

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

Date of decision: 25.10.2018

FAO No.10102 of 2014 (O&M)

Smt. Roshni and another

... Appellants

Versus

Union of India

... Respondent

FAO No.10345 of 2014 (O&M)

Master Gaurav (minor) thr. Smt. Roshni

... Appellant

Versus

Union of India

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. S.K. Rana, Advocate
for the claimants.

Mr. Parveen C. Goyal, Advocate
for the respondent in FAO No.10345 of 2014.

Mr. Karamjit Verma, Advocate
for the respondent in FAO No.10102 of 2014.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.10102 and 10345 of 2014 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.10102 of 2014.

The present appeal directs challenge against award dated 14.07.2014 passed by the Railway Claims Tribunal, Chandigarh whereby

applications for grant of compensation on account of death of Sh. Ishwar and Smt. Roji, wife of Sh. Ishwar in an untoward incident have been dismissed.

In brief, case of the claimants is that on 21.07.2011, Mahavir with his wife Smt. Rani, Ishwar, brother of Mahavir and his wife Smt. Roji reached Tohana Railway Station to board passenger train No.54642 for going to Jind. There was rush of passengers at the railway platform. When the train reached at Tohana Railway Station and was blowing horn, due to this impact, Smt. Roji accidentally fell down from the platform to the track due to pull and push of passengers. Ishwar, her husband jumped to save her life. Ishwar died at the spot but Roji died later on 10.08.2011. The deceased were possessing a joint ticket bearing No.26764821 dated 21.07.2011 from Tohana to Jind.

The respondent filed reply controverting the averments raised in the claim application. It is averred that no untoward incident within the meaning of Section 123(c) of the Railway Act (in short 'the Act') causing death of Ishwar had taken place. Ishwar was not a passenger of the train at the relevant time much less a bonafide passenger. He jumped in front of engine of train 544642 DN at Railway Station Tohana while the train was entering the platform. It is denied that Ishwar along with his wife and other relatives was to travel from Tohana to Jind or Smt. Roji fell down accidentally due to push and pull of passengers as alleged. The driver of train No.544642 DN reported to SS on duty that one male and a lady

jumped in front of engine of the train while the train was entering platform No.2. No train ticket was recovered from personal search of the deceased. All other material averments of the application have been denied with a prayer for dismissal of the same with costs.

The appellant filed replication and reiterated her stand taken in the claim application.

The controversy between the parties led to framing of following issues:-

1. Whether the deceased was a bonafide passenger at the time of incident?
2. Whether the incident is covered within ambit of Section 123(c)(2) read with Section 124-A of the Railways Act?
3. Whether the applicant(s) is/are the sole dependents of the deceased in this case?
4. Relief.

The appellant appeared in the witness box and examined Mahavir AW2. She placed on record documents Ex.A1 to A15, referred to while dealing with the documentary and oral evidence led by the appellants/claimants.

The respondent examined Sh. Satyander Kumar RW1 and Rajinder Kumar RW2.

Having heard counsel for the parties in the light of materials on record, the Tribunal determined issue Nos.1 to 4 against the appellant and eventually the application for compensation was dismissed.

Counsel for the appellants would argue that Mahavir, his wife

Smt. Rani and deceased Ishwar and Smt. Roji had purchased a joint ticket bearing No.26764821 dated 21.07.2011 for their travel from Tohana to Jind when the unfortunate occurrence took place as Smt. Roji accidentally fell down from the platform to the track due to pull and push of passengers and effort by her husband Sh. Ishwar to save her life proved futile rather fatal. It is further argued that Sh. Mahavir appeared in the witness box and the ticket was produced in evidence. The witness was cross examined at length but nothing tangible and material has been elicited to discard or disbelieve his testimony much less to challenge his version with regard to joint ticket having been purchased. It is further argued that even if Smt. Roji had fallen down from the platform to the track before boarding the train or in the process of boarding the train, it cannot be said that the incident is not covered within ambit of Section 123(c) read with Section 124-A of the Act. In support of his contention, he has relied upon judgments of Delhi High Court **Mukesh Rani and others Vs. Union of India, 2017 ACJ 2432, Raj Bal and others Vs. Union of India, 2015 ACJ 1064 and Union of India Vs. Krishan Kumar Goel, (2012) ACJ 1129.** Reference has been made to judgment of Hon'ble the Supreme Court **Union of India Vs. Prabhakaran Vijaya Kumar and others, (2008) ACJ 1895** and this Court **Budho Devi and others Vs. Union of India, FAO No.5696 of 2009, decided on 01.05.2017.**

Another submission made by counsel is that Section 124 and 124-A of the Act provide that compensation is payable whether or not there

has been wrongful act, neglect or default on the part of railway administration in the case of an accident or an untoward incident. Only exceptions are those provided under proviso to Section 124-A. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Where strict principle applies, proof of negligence is not required. Further submitted that compensation is liable to be paid as provided on the date of award of the Tribunal vis a vis the date of accident if the same is higher than unrevised amount with interest. In support of his contention, he has heavily relied upon latest judgment of Hon'ble the Supreme Court **Union of India Vs. Rina Devi, 2018 AIR (SC) 2362.**

Counsel representing the respondent has supported findings of the Tribunal that the deceased was neither a bonafide passenger of the railway nor the occurrence falls within the expression 'accidental falling of a passenger from a train carrying passengers' under Section 123(c) of the Act. In addition, it is argued that as the deceased jumped in front of engine of passenger train No.544642 DN and they could not be saved despite reasonable care taken by driver of the train to stop, appellants are not entitle to compensation for suicidal death of Sh. Ishwar and Smt. Roji.

I have heard counsel for the parties, perused the paper book and records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to recapitulate that provision for compensation in the Act is a benevolent piece of legislation and beneficial or welfare

statutes should receive liberal and wider interpretation and not a narrow and technical one. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Alembic Chemical Works Co. Ltd. Vs. The Workmen, AIR 1961 SC 647** and **Prabhakaran Vijaya Kumar and others's case (supra)**.

The first question that invites consideration is whether the deceased was a bonafide passenger or otherwise. As per case of the appellants, the deceased along with three other members of the family had gone to Tohana Railway Station for boarding the train in question and they had purchased joint ticket bearing No.26764821. Mahavir, brother of the deceased who also had to travel from Tohana to Jind with victims of accident appeared in the witness box and tendered into evidence his duly sworn affidavit. In his testimony, he has deposed that at Railway Station, Tohana, he purchased joint ticket for four persons and they had gone to Railway Station, Tohana for boarding passenger train No.54642. He had further stated that original ticket bearing No.26764821 is enclosed with the claim application. The witness was cross examined by a representative of the respondent but there is no challenge to his testimony with regard to purchase of joint ticket for four persons and the original being appended with the claim application. He denied the suggestion that his brother and brother's wife suddenly jumped in front of engine of the train. As Mahavir was not cross examined with regard to purchase of joint ticket for four persons including the deceased, it is difficult to sustain findings of the

Tribunal that the deceased was not a bonafide passenger merely because he had not boarded the train or was not in the process of boarding the same. The Delhi High Court in **Mukesh Rani and others's case (supra)** has held that untoward incident shall cover the accidents suffered by a bonafide passenger in the railway premises. Deceased was holding a valid ticket at the time of accident. If a person is in a railway premises or in a train, he shall be taken as a passenger and his presence in the railway premises or train shall be taken as authorized. In this view of the matter, findings of the Tribunal on issue No.1 are erroneous and accordingly set aside. The issues is decided in favour of the claimants.

This brings the Court to the second aspect whether death of the deceased in the circumstances pleaded by the appellants amounts to an 'untoward incident'.

Section 123(a) defines accident means an accident of the nature described in Section 124. Under Section 123(c) of the Act, untoward incident means the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Act deals with compensation on account of untoward incident. A relevant extract therefrom reads as follows:-

“Compensation on account of untoward incident.]-
When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect

thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident :

Provided that no compensation shall be payable under the section by the railway administration if the passenger dies or suffers injury due to -

- (a) suicide or attempted suicide by him ;
- (b) self-inflicted injury ;
- (c) his own criminal act ;
- (d) any act committed by him in a state of intoxication or insanity ;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purposes of this section, “passenger” includes -

- (i) a railway servant on duty ;
- and (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

As per plea of the claimants/appellants, the deceased had fallen on the track in an effort to save his wife who suddenly fell down from the platform due to pull and push of passengers. Meaning thereby that the occurrence took place before the deceased could board the train or attempt to board the train. If this factual plea of the appellants is accepted and the case is examined in the light of judgments of Delhi High Court in **Mukesh Rani and others’s case (supra)**, **Krishan Kumar Goel's case (supra)** and

Raj Bal and others's case (supra), it is difficult to accept contention of the respondent or sustain findings of the Tribunal that the occurrence in question does not fall within the purview and ambit of Section 123(c) of the Act. Counsel for the respondent has failed to cite any contrary judgment.

There is another issue that needs consideration in view of defence plea that the deceased sustained injuries as he intentionally jumped in front of engine of passenger train when it was entering platform of Tohana Railway Station. Smt. Roshni, the claimant appeared in the witness box and reiterated her version. However, she was not present at the spot when the deceased sustained injuries. However, there is nothing brought forth in cross examination of Smt. Roshni that Ishwar and his wife Smt. Roji had any marital differences or he was suffering from any mental disorder or financial difficulty etc. for the deceased to take extreme step of jumping in front of a running train and to commit suicide.

Mahavir AW2 is stated to be one of the eye witnesses to the occurrence. A perusal of his cross examination would reveal that neither his testimony with regard to his being eye witness to the occurrence nor Smt. Roji having suddenly fell from the platform to the track and effort of Ishwar to save his wife, has been successfully challenged nor there is material to impeach his veracity/credibility. The witness was confronted with his previous statement made to the police that Smt. Roji was ill and she had fallen because of her having gone towards the track and got vertigo. Even if first version of Mahavir is accepted, the same does not

substantiate plea of the respondent that Smt. Roji jumped in front of running train with an attempt to commit suicide.

Counsel for the respondent has failed to point out any materials on record to establish its plea that the deceased had jumped in front of running train, therefore, the present case falls within exceptions provided under Section 124(A) of the Act. In this view of the matter, findings of the Tribunal on issue No.2 do not stand the test of judicial scrutiny. As such, findings on issue No.2 are set aside and the same is decided in favour of the claimants.

The application for compensation has been filed by Smt. Roshni, wife of Sh. Ram Kishan. She appeared in the witness box and tendered into evidence duly sworn affidavit by way of examination in chief. She has categorically deposed that Ishwar (since deceased), is her son and Smt. Roji, was wife of Ishwar.

Section 123(b) of the Act defines dependent. A relevant extract therefrom reads as follows:-

(b) “dependant” means any of the 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 pre-deceased son, if dependant wholly or partly on the deceased passenger;
- (iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;
- (iv) the paternal grandparent wholly dependant on the deceased passenger.

Smt. Roshni had denied the suggestion that her son Sh. Ishwar was not doing any work or she was not dependent upon Ishwar. Taking into consideration the definition of dependent coupled with that provisions of the Act are benevolent social legislation that needs liberal and wider interpretation, it is difficult to affirm findings of the Tribunal that claimant Roshni was not dependent upon the deceased or is not entitle to get compensation.

The claim for compensation qua death of Ishwar has been made by Smt. Roshni and Master Gaurav, alleged to be son of Ishwar and Smt. Roji. With regard to death of Smt. Roji, application for compensation has been filed only by Master Gaurav. To prove that Master Gaurav is the son of Ishwar and Smt. Roji, a copy of ration card Ex.A11 has been produced. The ration card has a photograph purported to be of Ishwar and Smt. Roji and there is one child in the picture. However, in the ration card, number of members of family of Ishwar are described as two and both are adults. In the details of members of family, there is name of Ishwar and Roji, aged 21 and 18 years respectively. Meaning thereby that the child in the photograph is not a member of family of Ishwar. No evidence has been adduced that Master Gaurav is the son of Ishwar and Roji. No date of birth of Master Gaurav has been stated. In the given scenario, it can safely be held that claimants have failed to adduce sufficient much less cogent evidence to establish that Master Gaurav is the son of Ishwar and Smt. Roji and entitle to get compensation for death of his parents.

For the foregoing reasons, FAO No.10102 of 2014 is partly allowed. Smt. Roshni is entitle to get compensation qua death of Ishwar, her son. In the light of judgment of Hon’ble the Supreme Court **Rina Devi's case (supra)**, she shall be entitle to a sum of Rs.4 lakh with interest @ 7.5% per annum from the date of application till realization or Rs.8 lakh, the revised amount available at the time of disposal of appeal, whichever is higher. However, FAO No.10345 of 2014 is dismissed, leaving the parties to bear their own costs.

25.10.2018

ashok

(REKHA MITTAL)
JUDGE

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