

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 10156 of 2013

Date of Decision: March 7, 2017

Shakuntala and ors.

.....Petitioners

Vs.

UOI and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Brijender Kaushik, Advocate
for the petitioners.

Mr.Nitin Kumar, Advocate for the respondents.

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M.M.S. BEDI, J.

Petitioners are heirs of Dhian Singh who was working as ASI with Government Railway Police, Haryana and died while being hit by electric train while inspecting the case of dead body lying on the track between Kalanaur-Jagadhri upline on KM No.206/23-25. The petitioners seek issuance of a writ in the nature of mandamus directing the respondents for providing compensation on account of death of Dhian Singh in railway accident while on duty on March 2, 2010.

The petitioners have claimed that an information had been received in the Police Station GRP, Jagadhri that a dead body was lying on the track between Kalanaur-Jagadhri upline. Dhian Singh, Assistant Sub Inspector was deputed to go for inspection and to conduct the proceedings as per law. He had, along with other police officials, namely, EASI Shish Pal, and EASI Om Parkash had reached the spot of accident and started conducting the proceedings. Meanwhile, Shalimar Express came from Saharanpur side and Dhian Singh came to the other track but immediately another electric train came from the other side and he was struck in between. The place of accident was a turn and both the sides are not visible and thus it was mandatory for every train coming at this place to blow horn. But the electric train did not do so as such Dhian Singh was hit by the electric train and he suffered grievous and fatal injuries and died on the spot. Petitioners claimed that he was the only bread earner of the family and on account of untimely death, the petitioners have suffered a lot. Despite the petitioners having been promised compensation for the loss due to the negligence of the railway department in death of Dhian Singh while performing his duties but despite number of representations nothing was paid. A legal notice was sent on October 13, 2010, annexure P-1 but to no avail.

The respondents admit their negligence and vide order dated December 21, 2010, directed the petitioners to approach the Railway Claims Tribunal under the Railways Act for compensation on account of death of Dhian Singh. Copy of the said letter has been placed on record as annexure

P-2. The petitioners misguided by the reply of the respondents filed claim petition on February 21, 2011 before Railway Claims Tribunal vide application under Section 16 of the Railway Claims Tribunal Act, 1987 read with Rules 3 and 4 of the Railway Accidents and Untoward Accidents (Compensation) Rules, 1990, for grant of compensation on account of death of said Dhian Singh. The Tribunal vide order dated February 3, 2012 held that Tribunal had no jurisdiction as such the petitioners had no alternative but to withdraw the petition and approach this Court for compensation. Copy of the order passed by the Tribunal has been appended with the petition as annexure P-4.

The claim of the petitioners has been opposed by the respondents by raising a preliminary objection that since deceased Dhian Singh was an ASI with Government Railway Police and was not an employees of the Railways, the Government of Haryana which is the appointing authority of Government Railway Police, wa duly liable to grant compensation, if any. It is pleaded that State of Haryana was a necessary party and that the Railways have nothing to do with the present matter nor the Railways is a proper party. It has been pleaded that the petitioners have not approached the Court with clean hands. They have misrepresented the vital facts that Railways was negligent as at the place of accident there was a turn and both the sides are not visible and that it was mandatory for every train coming at that place to blow horn and on account of such negligence, the deceased was hit by the electric train resulting in his death. It is claimed

that there was no negligence of the Railways. Such plea had not been taken in the claim petition, annexure P-3 filed by the petitioners before the Railway Claims Tribunal nor there was any such averment in the legal notice. It is claimed that an inquiry was conducted regarding the accident and a report dated September 8, 2011 was submitted in which it was held that the deceased was conducting the inquiry but on account of approaching train on the upline, he went on the down line and as he was crossing the down line, he was hit by E/Chg Rake and became a victim of the accident, therefore, he had died on account of own negligence while crossing the line and became a victim of the accident. The writ petition has been filed after withdrawing the claim before the Railway Claims Tribunal after a delay of more than one year as such the petition is liable to be dismissed on account of delay and laches. The claim of the petitioners that there was a turn at the spot of the accident and the oncoming trains were not visible is a mere concoction. The negligence on the part of the respondents has also been denied in the written statement.

Counsel for the petitioners has submitted that it is a clear case of negligence of the railways authorities where an employee of the Government Railway Police while conducting an inquiry into the death on railway track went on another track on account of arrival of a train and was killed. The railway department should have stopped the trains on the spot as inquiry was being conducted on a dead body of unknown person. Neither any precaution was taken to stop the up and down trains nor any instructions

were passed to stop the train as a result of which Dhian Singh could not save himself from electric train which was coming on the track at high speed which hit him resulting in his death.

On the other hand, counsel for the respondents has submitted that the accident does not fall within the ambit of Section 123 (c) or Section 124 A of the Railways Act which provide compensation subject to the conditions that the accident was untoward incident and should be during the course of working railway and person involved must be a bonafide passenger. It is argued on behalf of the railways that untoward incident is defined in Section 123 (c) of the Railways Act which reads as follows:-

“123 (c) "untoward incident" means- (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ; or (ii) the making of a violent attack or the commission of robbery or dacoity; or (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or (2) the accidental falling of any passenger from a train carrying passengers.”

As such the incident being neither an untoward incident nor pertaining to bonafide passenger, there is no liability of the railways to provide compensation.

Counsel for the respondents relied upon the judgment of **Puran Devi and others Vs. Union of India and another**, FAO No 6019 of 2011, decided on August 5, 2016.

I have heard counsel for the petitioners as well as counsel for the respondents and carefully gone through the facts and circumstances of this case. The ratio of the judgment cited by counsel for the respondents is absolutely not applicable to the facts of the present case. No doubt the deceased was not a railway passenger. The short question which is required to be determined in the present case is, whether he had died no account of apparent negligence of the railway Department.

It is not disputed that Dhian Singh was working as ASI with Government Railway Police, Haryana and he was present on the spot in concern with the inquiry/ investigation of a dead body which was lying on the railway track. The railway track is supposed to be always busy as the trains as per the schedule are to run on the tracks but at the same time, if an incident or accident takes place on the track, it is the foremost duty of the authorities of the railway Department to ensure that the incident is inquired into as per the Rules and in case any cognizable offence is made out, to see that the criminal proceedings are launched. A prudent man can expect that when any incident takes place, the traffic on the railway line would be halted

for a short duration especially when the information is available and the matter is being looked into by the competent officials under law. As the incident had taken place on the Kalanaur- Jagadhri up-line KM 206/23-25 and police officials were required for investigation to remove the dead body from the track, the Station Superintendent Railway Station, Jagadhri (NR) had the information of the dead body lying on the track, it was the duty of the Station Superintendent, Railway Station to ensure that during the course of inspection of the dead body on the track, the scheduled train i.e. Shalimar Express which came from Saharanpur side should have been ordered to be stopped. The similar duty was expected regarding the electric train which was coming on the adjacent track. The basic principle of determining negligence is to see whether an authority owed a duty towards the others; whether there is a breach of duty; and whether the breach of duty has resulted in the loss caused to the victim.

As discussed above, there is an obligation on the part of the railway authorities and the concerned Station Superintendent, Jagadhri (NR) to ensure the safety of the investigating team by issuing instructions for slowing down or stopping of the train with simultaneous instructions to the signal staff. As no step was taken to stop the traffic on the railway track, it is a clear cut case of negligence on the part of employees for which the railways Department will be vicariously liable. The petitioners have suffered loss on account of said breach of obligation as such they would be entitled to compensation on the principles of law of torts. Since the death

has been caused on account of negligence of the respondents as per Schedule 3, a sum of Rs.4 lacs was liable to be awarded as compensation to the petitioners on account of death of Dhian Singh. The accident in the present case could have been averted in case the respondents had ensured the stoppage of Shalimar express on the track where the dead body had been spotted. No doubt the deceased was not a passenger but he had died on account of the negligent act on the part of the railways Department as such petitioner would be entitled to receive compensation on account of his untimely death. As per Rules 3 and 4 of the Railway Accident (Compensation) Rules, 1990 in case of death of a passenger, the sum of Rs.4 lacs is to be awarded as compensation. Drawing the analogy and in view of the above discussion pertaining to the established negligence of the respondents, it would be just and fair and in the interest of justice to award sum of Rs.4 lacs as lumpsum compensation to the petitioners on account of death of Dhian Singh. In case, the amount has been enhanced by the notification, the petitioners will be entitled to the said statutory benefit also. The amount shall be shared by the petitioners equally. The respondents are directed to make the payment of compensation within a period of one month after the receipt of a certified copy of the order.

Allowed in the aforesaid terms.

March 7, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.