fall from a train at a speed of 10 KM/h., which was the speed allowed at that place for the trains which were crossing the same, the possibility would be of the body of victim falling besides the track as it cannot roll over to the middle of the other track. On placing reliance upon a decision of Delhi High Court rendered in *Mahipal Jagid* versus *Union of India*, in FAO No.438 of 2010 decided on 14.09.2011, the Tribunal held that though there is no positive evidence but on balancing the probability, it cannot be ruled out that the deceased died as he was run over by the train. Eventually, the claim application was dismissed. However, the issue No.3 has been decided in favour of the applicants/appellants holding that the applicants are the dependents of the deceased and therefore, they are entitled to file the claim application.

(8) In the aforesaid factual matrix, this Court has heard the parties and has perused the records of this case.

(9) AW1 Reshu widow of the deceased has reiterated the averments made in the claim application in her affidavit. At the time of cross-examination, she has stated that her husband had accompanied

her to Mujaffar Nagar, her maternal home. She remained there and thereafter, the deceased was coming alone to Delhi and then to Ambala. She came to know about the accident in the morning of 15.05.2010 through her family members. This stand of AW1 stands corroborated as two tickets from Ambala Cantt. to Mujaffar Nagar were found on search of the dead body of the deceased. The Tribunal has accepted the stand of the respondent- Railways that the cash amount and other articles were found and two other railway tickets were found but no ticket for the concerned journey was recovered which would necessarily mean that the deceased was not a *bona fide* passenger. However, the Hon'ble Apex Court in *Union of India* versus *Rina Devi*¹, has held that merely not finding the railway ticket from the search of the dead body would not be sufficient to prove that deceased was a ticketless passenger as the things would depend upon the attending circumstances. The circumstances show that he purchased two railway tickets from Ambala Cantt. to Mujaffar Nagar, i.e., for himself and his spouse and then he came to New Delhi. The averment in the claim application is that he purchased railway tickets from New Delhi Railway Station to Ambala Cantt, where he used to work as labourer. Though, no ticket was found but sufficient cash was found in his possession, i.e., Rs.1580/- for purchase of such ticket. Under such circumstances, it would be very harsh to presume that while going from Ambala Cantt. to Mujaffar Nagar along with his spouse, the deceased would purchase tickets but for journey from New Delhi to Ambala Cantt. he would not purchase any ticket for himself even though he was having the sufficient money. There is no presumption that a person would be a ticketless passenger rather his aforesaid conduct shows that he always was inclined to purchase the ticket. Having said so, there would always be a possibility of losing the ticket in such nature of railway accident resulting in loss of life.

(10) Apart from the above, it cannot be found from the materials available on record including the DRM's report that extensive search was made on the spot of accident or the nearby area to recover or find out the belongings of the deceased. In such a situation, the attending circumstances show that the deceased was not such a person who used to travel ticketless as he had purchased ticket for his journey on 12.05.2010 from Ambala Cantt. to Mujaffar Nagar and there would always be a possibility of losing such ticket in this nature of serious accident but no extensive search was made to find out the belongings of

¹ 2018 (3) RCR(Civil) 40

the deceased.

(11) As per the discussion held above, the deceased would have to be held to be a *bona fide* passenger.

(12) Another ground on which the claimants/appellants have been non-suited is that the accident appears to be a case of hit and run over by some train. The Tribunal has held that the body having been found on the middle of the Up Track, it has to be held that he must have been hit by some train as the same is not possible in case a person has accidental fall while the train was moving on the another track as at that spot the trains were allowed only to move at a speed of 10 KM/h. As such, there would be no possibility that a person would fall and his dead body would roll over to middle of the next track.

(13) In my considered opinion, there is no material on record to come to such conclusion. The dead body, in case of accidental fall from the moving train, would land at which place and at what distance, would depend upon the *inertia* which the body was having in view of the moving train. That would also depend upon the velocity and the direction of the wind which was blowing at that point of time. In such a case, only an expert of such subject, after proper inquiry, can come to such conclusion as to whether dead body could have reached the next track or not in view of the speed of the moving train. No such opinion appears to have been sought from any expert at the time of DRM's inquiry. Therefore, it would be very difficult to come to such conclusion to which the Tribunal has reached. However, the *post mortem* report shows that there were fractures on right leg, nose and in parietal region of skull and bruises all over the dead body. Now the question would be, even if it is assumed that the deceased came under the impact of a moving train while trying to cross the railway line, the aforesaid would be the nature of injury? The answer has to be in negative. In case a person is run over by a train, his body would be found in a mutilated condition and may be cut into several pieces, however, if there is an accidental fall from the moving train there would always be a possibility of factures and bruises all along the body. So far the decision of the Delhi High Court rendered in the case of **Mahipal Jagid** (supra) is concerned, it has come to such conclusion on the basis of the fact that the place of incident was not far away from Sahadra where the school of deceased was situated, thus, the deceased might have come for any reason to the track and tried to cross the same and got entangled with the train. However, in the present case no such set of fact is available, therefore, it would be very difficult to bring this

case under the ambit of the case which was decided by the Delhi High Court in the aforesaid case.

(14) Having regards to the aforesaid discussion, this Court is of the opinion that the circumstances indicate towards the incident being the railway untoward incident due to accidental fall of the victim and, as such, the findings recorded with respect to issue no.1 and 2 by the Tribunal are hereby quashed and set aside and it is held that, in the attending circumstances, the claimants/appellants would be entitled for statutory compensation amount.

(15) So far the finding recorded by the Tribunal on issue no.3 is concerned, the same is not disturbed.

(16) Having held as above, the next issue would be as to what would be the just and proper statutory compensation amount, which would be available to the claimants/appellants.

(17) Ordinarily, the compensation amount available on the date of accident as per the Railway Accident and Untoward Incident (Compensation) Rule, 1990, a sum of Rs.4 Lakhs would be such amount. However, in the case of *Rina Devi* (supra), the Apex Court has held that, if on the date of Award, the amount enhanced as per the amendment made in the aforesaid rules having made effective from January 1, 2017, was available and if the enhanced amount would be greater than the amount available under the earlier provision even after adding reasonable interest, then higher of the two would be just and proper compensation. However, in the present case, though the Tribunal has decided the matter on 29.09.2011 on which date the amendment in the aforesaid rules was not available but at the same time it is also admitted position that the Tribunal has not pronounced any Award rather it has dismissed the claim application and the compensation amount is being awarded to the claimants/appellants vide the present decision of this Court. Thus, in my considered view, the higher amount which would be available as on the date would be just and proper compensation amount. If Rs.4 Lakhs, which was available as per the rules prior to the aforesaid amendment is added with interest at the rate of 9% per annum, even then it would come to about Rs.7,24,000/- which would be lesser than the amount enhanced after the aforesaid amendment in the rules, i.e., Rs.8 Lakhs. Thus, the higher of the two, i.e., a sum of Rs.8 Lakhs would be just and fair compensation in the present case. The said compensation amount would also carry interest at the rate of 9% per annum to be calculated from the date of the present order till the date of its payment in favour of the

claimants/appellants.

(18) In the result this appeal, stands allowed to the extent as indicated above with cost which is assessed at Rs.5 thousands.

Inder Pal Singh Doabia