

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.1398 of 2014 (O&M)
Date of decision: 7.1.2016

Pavita Devi and others

..... Petitioners

Versus

The Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Surinder Sharma, Advocate, for the petitioners.

Mr. Vivek Janda, Advocate for
Ms. Chetna Rao, Advocate, for the respondents.

RAJESH BINDAL, J

Prayer in the present petition filed by the legal representatives of deceased Manjit Singh, is for award of compensation on account of his death in an accident at a manned railway crossing.

Learned counsel for the petitioners submitted that the husband of petitioner No.1 and father of petitioners No.2 and 3, minor sons, was running a shop of photographer in village Bumbchak. He was earning more than ₹ 20,000/- per month. The petitioners were wholly dependant on him. On 9.12.2012 at about 6-7 P.M., deceased-Manjit Singh along with Harjinder Singh, Navjot Singh, Talwinder Singh and Amrik Singh were travelling in car bearing No. PB-08-W-1789. They were coming back from Hoshiarpur after completing a professional assignment. The car was being driven by deceased-Manjit Singh. When he turned from link road to his village Jhingara Kalan from GT road, the gate of railway crossing No.A-82 was open and there was no signal of any coming train. When the car was just on the railway line, a passenger train No.54621 UP suddenly came on the track without sounding any whistle/horn and struck against the car, as a result of which, the deceased suffered multiple injuries and died on the spot. The car was also completely damaged. The other passengers suffered injuries. As the accident had taken place on account of negligence of the

gate man at railway crossing No.A-82, the petitioners having lost their only bread earner, they deserve to be compensated. He further submitted that FIR No.127 of 9.12.2012 was registered under Sections 304-A, 337, 427 IPC and under Section 175 of the Railways Act, 1989. The trial of which is still pending. In support of his arguments, reliance was placed upon the judgment of Division Bench of this Court in Satyabir and others v. Union of India through Secretary, Ministry of Railways and others, 2008 (3) RCR (Civil) 721.

On the other hand, learned counsel for the respondents did not dispute the fact that the accident had taken place, however, he argued that it was sheer negligence of deceased-Manjit Singh. Even if, the gate was open, it was the duty of the deceased to have looked both sides of the railway track before crossing. Learned counsel for the respondents referred to Section 131 of the Motor Vehicles Act, 1988 (for short 'the Act'), which casts duty on a driver of a motor vehicle before crossing the railway line. He further did not dispute the fact that trial in the criminal case is still pending. He further submitted that negligence of the gate man of the railway crossing, is yet to be proved and in the absence thereof, the petitioners cannot be compensated.

Heard learned counsel for the parties and perused the paper book.

The fact that the accident had taken place at manned railway crossing on account of the fact that the gate was not closed, is not in dispute. The only issue sought to be raised by learned counsel for the respondents is that even if, the railway gate was open, deceased-Manjit Singh was to ensure that no train was coming, before crossing the same. Section 131 of the Act, which is sought to be relied upon for the purpose is not applicable, as it talks about the precaution to be taken at un-guarded railway crossing. It is not in dispute that in the case in hand, the railway crossing was guarded. At a guarded railway crossing, vehicle or person normally passes through, if the gate is open. The presumption, if the gate is open, is that no train will come. Mind of a person functions in that direction. Once, the gate was open, in my opinion, deceased-Manjit Singh, who was driving car could not be said to be negligent. Had he seen the train or the train would have been visible from the place, he would not have crossed the railway line. In normal circumstances, he would not have put his or life of

other occupants of car in danger. Even if, he had himself missed to see the train, the other occupants of the car would have certainly warned him. They were not on a suicidal mission.

In Satyabir's case (supra), the claimants were awarded compensation on account of death of a person at railway crossing, when pole of railway gate suddenly fell, this Court awarded compensation of ₹ 4,00,000/- in terms of the Rules 3 and 4 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The relevant para thereof is extracted below:-

“ 8. Facts in the present case are not in dispute. Admittedly, Smt. Santosh had suffered injuries when pole of railway gate fell on her while she was crossing the railway line along with her daughter. As per Annexure P2, Smt. Santosh was brought dead to the hospital. The incident was informed by the concerned Station Master, Railway Station, Rohtak to SHO Government Railway Police, Rohtak on 21.5.2004. Admittedly, ex-gratia payment of Rs.4,000/- was made by the respondents to meet out the immediate requirement of the injured. Annexure P3 is the receipt issued by the petitioner No.1 in this regard. From this, it can be inferred that the pole had fallen due to the negligence on the part of the official of the railway department. It was the duty of the officials of the railway department to maintain the poles of the railway gate. The accident could have been averted in case the respondents had done proper maintenance of the pole of the railway gate from time to time. Respondents are therefore, liable to pay compensation to the petitioners for accidental death of Smt. Santosh. Deceased, Smt. Santosh, was a house wife and was aged about 40-42 years at the time of accident. Petitioner No.1 is the husband of the deceased and petitioner Nos.2 to 4 are the children of the deceased and have thus, suffered a great loss due to her untimely death. Although Smt. Santosh was not a passenger yet she had died due to negligent act on the part of the railway department and as such, petitioners are entitled to receive compensation on account of her untimely death. As per

Rules 3 and 4 of the Railway Accident (Compensation Rules) 1990, in case of death of a passenger, Rs.4 lakhs is to be awarded as compensation. Applying the same analogy and keeping in view the facts of the case in mind, it would be just and fair to award Rs.4 lakhs as lump sum compensation to the petitioners on account of death of Smt. Santosh. All the petitioners shall share the amount of compensation equally. The respondents are directed to make payment of compensation within a period of three months from today.”

Keeping in view the enunciation of law in the aforesaid case and the facts of the present case, in my opinion, the petitioners herein also deserve to be compensated in the same terms, as the maximum cap fixed for awarding compensation in terms of the Rules is ₹ 4,00,000/-. The deceased being survived by petitioner No.1, a widow and petitioners No.2 and 3, two minor children, in my opinion, ₹ 2,00,000/- be paid to petitioner No.1, whereas ₹ 1,00,000/- each be deposited in Bank in the names of two minor children in FDR for the period carrying maximum rate of interest to finally mature, when they attain the age of 18 years. Thereafter, they shall be at liberty to deal with the amount of compensation.

The present writ petition stands disposed of accordingly.

(RAJESH BINDAL)
JUDGE

7.1.2016

sharmila

(Refer to Reporter)