

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

**FAO No.4277 of 2013
Decided on : 06.09.2018**

Nirmala Devi

... Appellant

Versus

Union of India

... Respondent

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

Present : Mr. Upender Prasher, Advocate for the appellant.

Mr.Sandeep Vermani, Advocate, for the respondent-UOI.

G.S. Sandhawalia, J. (Oral)

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987 (for short, the 'Act'), is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 11.05.2012, whereby the Tribunal, while holding that the death of Sukhdev Raj, brother of the appellant, had taken place on account of an untoward incident and that he was a *bona fide* passenger travelling on the train between Dalton Ganj to Beas, having proper authority to travel since the journey tickets were also recovered which were issued on 01.05.2010. However, on account of the fact that the appellant was the married sister of the deceased, the benefit of compensation was not granted, keeping in view the fact that her case would not be covered, as such, under Section 123 (b) of the Act. It was further held that she was married and living separately and therefore, could not claim any dependency, as such, upon the deceased.

Counsel for the appellant has rightly pointed out from the record that on account of death of Sukhdev Raj, both the mother of the appellant, Roop Rani along with the appellant had filed the claim petition

on 24.09.2010. During the pendency of the proceedings, Roop Rani, the mother of the deceased expired on 15.11.2011. Instead of bringing the present appellant on record, under Rule 26 of the Railway Claims Tribunal (Procedure) Rules, 1989, as her legal representative, the counsel filed application for deletion of the name of Roop Rani on 27.11.2011. Resultantly, even the Tribunal, vide order dated 10.02.2012, allowed the said application, without reference to the said rule, which is part of a socially beneficial piece of legislation, as has been held by the Apex Court in various judgments. Rule 26 reads as under:

“26. Substitution of legal representatives .-(1) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representatives of the deceased party may apply within ninety days of the date of such death for being brought on record.

(2) Where no application is received from the legal representatives within the period specified in sub-rule (1), the proceedings shall abate:

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased.”

It is also pertinent to notice from the record that even an affidavit, as such, was filed subsequently, by the present appellant on 21.03.2012 that there was no other legal heir or dependent of the deceased-Sukhdev Raj, after the death of the applicant-Roop Rani. It is, thus, apparent that Roop Rani was entitled to claim the compensation on account of the death of her son-Sukhdev Raj, on account of the dependency, as such, which is not disputed as he was unmarried at the

time of his death.

In similar circumstances, on account of the death of his son, a father had also filed a claim petition before the Railways Tribunal and on his death, his sons were brought on record under Rule 26 and compensation was, accordingly, awarded to them. The Union of India in *Union of India Vs. Phoolsaye & another 2010 (3) PLR 596* had challenged the awarding of the said compensation on account of the fact that the said persons were not dependents and therefore, the order of compensation passed in their favour, was not justifiable. This Court, while placing reliance upon the provisions of Section 2(11) of the Civil Procedure Code, 1908, held that legal representative means a person who in law represents the estate of a deceased person who intermeddles with the estate of a deceased person, while dismissing the appeal. Relevant portion of the judgment reads as under:

“3. In the present appeal, the only argument raised by learned counsel for the appellant is that respondents are not the dependents of deceased-Kantu, therefore, the amount of compensation could not have been awarded to them. In response thereto, learned counsel for the respondents has submitted that even if for the sake of arguments, it is presumed that the respondents who happened to be brothers of deceased Kantu' are not the dependents of deceased-Kantu but it has been awarded as legal representatives of deceased Timbu, who had filed application for claim as dependents of deceased-Kantu. It is also submitted that legal representatives is not defined in the Railways Act, 1989 (for short 'the Act') but according to Section 2(11) of the Code of Civil Procedure, 1908 (for short 'CPC') 'Legal Representative' means a person who in law represents the estate of a deceased

person and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

4. I have heard both learned counsel for the parties.

5. In my considered view, the objection raised by learned counsel for the appellant is totally unfounded and misplaced because even if respondents are not dependents of deceased Kantu it hardly makes any difference because the compensation has been awarded to them not as dependents of deceased-Kantu but as the Legal Representatives of their father Timbu, who filed the claim petition as dependent of deceased Kantu and according to definition of legal representatives, the respondents in any case, would have been entitled to the amount of compensation. Thus, I do not find any illegality in the order of the learned Tribunal in awarding compensation to the respondents as legal representatives of the dependent-Timbu, who had filed claim petition on account of the death of Kantu.

6. In view of the above, present appeal is found to be without any merit and as such the same is hereby dismissed though without any order as to costs.”

Resultantly, keeping in view the above, once nothing has come on record that there were no other legal heirs, as such, of Roop Rani, the amount which was due to her on account of death of her son, cannot be denied on technical ground, which has been resorted to by the Tribunal, more so, in view of Rule 26 where there is a specific provision, as such, to allow the legal representative of the deceased to be brought on record. There is no denial that the present appellant, being the sister of the deceased, was entitled to be substituted as legal representative of her mother and her claim, as such, on account of being a dependent, is

distinct and different and which has been rightly rejected. The amount is only due to her on account of the death of Roop Rani, who could not get her dues on account of delay in the proceedings before the Tribunal.

Accordingly, the present appeal is allowed and the amount of Rs.4 lakhs along with interest @ 6% per annum from the date of the accident, i.e., 01.05.2010, will be payable to her, in view of the law laid down by the Apex Court in CA-4945-2018 titled ***Union of India Vs. Rina Devi***, decided on 09.05.2018.

SEPTEMBER 6th, 2018
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No