

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

**FAO No.2949 of 2008 (O&M)
Date of Decision:05.07.2018**

Nirmal Kanta and others

...Appellants

Versus

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Paul S. Saini, Advocate
for the appellants.

Mr. Yogesh Saini, Advocate
for the respondent-UOI.

G.S. SANDHAWALIA, J. (ORAL)

The present appeal under Section 23 of the Railways Claims Tribunal Act, 1987 (in short 1987 Act) has been filed against the order dated 28.03.2008 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as Tribunal). The claim of the appellants who are wife and sons of the deceased Ramesh Chander has been denied by the Tribunal on the ground by disbelieving the story of the son of the deceased that he was traveling along with deceased and untoward incident happened. The issue of the loss of first tickets and cash which was alleged did not inspire confidence as per the opinion of the Tribunal since the son should have taken care of the cash.

In spite of statement recorded by the railway police Ex.A2 wherein the presence of Hari Om son of the deceased was recorded, it was held that when the train reached at Sadar Bazar, Railway Station, Delhi the deceased had jumped from the moving train at platform No.3

and his both legs were crushed. On account of no foul play the recommendation was accepted by the Commissioner of Police and the SDM also concurred and therefore, without any basis, the Tribunal has come to the conclusion that the deceased was not having a valid ticket for the alleged journey and he had jumped from the moving train at Sadar Bazar railway station where the train was not having a scheduled stoppage. Therefore, it has been held that the deceased was not a bona fide passenger and claim could not be covered by the untoward incident as defined under Section 123 (c) (2) of the Railways Act, 1989 (in short 1989 Act). The factum of the appellants claimants being dependants of the deceased stands decided in their favour under issue No.3.

The reason as such which has been adopted by the Tribunal cannot be justified in any manner. The specific case as per the claim petition by the appellants under Section 124-A of the 1989 Act is that deceased along with his son Hari Om had purchased two tickets at the railway station, Karnal and boarded train No.1078 Jehlum Express which made its departure from railway station Karnal to New Delhi on 26.07.2002. That due to heavy rush at Sadar Bazar railway station, Delhi the deceased Ramesh Chander had fallen down and suffered grievous and multiple injuries having been crushed under the train and was taken to Lok Nayak Jai Parkash Hospital and remained admitted and succumbed to the injuries. The dead body had been handed over in Delhi to his son himself. The averments have been made that ticket, purse and some cash was misplaced in the accident. The defence of the railways was that no untoward incident had taken place and the deceased was not a passenger of the train. He had suffered injuries due to his own negligent act and

deceased did not fall down from the moving train. The enquiry by the police was pending and respondent was reserving his right to file amended written statement.

The sole eyewitness Hari Om was examined as AW1 who stood by the claim petition and specifically averred that there was rush in the train and both father and son were standing in the corridor. On account of pushing and jostling by the passengers when the train arrived at Sadar Bazar, railway station his father had fallen down and his legs were entangled in the platform and his clothes had got torn. It was further averred that his money, tickets, papers and everything had got lost and he had pulled the chain at that time and the train had stopped. He and other passengers got down from the train and helped his father and put him in a rickshaw and took him to Lok Nayak Jai Prakash Hospital, Delhi where he had expired.

Resultantly, due to the stop of the train, the police had also come and noted down his statement. The body had been handed over after post mortem and after taking his signatures proceedings under Section 174 Cr.P.C. had been conducted. In cross-examination, it further came on record that his father had purchased and kept with himself both the tickets which were for the general compartment and not for reserved class. He used to travel to New Delhi in connection with the selling of locks and knives and they could not get the seats and, therefore, were standing in the train. There was a scheduled stoppage for New Delhi railway station and not at Sadar Bazar railway station and there was no stoppage as such at the Sadar Bazar railway station. He denied the suggestion that his father had tried to alight from the moving train at

Sadar Bazar. The statement of the wife of the deceased was also got recorded but her discussion is not necessary as such she was not eyewitness.

It is pertinent to notice that railway as such has not bothered to examine any witness to rebut the claim and the onus of untoward incident has been validly proved by the claimant eyewitness himself. The onus had shifted upon the railways now and in the absence of any such contrary evidence, the findings which have been recorded by the Tribunal cannot be justified in any manner. The presence of the son has been discounted unnecessarily which is specifically proved from the fact that in the inquest proceedings conducted at 02:10 PM, his name was mentioned by the ASI of Delhi Police who had forwarded the said proceedings by noting that the incident had taken place at Sadar Bazar railway station which would go on to show that in the proceedings on 26.07.2002 at 02:10 P.M. the presence of the son had been noted. The death summary Ex.A3 also would go on to show that the death took place at 01:10 PM in the said hospital and the cause of death was train accident. Ex.A4 shows that the time of admission of the said deceased is at 11:35 AM and the hospital report Ex.A4 (Death summary) shows that railway accident happened 2 hours back and there was crushing of both legs under the train. The death certificate Ex.A5 also contained the signature of the son Hari Om which shows that death happened at 01:15 PM due to hypovolemic shock (haemorrhagic). The body was handed over to the son after post mortem also on the same date as per Ex.A6.

The pleadings and evidence that the son was present is corroborated by the record, therefore, the Tribunal's finding on the issue

Nos.1 and 2 cannot be sustained in any manner being contrary to the police proceeding conducted at the spot and accordingly, are reversed.

It is to be noticed that purchase of tickets had been done at 08:15 AM and the statement also recorded by the Tribunal that he boarded the train at 08:15 AM and the incident took place at 10:00 AM. The deceased and his son were on the train for a period of more than 2 hours and therefore, the presumption as such would arise that they had valid tickets as such and were passengers as defined under Section 2 (29) of the 1989 Act. The deceased passenger having got his legs crushed which were amputated would have in all probability would have lost his purse and belongings due to his pants being torn and loss of the tickets in the melee is but possible.

Section 124(A) has been held by the Apex Court to be in the form of beneficial legislation whereby an amount is due under Section 124-A if the case does not come to fall under the exceptions and nothing has come on record as such that the present case as such would fall in such exceptions. Therefore, it is necessarily to be held that the deceased was travelling with a valid ticket for the last two hours on a inter state journey before he became a victim of untoward incident as defined under Section 123(c)(2) and therefore, is entitled for compensation as per the schedule under the Railway Accident and Untoward Incidents (Compensation) Rules, 1990.

The issue of untoward incident, as defined under Section 123(c) of the Railways Act, 1989, was subject matter of consideration before the Apex Court in **Union of India Vs. Prabhakaran Vijaya Kumar & others 2008 (9) SCC 527**, wherein it has been held that the

provision for compensation by the Railways is a beneficial piece of legislation and it should receive a liberal and wider interpretation and not a narrow and technical one. Keeping in view the explanation provided under Section 123(c), regarding the accidental falling of any passenger from the train carrying passengers, it was held that it would also include a person who is trying to enter the railway train and falls down during the process. A restrictive and narrow meaning could not be given, as such, as it would deprive a large number of victims of train accidents, particularly poor and middle class people, from getting compensation.

Similarly, the definition under Section 2(29) was kept into consideration as to the right to claim compensation qua a passenger who had a valid pass or ticket and the exception provided under Section 124-A. Resultantly, it was held that it was in a form of a no fault liability and it was to be applied irrespective of the fault, as such, as long it did not fall within the proviso which were the exceptions provided. The exceptions, it is to be noticed, whereby no compensation is to be paid by the Railway administration is if the passenger dies or suffers injury due to suicide or attempted suicide by him; self-inflicted injury; his own criminal act; any act committed by him in a state of intoxication or insanity and natural cause of deceased was medical and surgical treatment unless such treatment became necessary due to the injury caused by the untoward incident. Relevant portion of the judgment reads as under:

“11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it

includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the [Railways Act](#) is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide [Kunal Singh vs. Union of India](#) (2003) 4 SCC 524(para 9), [B. D. Shetty vs. CEAT Ltd.](#) (2002) 1 SCC 193 (para 12), [Transport Corporation of India vs. ESI Corporation](#) (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide [Alembic Chemical Works Co. Ltd. vs. The Workmen](#) AIR 1961 SC 647(para 7), [Jeewanlal Ltd. vs. Appellate Authority](#) AIR 1984 SC 1842 (para 11), [Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd.](#) AIR 1981 SC 852 (para 13), [S. M. Nilajkar vs. Telecom Distt. Manager](#) (2003) 4 SCC 27 (para 12) etc.

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14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in [Section 123\(c\)](#) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the [Railways Act](#). Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a

bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

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16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to [Section 124A](#). Hence, in our opinion, the present case is clearly covered by the main body of [Section 124A](#) of the Railways Act, and not its proviso.

17. [Section 124A](#) lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of [Section 124A](#) it is wholly irrelevant as to who was at fault.”

In ***Jameela & others Vs. Union of India 2010 (12) SCC***

443, the aspect of negligence was again considered and it was noticed that where a person falls from a train's berth with a valid ticket, he would be passenger as defined under Section 124-A. The deceased in the said case was standing in the open door of the compartment and had fallen down and it had been held by the High Court that it was his negligence, as such. It was, accordingly, noticed that there was no eye-witness to the fall of the deceased and therefore, the suggestion that there was negligence, was not tenable and even otherwise, it was held that under the proviso, standing at a open door of the compartment may be a negligent or rash act but it was not a criminal act on the basis of which the claim could be denied. Relevant portion read as under:

“7. It is not denied by the Railway that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a "passenger" for the purpose of [section 124A](#) as clarified by the Explanation. It is now to be

seen, that under [section 124A](#) the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. But the proviso to the section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).

8. Coming back to the case in hand, it is not the case of the Railway that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124 A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.”

In CA-4945-2018 titled ***Union of India Vs. Rina Devi***, decided on 09.05.2018, four issues arose before the Apex Court, which are as under:

“15. We now proceed to deal with the following issues seriatim:

(i) Whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order

awarding compensation;

(ii) Whether principle of strict liability applies;

(iii) Whether presence of a body near the railway track is enough to maintain a claim.

(iv) Rate of interest.”

Resultantly, it was held that the date of accident was the relevant date and the legislation was a beneficial legislation and the amount due was to be given with reasonable interest. Similarly, the issue of rate of interest was also held to be @ 6% per annum, as per the Motor Vehicles Act, 1988. Relevant portions read as under:

“15.3 xxxx xxxx xxxx

We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of [Workmen Compensation Act](#) can certainly be applied and judgment of 4-Judge Bench in Pratap Narain Singh Deo (supra) will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation.

15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of

the award of the Prabhakaran Vijaya Kumar (supra) Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

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18. As already observed, though this Court in Thazhathe Purayil Sarabi (supra) held that rate of interest has to be at the rate of 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi (supra), rate of interest has to be reasonable rate at par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises upto the date of payment, without any difference in the stages. Legal position in this regard is at par with the cases of accident claims under the [Motor Vehicles Act](#), 1988. Conflicting views stand resolved in this manner.

The appeal will stand disposed of accordingly.”

Similarly, on the second issue of strict liability, it was held that the claim was liable to be paid on the basis of a no fault liability and the Railways could not, as such, take a plea of negligence. Relevant portion reads as under:

“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 judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar laying down that 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 de-boarding 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.”

On the issue of the body being found on the Railway track or being a passenger or not to be covered under Section 2(29), it was held that mere absence of ticket would not negative the claim and the burden was upon the claimants and the onus would shift to the Railways, on filing of the affidavit and the issue is to be decided on the basis of the attending facts. Relevant portion reads as under:

“17.4 We thus hold 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.”

Accordingly, the appellants are held entitled for the sum of

Rs.4,00,000/- from the date of accident i.e. 26.07.2002 alongwith interest @ 6% in view of the judgment of the Apex Court passed in **Civil Appeal No.4945 of 2018 titled as Union of India Vs. Rina Devi**, decided on 09.05.2018.

Appeal is allowed accordingly.

05.07.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No