

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

FAO No. 1012 of 2014 (O & M)

Date of decision: 06.07.2018

Nirmala and another

....Appellant(s)

Versus

UOI

...Respondent(s)

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

Present: Mr. Upender Prashar, Advocate,
for the applicant-appellants.

Mr. R.S. Mamli, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3332-CI of 2014

Application for condonation of delay of 210 days in refiling the appeal is allowed, in view of the averments made in the application duly supported by affidavit of the counsel.

C.M. No. 3333-CI of 2014

Application has been filed for condonation of delay of 80 days in filing the appeal. The same has gone un-controverted.

Accordingly, the application is allowed, in view of the averments made in the application duly supported by affidavit.

FAO No. 1012 of 2014

The present appeal filed under Section 23 of the Railways Act, 1989 (in short 'the Act') is directed against the order dated 19.10.2012 passed by the Railways Claims Tribunal, Chandigarh Bench. The claimants are the wife and the son of the deceased namely Om Parkash. The claim has

been rejected by the Tribunal on the ground that the deceased was not a bona fide passenger at the time of the accident on 25.10.2009 and, therefore, the death was not covered under the ambit of an untoward incident as defined under Section 123(c)(2) of the Act. The reasoning given as such is that the statement made of the witnesses namely the son and the son-in-law that he had boarded the Dadar Express stood falsified in as much as the Dadar Express was late and had arrived much later after the untoward incident had taken place. The injuries suffered on the person of the deceased were also scrutinized to come to a conclusion that they could not have been on account of being hit by a train on the ground that if a person falls from a moving train, the body would generally roll over the ballasts and will not get stained with grease as it does not come in contact with the engine/train. The factum of staining of body parts with grease showed that the deceased might have been entangled with the engine/train or some part thereof. In the absence of a ticket as such not having been recovered from the deceased, the denial of the claim has, thus, been made though a finding has been recorded that he did died due to being hit/entangled with some unknown train, which is not an untoward incident as defined under the Act.

A perusal of the record would go on to show that it was the specific claim that the claimants who are residents of Rajasthan that they had come to Beas for the religious purpose on 24.10.2009 from their village. After attending the religious ceremony, the deceased, who was aged about 65 years, had asked his son-in-law that he also wanted to visit Golden Temple at Amritsar. On this, his son-in-law left him at Railway Station, Beas after purchasing a ticket for him for Amritsar and he had boarded the train at about 3.30 p.m. The claim was that he was a bona fide passenger

and was travelling on a second class general ticket which was lost during the accident. It was further mentioned that the post-mortem had been conducted at Medical College, Amritsar on 26.10.2009.

The railways had denied the untoward incident and the fact that he was a passenger of the train much less a bona fide passenger. It is denied that he had fallen down from a moving train but entangled with some moving train. The factum of the train number not having been mentioned at the time of the commencement of the journey was also a defence. The deceased had accidentally fallen down from the running train and received multiple injuries. It had further been averred that the GRP proceedings were of no consequence as on the same, no where described the said person to have been travelling in the train and did not disclose the occurrence of the untoward incident.

The evidence of AW-1 Daulat Ram, son of the deceased, would also go on to show that the affidavit was submitted as per the pleadings but the additional incorporation was that the father had boarded the Dadri Express. It was also mentioned that the brother Satish had come at Beas and they had gone to police station and when photos were shown of the father for identification, then they came to know that their father had expired. AW-1 Daulat Ram, in cross examination, submitted that on 27.10.2009, they had come to know about the said factum of the death and the identification had taken place from the photographs. It has also come on record that the deceased was also cremated after post mortem on 26.10.2009 by the authorities at Amritsar.

AW-2 Daya Nand also submitted his affidavit to the same extent and in cross examination, he submitted that he had bought the ticket

for Rs.20/- and his father-in-law had boarded the train. It was only on that account that when he did not reach back to Beas, they had started searching him.

It is not disputed that the body was found at 4.20 p.m. lying on the track on the UP line at KM No. 481/13 between the Railway Station, Bhutari and Tangra as per the proceedings which were conducted under Section 174 Cr.P.C. and the time of information regarding the death, which would be clear from Annexure A-2. On the personal search of the deceased, the name and address was not found and nothing was found and the memo was prepared. Accordingly, all the facts of the spot were recorded by ASI Kishori Lal on 25.10.2009 who also opined that the death of the deceased had happened due to the injuries sustained with railway train. The injuries also as such would go on to show that the skull was badly crushed. Right hand was broken from near the wrist and abrasions were on legs and feet. At the time of site inspection, many visiting persons and persons of adjoining village Matewal could not identify the dead body. Even in the post mortem, it has been recorded that the death was on account of the railway accident and the cause of death was due to laceration of brain, a vital organ, which was sufficient to cause death on the ordinary course of nature.

Even in the statement of Gulzar Singh Keyman, it has come on record that he had reached the track for routine checking and had seen the dead body outside the UP line and intimation was given to the Station Master regarding this aspect and a finding has been recorded by the Tribunal also. In the affidavit of Rajesh Kumar Verma (RW-1), who was working as a Station Master, Railway Station, Tangra, it has come that the

Delhi-Pathankot Express departed from Beas Railway Station at 15.05 hours and passed run through Railway Station, Bhutari at 15.15 hours and through the Railway Station, Tangra at 15.20 hours. Thereafter, the Jan Seva Express bearing No. 5209 departed from Beas at 17.25 hours and passed run through Railway Station, Bhutari at 17.35 hours and passed run through Railway Station Tangra at 17.39 hours. Similarly, Train No. 1057 Dadar-ASR Exp. was running late and had departed from Railway Station, Beas at 1.25 hours on 26.10.2009. Gulzar Singh Keyman had informed regarding the body which was lying outside the UP track.

The Tribunal has, thus, wrongly discarded the statement of AW-2 Daya Nand that the deceased had boarded the Dadar Express. The Beas-Amritsar track is the main line and as per the evidence of the Railways itself, two other trains i.e. Delhi-Pathankot Express and the Jan Seva Express had departed just 10 minutes apart around 3 o'clock. It is the case that the deceased had boarded in the after noon and, therefore, merely because the witness has stated that it was the Dadar Express, the evidence is not to be discarded. The evidence would go on to show that the pilgrims had come to Beas and one of the family members wanting to pay his homage to the Golden Temple at Amritsar is not to be lost sight off. The factum of Om Parkash Bajaj having boarded the train and thereafter his body was found at 4.p.m. 15 kilometers from Beas on the UP Track leading to Amritsar is sufficient evidence to show that he was a bona fide passenger who had boarded the train.

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. The Tribunal has gone on needlessly expressed the manner in which the body was found and as such was covered with grease. The injuries go on to show that it is apparently a railway accident which had taken place on account of the deceased falling off a running train and, therefore, it would come within the ambit of the untoward incident.

Similarly, the definition under Section 2(29) was to be 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 were the exceptions provided otherwise. 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 read 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."

The facts have already been discussed in detail above. The onus has, thus, shifted upon the Railways to explain as to in what circumstances the body was found on the railway track. The Tribunal itself has recorded that the deceased had died being entangled with some

unknown train but has wrongly come to the conclusion that it was not an untoward incident.

The present case also does not fall under any of the exceptions provided under the Act as such and, therefore, the findings on issue no. 1 and 2 are reversed. Similarly, the findings under issue no. 3 whereby, it was held that the deceased was survived by three sons and two sisters besides one widow and all of them are dependant upon the deceased is without any basis. In the affidavit of Daulat Ram, it has been specifically said that he alongwith mother Nirmala and the father used to live together and they were dependants of the deceased Om Parkash. The other children were married and thus, living separately including the brothers. In such circumstances, the findings on issue no. 3 are also reversed and the claim is maintainable by the appellants.

Accordingly, the appeal is allowed. A sum of Rs.4,00,000/- is granted to the appellants alongwith interest @6% per annum from the date of incident.

06.07.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

