

BEFORE THE RAILWAY CLAIMS TRIBUNAL, CHANDIGARH BENCH,
CHANDIGARH

CORAM: HON'BLE MEMBER (JUDICIAL) SHRI LABH SINGH

Case No. OA-IIu/CDG/57/2022
Date of Institution: 29.8.2022
Judgment reserved on: 28.3.2024
Date of Pronouncement :28.03.2024

Hari Singh son of late Sh. Gurnam Singh, aged about 81 years, resident of village Bhai Bakhtaur, PO and PS Kot Fatta, District Bathinda, Punjab.

----Applicant

Versus

Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.

----Respondent

CLAIM FOR Rs. 8,00,000/-

Present:

For the applicant: Mr. K.N Bansal, Ld. Advocate

For the respondent: Mr. Varun Dhawan, Ld. Advocate.

J U D G M E N T

1. The present claim application has been filed by the applicant under Section 16 of The Railway Claims Tribunal

Act, 1987 read with Section 124-A of the Railways Act, 1989 seeking compensation to the tune of Rs. 8,00,000/- (Rupees Eight Lakhs only) along with interest from the respondent-railway on account of the injuries sustained by him in an alleged untoward incident, which occurred on 19.6.2019, while he was travelling by a passenger train.

2. Briefly stated, the facts of the case are that on 19.6.2019 at 15.00 hours, Station Master, railway station, Maisarkhana issued a memo to the GRP Muar, mentioning therein that as informed by the Guard of 54641-UP passenger, one person fell down while trying to de-board the running train and both of his legs got amputated. He informed the Ambulance 108 about the incident. The Guard informed that there were ten bottles of liquor and the bottles were handed over to GRP, Maur. On the same day i.e. on 19.6.2019 at 4.00 p.m., In-charge, DCR, Bathinda issued a memo (ruqqa) to the GRP, Bhatinda regarding arrival of injured Hari Singh son of Gurnam Singh, 70 Years Male resident of Bhai Bakhtaur with history of rail accident at Maisar Khana railway station. On receipt of information, the GRP personnel reached the hospital and initiated the proceedings.
3. The case of the applicant, as pleaded in the claim application, is that on 19.6.2019, the applicant had gone to

Jakhal in search of labour work but could not find any job. Therefore, he purchased a railway journey ticket to travel from Jakhal to Maisar Khana and boarded the train. When the train reached its destination station Maisar Khana, the applicant was standing on the door of the coach to de-board the train. When the train was about to stop, he fell down from the moving train due to a jerk; came under the train and both of his legs got amputated. The ticket purchased by the applicant got lost in the incident. The Driver and Guard of the train stopped the train and informed the Station Master regarding the incident, who called an Ambulance and sent the applicant to Civil Hospital, Bathinda. Keeping in view his critical condition, the Doctors referred him to Guru Gobind Singh Medical College & Hospital, Faridkot where he remained admitted and was discharged on 12.7.2019. On 20.6.2019, his statement was recorded by the ASI, GRP Police but he was not fully conscious at that time. The ASI, GRP obtained his thumb impression on already handwritten documents which were also not read over the applicant. Thus, terming the incident as an untoward incident, the applicant is before this Tribunal seeking compensation for the injuries sustained by him in the said untoward incident.

4. Respondent appeared in pursuance of the notice issued by this Tribunal and filed its written statement along with the statutory report of DRM. In the written statement filed, by way of preliminary objections, it is replied that the present claim application is not maintainable and liable to be dismissed being bad in law as the applicant was not a bonafide passenger of the train. No railway journey ticket or any pass was recovered from the applicant during investigation.
5. It is also averred that as per the DRM report, the applicant was trying to deboard the running train at Maisar Khana railway station in the state of intoxication and he came underneath the train No. 54641 and got severely injured. It is pertinent to mention here that the applicant was carrying 10 bottles of liquor with him which were recovered from him during investigation and as such, the respondent-railway is exempted from its liability to pay compensation to the applicant. As per Section 123(d) of the Railways Act, 1989, no compensation shall be payable by the railway Administration if the passenger dies or suffers injury due to any act committed by him in the state of intoxication or insanity. In the present case, the applicant himself has admitted in his statement recorded before the police

officials that he had consumed one bottle out of four liquor bottles which he was carrying with him during his travel.

6. On merits, while denying all the averments of the applicants as made in the claim application either being wrong or for want of knowledge, a prayer is made for the dismissal of the claim application.
7. No replication was filed by the applicants and based upon the pleadings of the parties; the following issues were settled by the Tribunal on 29.3.2023 for adjudication: -
 - (i) Whether the injured was a bonafide passenger of the train at the time of incident?
 - (ii) Whether the alleged incident is covered within the ambit of Section 123(c)(2) read with Section 124-A of the Railways Act, 1989?
 - (iii) What are the scheduled/non-scheduled injuries allegedly sustained by the injured during the alleged incident?
 - (iv) Relief.
8. In order to prove his case, the applicant appeared as AW/01 and filed his affidavit of evidence AW1/1 in his examination in chief reiterating the facts pleaded in the original claim application and was cross-examined thereon. He also tendered in his evidence the documents Exh. A/01 to A/11 in support of the claim application.
9. Respondent Railway has examined Shri Amit Kumar, Loco Pilot as RW-1, Shri Chaman Lal, retired Station Master as RW-2 and Shri Amarjeet Kumar, Assistant Loco Pilot as RW-3 besides

filing its certified DRM report Exh. R/01 along with the annexure, which is already placed on record. The respondent-railway has also filed, along with its DRM report, the investigation report of Shri Nirmal Singh, ASI, RPF, Maisar Khana along with the annexure.

10. Shri Paramjit Singh, ASI, GRP, Police Post Rama Mandi was also examined as a Court Witness (CW-1) and he has also produced original records of investigation.
11. I have gone through the case file carefully and perused the pleadings of the parties and the documents placed on record by the parties and heard the arguments put forth by the learned counsel for both the parties; and after hearing learned counsel for the parties, I shall now proceed to consider the claim application on its merits, specifically within the ambit of the issues framed in this case.

Issues No. (i)

12. Insofar as this issue is concerned, the case, as set up in the claim application is that on 19.6.2019, the deceased, while travelling in the train from Jakhal to Maisar Khana with a valid journey ticket, fell down from the train at Maisar Khana railway station when the train was about to stop; came underneath the train and the incident resulted in amputation of both his legs and further that the journey

ticket got lost in the incident. The question arises whether the applicant could be termed as a bonafide passenger in absence of a railway journey ticket.

13. On the aspect of bonafide passenger, Hon'ble Supreme Court of India, in the case of Union of India Versus Rina Devi Civil Appeal No. 4945 of 2018 decided on 09.05.2018, has held 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".
14. Thus, it is settled law that mere presence of the dead body on the railway premises will not be conclusive to hold that the injured or deceased was a bonafide passenger for which claim for compensation could be maintained. The initial burden to establish the fact that the deceased was a

bonafide passenger, is on the applicants, which could be discharged by filing an affidavit of the relevant facts.

15. It would be apposite to reproduce herein the relevant provisions of Section 2(29) of the Railways Act, 1989 wherein a 'bonafide passenger' has been defined and Section 124-A, which provides for compensation to the victims of an untoward accident and the same reads as under:
16. Section 2(29): "Passenger" means a person travelling with a valid pass or ticket"
17. Section 124-A. Compensation on account of untoward incidents.—"When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) Suicide or attempted suicide by him;
- (b) Self-inflicted injury;
- (c) His own criminal act;
- (d) Any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purpose of this section, “passenger” includes—

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

18. Thus, a passenger includes a person travelling with a valid pass or ticket as well as who has purchased a valid ticket for travelling by a train carrying passengers on any date or having a valid platform ticket and becomes a victim of an untoward incident. If it is established that the deceased was a bonafide passenger, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, the railway administration would be liable to pay compensation.

19. The applicant, in order to discharge the initial burden placed on him, appeared as AW/01 and reiterated the facts pleaded in the original application while filing his affidavit of evidence Exh. AW.1/1 in his examination-in-chief. During his cross-examination, he stated that he had purchased a railway journey ticket to travel from Jakhal to Maisar Khana. He has further deposed that the railway journey ticket was lost at the time of incident in question. During his cross-examination, the testimony of the applicant can not be shaken on the aspect of travelling of the deceased with ticket. Thus, the applicant has discharged the initial burden placed on him to prove himself as a bonafide passenger of the train. Thus, the onus shifted on respondent railway to disprove the case of the applicant on the aspect of bonafide passenger of the train.
20. Respondent Railway has not adduced any evidence to prove that the applicant was detected ticketless at any time before the incident on the date of journey. If the applicant had tried to travel without ticket and entered railway platform without ticket then respondent railway was duty bound to take appropriate legal action against him but there

is nothing on record to prove that the applicant was apprehended ticketless and any action was taken against him.

21. Therefore, in view of the above, the applicant has succeeded to prove his case that he was a bonafide passenger of the train no. 54641 on the date of incident as defined in Section 2(29) read with explanation (ii) of Section 124-A of the Railways Act 1989.

Issue No. (ii)

22. Insofar as this issue is concerned, it is an admitted fact on the part of the respondent railway that the incident in question happened on platform no. 2 of railway station Maisar Khana. It is also admitted that the applicant fell down from the train while trying to deboard the running train no. 54641. The question arises whether falling of the applicant while deboarding the slow running train at platform amounts to untoward incident as defined in Section 123(c)(2) read with Section 124-A of the Railways Act 1989 and such a negligent act of the applicant brings the incident beyond the purview of untoward incident as defined in the Railways Act 1989.
23. On this aspect, Hon'ble Apex Court in case of Union of India Versus Rina Devi 2018 SCC OnLine SC 507 while interpreting the untoward incident in context of falling down of the

passenger in attempt to board or deboard the train held that:

“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 the judgment of this Court in United India Insurance Co. Ltd Versus Sunil Kumar laying down that the 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 deboarding 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.”

24. Therefore, in the instant case also by applying the same analogy, the incident in question falls within the definition of untoward incident as defined in Section 123(c)(2) read with Section 124-A of the Railways Act 1989.

25. In view of the peculiar facts of this case, the next incidental question arises for consideration is whether this untoward incident falls within exemption clause (d) of proviso to Section 124-A of the Railways Act 1989 for which respondent railway is absolved to pay compensation to the applicant.
26. It is pertinent to mention here that the applicant, at the time of filing the original application, has annexed his statement Exh. A/04 recorded by GRP Police wherein it has been recorded that he was a habitual drunkard. On 19.06.2019, he went to Jakhal Haryana for taking liquor as it was available at a cheap rate in state of Haryana. He purchased a country made liquor for Rs. 70/- and started drinking; and he also drunk while travelling in the train. When the train in question was about to reach Railway Station Maisar Khana, he tried to deboard the running train which resulted in the incident in question.
27. The applicant has pleaded that the said statement Exh. A/04 was already written by ASI GRP and he put up his thumb impression on the same without understanding the content of the same; however, Sh. Paramjit Singh, ASI while appearing as CW/01 has stated that he has recorded statements of the applicant during investigation. Learned Counsel for

applicant has failed to cross-examine this witness to seek clarification on this aspect despite the fact that Sh. Paramjit Singh has proved the statement Exh. A/04.

28. Respondent Railway has placed on record Station Master Memo Exh. RW.2/2 given to GRP Police wherein it has been recorded that the applicant was having 10 bottles of liquor in his hand when the incident in question happened. The liquor was handed over to the GRP Police. Sh. Chaman Lal the then Station Master appeared before the Tribunal as RW/02 and stated in his affidavit of evidence Exh. RW/02 that the Guard of the Train handed over 10 bottles of liquor to him and he further handed over the same to GRP Police Maur. He further stated that he has not made any statement to the GRP Police. Consequently. The original record of the police was called for and this witness was shown statement Exh. RW.2/1 the photo copy of which is Exh.A/05 upon which he stated that he has not made any such statement before GRP and the signature in his name is also not his handwriting. A perusal of the statement Exh. RW.2/1 and the photocopy of which is Exh.A/05 reveals that it does not contain any details about recovery of liquor from the applicant. Sh. Paramjit Singh ASI, during his cross-examination, stated Sh. Chiman Lal had not signed Exh. A/05 in his presence rather constable

Harvinder Singh was sent to obtain his signature. He stated that he cannot certify whether it was the signature of Sh. Chaman Lal or not.

29. Sh. Amit Kumar Loco Pilot of Train No. 54641 appeared as RW-1 and tendered his affidavit of evidence Exh.RW.1(as it was practice in the Tribunal to give such numbers) and stated on oath that the injured had fallen down from the train and he was having in his possession liquor bottles which were handed over by the Guard of the Train to Station Master. During his cross-examination, he confirmed that he is witness to articles found with the applicant. Sh. Amarjit Kumar Assistant Loco Pilot has stated that the bottles were with the applicant but he has not counted the same.
30. Respondent Railway has further placed on record a copy of RPF Rapat Roznamcha dated 19.06.2019 wherein it has been recorded that the applicant/injured was having 10 bottles of liquor with him. Thus, it is not a case of applicant that the record of the railway which is maintained in ordinary course of duty has been manipulated by the RPF Staff later on.
31. It is an admitted fact on the part of the applicant that he was trying to deboard the running train. Since, it has been proved on record that he was drunk and having liquor in his

possession and hence, it can safely be presumed that he tried to board the running train under influence of liquor and with a fear of being apprehended on the railway station. The said act of the applicant to deboard the running train under intoxication brings the incident within purview of exemption clause (d) of proviso to Section 124-A of the Railways Act 1989.

32. Therefore, in view of the above, though the incident in question falls within definition of untoward incident but simultaneously comes within purview of exemption clause (d) of proviso to Section 124-A of the Railways Act 1989 for which respondent railway is not bound to pay the compensation to the applicant. Hence, this issue is answered as above.

Issue No. (iii)

33. In view of my findings on issue no. 2 as above, the discussion on this issue will be a redundant exercise and accordingly, this issue is relieved.

Issue No. (iv)

34. Therefore, in view of the above discussion, the present claim application fails and the same is hereby dismissed being devoid of merits.

Pronounced in open Court
March 28, 2024

Labh Singh
Judicial Member

(The judgment has been dictated in the open Court and consists of seventeen pages and each page has been checked and signed by me).

Labh Singh
Judicial Member