

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8705 of 2014 (O&M)
Date of decision: 07.02.2017

Naresh Kumar and another

... Petitioners

Vs.

Union of India

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Deepak Gupta, Advocate
for the petitioners.

Mr. Amit Kumar, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present revision petition is directed against the impugned order dated 14.10.2014 (Annexure P-7) passed by the learned Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short 'Tribunal'), whereby the petitioners were directed to furnish the succession certificate for receiving the amount of compensation.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that as per the definition of dependent contained in Section 123 of the Railways Act, 1989, petitioner No.2, daughter of late Sh. Krishan Kumar, alone is entitled to receive the amount of compensation on account of death of her unmarried brother late Sh. Ramesh Kumar son of late Sh. Krishan Kumar. During pendency of the present revision petition, petitioner No.2, in compliance of the order dated 01.06.2016 passed by

this Court, filed a specific affidavit dated 10.10.2016 by way of CM No.23873-CII of 2016, which has been allowed today by a separate order.

In this affidavit, petitioner No.2 has deposed as under: -

“....That the deponent is an unmarried sister of the deceased (Ramesh Kumar) and unmarried daughter of Original Claimant (Krishan Kumar). The deponent is only unmarried daughter of the original claimant (Krishan Kumar) and only dependent unmarried sister of the deceased (Ramesh Kumar) and falls under the definition of the dependent as defined under Section 123 (b) (ii) of the Railways Act, 1989. The deponent is only unmarried daughter of Sh. Krishan Kumar (Original Claimant). Except the deponent there is no other dependent unmarried sister of the deceased brother (Ramesh Kumar) and unmarried daughter of Original Claimant (Krishan Kumar). Section 123 (b) (ii) of the Railways Act, 1989 is as under:

“123. Definitions.- In this chapter, unless the context otherwise require, -

*(a)******

(b)“dependent” means any other following relatives of a deceased passenger, namely:—

- (i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;*
- (ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor*

child of a predeceased son, if dependent wholly or partly on the deceased passenger;

(iii) a minor child of a predeceased daughter, if wholly dependent on the deceased passenger;

(iv) the paternal grandparent wholly dependent on the deceased passenger.”

Neither the abovesaid contents of the affidavit filed by petitioner No.2 have been denied, at the hands of the respondent nor any reply to the abovesaid application has been filed. Placing reliance on a judgment of the Hon'ble Supreme Court in **Smt. Rukhsana and others Vs. Smt. Nazrunnisa and another, 2000 (9) SCC 240**, learned counsel for the petitioners submits that there was no requirement of succession certificate for the purpose of receiving the amount of compensation and the learned Tribunal acted without jurisdiction, while passing the impugned order.

Faced with the above, learned counsel for the respondent had no answer and rightly so, it being a matter of record. Despite making his best efforts, learned counsel for the respondent could not dispute the entitlement of petitioner No.2 alone, to receive the amount of compensation on account of death of her unmarried brother late Sh. Ramesh Kumar son of late Sh. Krishan Kumar. In fact, learned counsel for the petitioner has been found fully justified in placing reliance on the judgment of the Hon'ble Supreme Court in **Rukhsana's case (supra)**, which squarely covers the matter in favour of the petitioners.

In view of the abovesaid undisputed facts and circumstances of the case, this Court is of the considered opinion that the impugned order is an order

without jurisdiction and the same cannot be sustained. It is so said because there was no requirement of law directing the petitioners to produce a succession certificate, in view of the law laid down by the Hon'ble Supreme Court in **Rukhsana's** case (supra).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, the impugned order is hereby set aside. Instant revision petition deserves to be accepted and it is allowed.

Consequently, learned Tribunal is directed to get the amount of compensation released in favour of Ms. Nitu daughter of late Sh. Krishan Kumar, without insisting for production of succession certificate. Let the amount of compensation, on account of death of late Sh. Ramesh Kumar-unmarried brother of Ms. Nitu, daughter of late Sh. Krishan Kumar, be released in favour of Ms. Nitu alone, at an early date and in any case within a period of one month from the date of receipt of certified copy of this order.

Resultantly, with the abovesaid observations made and directions issued, present revision petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

07.02.2017
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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No