

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

**CWP No. 2185 of 2014  
DATE OF DECISION : 07.12.2018**

**Meera Devi and others**

**...Petitioners**

**versus**

**Union of India and others**

**...Respondents**

**CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Pankaj Midha, Advocate,  
for the petitioners.

Ms. Abha Rathore, Advocate,  
for respondent No.3.

None for respondents No.1, 2 and 4.

**ARUN MONGA, J.**

1. Budhai Shah-the sole bread earner of the petitioners' family, who worked as labourer in a factory and also used to pull rickshaw in his remaining time, was hit eight years ago by a speeding train while going across an unmanned railway crossing. Such was the impact of collision that he succumbed to his injuries on the spot. Apathy, utter lack of humanity, sensitivity, cavalier and callous approach of the respondents, in negating the claim of compensation to the unfortunate widow and four minor children (three daughters and a son) of deceased, is writ large in the present case. As already stated, Budhai Shah was the sole bread earner of his family, and the denial of compensation

compounded the agony of entire family by making them victims of destitution, misery and hunger.

2. Succinctly, facts of the case are that on 19.12.2010 at about 2.25 PM, the deceased was plying his rickshaw. While he was going across the unmanned railway crossing at gate No. C-7, Railway Station Phagwara/Mandali, a very high speed train No.3 JRJUP, without blowing any horn, hit the deceased. Due to the forceful impact of the accident, he was thrown away and suffered fatal injuries on his head, face, chest, leg, neck and other parts of the body, resulting in instant death.

3. In this regard, an inquest report No.318 dated 19.12.2010 (Annexure P-2) was prepared by Government Railway Police, Jalandhar. Postmortem of the deceased was also conducted. The petitioners have also placed on record the photographs of scene of accident as Annexures P-4 and P-5.

4. It is stated in the petition that no fence/gate/bar was installed by the railways on the crossing and no man was either deployed to warn the people about coming and going of trains. The petitioners have also stated that neither any sign board was installed, nor there was any temporary chain installed at the crossing to stop any person from crossing the unmanned railway crossing and thus, the deceased died owing to the negligence of railways.

5. Even though under the Railways Act, 1989, it is the duty of the State to provide compensation to the railway victims,

but the petitioners were denied the same compelling them to cause legal notice dated 01.09.2011 (Annexure P-6) to respondents No.2 to 4, but no heed was paid thereto.

6. In the circumstances, the petitioners were compelled to file an earlier writ petition before this Court bearing CWP No. 10504 of 2012, which was disposed of vide order dated 29.05.2012, directing the respondents to consider and decide the legal notice of petitioners. This Court had given a clear direction to the respondents to consider the legal notice and decide the same in accordance with law, as expeditiously as possible.

7. However, the respondents did not bother to decide the claim of petitioners and ignored the said direction of this Court. The petitioners, therefore, once again caused another legal notice dated 24.01.2013 (Annexure P-8) requesting the respondents to decide the compensation, to be granted to the petitioners, keeping in view their pathetic living conditions, but to no avail.

8. In the circumstances, the petitioners were yet again compelled to approach this Court. They filed a second writ petition bearing CWP No. 11765 of 2013, which was disposed of vide order dated 27.05.2013 (Annexure P-9), directing the respondents to consider and decide the legal notice dated 24.01.2013 (Annexure P-8), within 30 days, on receipt of the certified copy of the order.

9. Pursuant to the order dated 27.05.2013 passed by this Court, the respondents, instead of themselves passing any order,

through their counsel, sent a reply dated 15.07.2013 (Annexure P-10) to the legal notice. Whereby, claim of the petitioners for grant of compensation was totally denied. Ground of denial was that the accident took place owing to the sole negligence of deceased. Respondents averred that victim might have been in a hurry to reach his destination, while plying the rickshaw and in the process, was run over by a train. It is also stated in the reply to legal notice that since the deceased was not a passenger in the offending train, therefore, the claim is not covered under the Act. It was also stated that crossing of an unmanned railway gate, negligently, is an offence as per the Railway Act. Accordingly, legal heirs of the deceased were disentitled to any compensation.

10. Hence, the third writ petition before this Court, seeking compensation, by the legal heirs of the deceased.

11. In the written statement filed by the respondents, a stand similar the one as in reply to legal notice, has been taken. Coupled with the assertion, that driver of the train was continuously blowing the horn, but despite that, the deceased rickshaw puller did not stop. It is also stated that crossing of an unmanned railway crossing is an offence under Section 161 of the Railways Act. Therefore, no compensation is payable in present case.

12. I have gone through the pleadings and the annexures appended thereto and have heard the rival contentions of learned counsels for the parties in support of their pleadings.

13. As per the inquest report submitted by the Station House Officer, Government Railway Police Station, Jalandhar, cause of death of deceased is due to railway accident and even the Postmortem report records the same. The report also records that the death of deceased was caused by head and chest injury, fractures, dislocation and also deformity of the body.

14. I have also perused the enquiry report of the accident, conducted under Section 124-A of the Railways Act. Wherein, statement of the driver of train has been recorded. He has candidly admitted that at the time of accident, the conditions were foggy when the deceased rickshaw puller was trying to cross the railway crossing, while he was blowing horn. He also stated that he applied emergency brakes of the train. But before train came to halt, the deceased had already been hit. As he got off the train, the deceased had already died at the spot itself.

15. Though by implication, but the factual position is, that at the time of accident, the deceased rickshaw puller could not or did not see the train owing to foggy conditions of the weather.

16. In such circumstances, I am unable to agree to or accept the finding as recorded in Railway Enquiry Report dated 25.04.2013 (Annexure R-1) stating that the Railway Administration is not at fault. The finding that deceased died due to his own mistake, after being hit by a train, while he was crossing the unmanned railway crossing without looking on both the sides, is perverse, to say the least.

17. Regardless of the tort, which, even if it is assumed, was committed by the victim, the claim of compensation to the legal heirs could not have been negated due to non-compliance of statutory obligation of the Railway. It is the statutory duty on the part of Railway Administration to provide sufficient safeguards at the level railway crossings, by putting railway gates and keeping it closed at the time when train is to be passed. The negligence, in fact, is ex facie attributable to the respondent-railways as would be borne out of Section 18 of the Railways Act, which is reproduced herein below for ready reference :

“18. Fences, Gates and Bars.

The Central Government may within such time as may be specified by it or within such further time, as it may grant, require that :

(i) boundary marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection herewith :

(ii) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at level crossings.

(iii) persons be employed by a railway administration to open and shut gates, chains or bars.”

18. It is not disputed that it was 14:25 hours when Budhai Shah was pulling his pedal rickshaw across the unmanned

Railway crossing and was run over in broad day by a speeding train. The very fact that the Railway level crossing situated in the populated area was unguarded and unmanned at that time of the day, when people are most likely to cross the same, is clear indicator of the gross negligence of the respondents. Record negates the contention of the learned counsel for respondents that the deceased himself failed to look on both sides of the Railway track or that he himself was negligent or that his negligence had resulted in the accident. It is in the own statement of the concerned train driver that the weather was foggy at the relevant time. It is highly improbable and against normal human nature that the deceased would have neglected to look on both sides of the railway track. It is obvious that he could not have seen the train due to foggy weather and reduced visibility. In such situation, it is difficult to accept the contention of the respondents, as canvassed by their learned counsel, that the accident was caused due to the negligence of the deceased.

19. In **Anil Kumar Gupta v. Union of India & Others Writ Petition No. 68 of 2011** reported as **2016 (14) SCC 657**, it was noticed that requests were made by the Railway and Civil officials to get the roof riders to come down from the roof and announcements were made in that behalf but the roof riders had refused to come down and that due to the exigencies of the situation, movement of the train was necessary. Still, the Hon'ble Supreme Court did not agree to the conclusion in the inquiry

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report that the Railway Administration was not responsible for the accident observing that the Railway administration alone would be in a position to know about the existence of infringements with regard to certain structures and what could be possible implications if the train were to run at a great speed with large number of people on roof top. It was held that though the people who travelled on the roof top also contributed to the mishap, the Railway administration was not free from blame and compensation was awarded to the next of kin of the deceased victims and to those who were injured in the accident. The relevant of the Supreme Court judgment, *ibid*, is extracted herein below :

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“ In the backdrop of the aforesaid precedents, in our view, it must be expected of the persons concerned to be aware of the inherent danger in allowing the train to run with such speed having large number of persons travelling on roof top. Though the people who travelled on roof top also contributed to the mishap, the Railway Administration, in our view, was not free from blame. Concluding so, we direct that the next of kin of those who died in the incident and those who sustained injuries must be duly compensated by the Railway Administration.”

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20. I am of the opinion that petitioners have a much stronger case to show the negligence of the respondents. The same is obvious from the facts and circumstances on record. The respondents had left the Railway level crossing in the populated

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area wholly unmanned and unguarded. It was during day time, when there is bound to be considerable activity and movement for crossing the Railway track. The respondents, thus, endangered the life and safety of the people. Weather was foggy. In such situation, while passing along the unmanned and unguarded Railway level crossing during day time, it was all the more necessary and incumbent upon the train driver to reduce its speed, take extra caution and look around very carefully, to avoid any mishap. Had the train driver been fully alive to the situation and exercised some alacrity, most likely the life of deceased would have been saved.

21. To me, the probability of negligence or say the lack of sufficient and proper care and vigilance on the part of the train driver seems greater contribution for causing the accident than that of the negligence of the deceased victim of the accident. I am, therefore, unable to accept the contention that the accident was the result of the negligence of the deceased rickshaw puller or that it was a case of contributory negligence on his part.

22. On the quantum of compensation, learned counsel for the petitioners has contended that the same is to be determined by applying the principles laid down and the formula prescribed under Section 163-A read with the Second Schedule of the Motor Vehicles Act, 1988 . No statutory provision or case law for a contrary view has been brought to the notice of the Court by the learned counsel for respondents. On the face of it, the contention

of the learned counsel for the petitioners in this behalf seems fair and reasonable and I see no reason to take a different view.

23. The issue of determination of the quantum of compensation under the Motor Vehicles Act to the victims of the accident victims is no more res-integra. Addition of income for future prospects, deduction of personal and living expenses, selection of multiplier, various heads of compensation and the computation of compensation have been explained and settled by the Hon'ble Supreme Court of India in its judgments reported as **Sarla Verma and Others v. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 (SC), National Insurance Company Limited v. Pranay Sethi and Ors. 2007 (4) RCR (Civil) 1009 (SC) and Magma General Insurance Co. Ltd., v. Nanu Ram alias Chuhru Ram & Ors 2018(4) RCR 333.**

Relevant paras thereof, are reproduced hereunder:

**Sarla Verma and Others v. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 (SC)**

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21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to

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55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

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**National Insurance Company Limited v. Pranay Sethi and Ors. 2007 (4) RCR (Civil) 1009 (SC):**

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61. In view of the aforesaid analysis, we proceed to record our conclusions:-

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(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

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(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral

expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

**Magma General Insurance Co. Ltd., v. Nanu Ram alias Chuhru Ram & Ors 2018(4) RCR 333.**

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8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

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In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. 3 Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."4 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and 3 [Rajesh and Ors. vs. Rajbir Singh and Ors.](#) (2013) 9 SCC 54 4 BLACK'S LAW DICTIONARY (5<sup>th</sup> ed. 1979) family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

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The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

24. In the present case, Inquest report (Annexure P/2), death report Annexure P/2A), postmortem report (Annexure P/30) show that at the time of accident the deceased was aged 42. He was a labourer in JCT (Jagjit Cotton Textiles ) Mill, Phagwara. In his remaining time, he was doing the work of rickshaw puller to supplement his income. At the time of accident also, he was actually pulling his pedal rickshaw. Annexure P/1 is the statement of his salary account. It shows that his month wise salary payments, including shifts, in the factory from June, 2010 to November, 2010 were ₹4,475/-, ₹2,781/-, ₹2,738/-, ₹2,683/- ₹2,966/- and ₹2,892/- respectively. Taking the mean of the highest (₹4,475/-) and lowest (₹2,683/-) of these figures of monthly salary, I would deduct his monthly salary income to be ₹3,579/-, including the payments for extra shifts, in the factory.

25. Annexure P/1 also shows payment of ₹4,677/- as bonus. Assuming this bonus to be for the entire full year, the monthly amount of his bonus comes to ₹390/- . Thus, at the time of death, Budhai Shah was earning ₹3,969/- (₹3,579+₹390) from his employment in the factory. Besides, he was doing the work of rickshaw puller in remaining time, to supplement his income and feed the family. On a modest estimate, his monthly income by working as rickshaw puller may be taken at ₹3000/-. Thus, I take his total monthly income as ₹5,969/- . His family comprised of himself, his wife, three minor daughters and one minor son, who are the petitioners herein.

26. By applying the aforesaid principles and formula, the amount of compensation payable in the present case works out as under:

- (i) Monthly income ₹5,969/-
- (ii) Add 25% for future prospects: ₹1,492/-
- (iii) Total monthly income ₹7,461/- (i+ii)
- (iv) Deduct 25 % as personal expenses of the deceased: ₹1,865/-
- (v) Monthly dependency of the petitioners ₹5596/-
- (vi) Loss of dependency income by application of multiplier of 14:  $5,596 \times 12 \times 14 = ₹9,40,128/-$
- (vii) Loss of love and affection : ₹1,00,000/-
- (viii) Funeral expenses: Rs. 15,000/-
- (ix) Loss of estate: ₹15,000/-
- (x) Spousal consortium for petitioner No. 1 (widow) ₹1,00,000/-
- (xi) Filial consortium for four minor children (petitioners No. 2-5) ₹1,00,000/-
- (xii) Total ( vi to xi) Rs. 12,40,128/- rounded off to ₹12,40,200/-

27. The petitioners have claimed compensation of ₹10,00,000/-. Accordingly, I confine the amount of compensation to the same figure. The writ petition is thus allowed and the respondents are directed to pay an amount of ₹10,00,000/- to the petitioners as compensation for the death of Budhai Shah, with interest thereon @ 9% per annum from the date of accident till payment. The amount shall be apportioned amongst the petitioners as under:

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Petitioner No. 1 (widow) 40%  
Petitioner No. 2 (daughter) 15%  
Petitioner No. 3 (daughter) 15%  
Petitioner No. 4 (daughter) 15%  
Petitioner No. 5 (son) 15%

The petitioners shall also be entitled to cost of litigation for being forced to approach this Court multiple times. The litigation cost is assessed at ₹1,00,000/- and the respondents are directed to pay the same to the petitioners in the same proportion as the compensation, as apportioned above.

**(ARUN MONGA)**  
**JUDGE**

**DECEMBER 07, 2018**  
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable :        | Yes/No |