

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

**FAO No.8148 of 2014
Decided on : 02.08.2018**

Mamta & others

... Appellants

Versus

Union of India

... Respondent

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

Present : Mr. Somesh Gupta, Advocate for the appellants.

Mr.Neeraj Madan, Advocate, for the respondent-UOI.

G.S. Sandhawalia, J.

The present appeal, filed under Section 23 of the Railways Claims Tribunal Act, 1987, is directed against the order of the Railways Claims Tribunal, Chandigarh Bench dated 24.01.2014, whereby the claim petition filed by the appellants, who are the wife, father and minor daughter of the deceased, has been rejected.

The reasoning for the Tribunal to come to the said conclusion is that the deceased-Tilakraj was not having a valid travel document in the form of a ticket or a pass and nobody had seen him falling off the train on the evening of 08.04.2012 between Ambala Cantt & Mohri Railway Stations. Resultantly, it was held that the deceased was neither a victim of an untoward incident, as defined under Section 123 (c) (2) of the Railways Claims Act, 1989 nor was a passenger and a finding was recorded that he suffered the injuries due to his own negligent act, for which the Railways could not be held responsible. Under issue No.3, it was held that the appellant/claimants who are the widow, minor daughter and father, were the

only dependents of the deceased but compensation was denied under issue No.4.

Counsel for the appellants has argued that sufficient material was there to show that it was a case of untoward incident and merely because the ticket was not recovered would not be sufficient to discard the case of the claimant/appellants as the body was found next to the track, regarding which there was no dispute. The deceased was not a resident of the said area, who was travelling from Kalka to Delhi in the Himalayan Queen Express and therefore, his accidental falling off would, thus, be covered under the provisions of untoward incident as defined under Section 123 (c) (2) and merely because the ticket was not found, as such, would not absolve the Railways of the liability.

Counsel for the Railways, on the other hand, vehemently argued that the order was liable to be upheld which is well reasoned and justified and the findings which are recorded are not liable to be interfered with, since the jamatalasi report showed that no ticket had been recovered.

A perusal of the record would go no to show that the claim of the appellants specifically was that the deceased was a Driver in a private taxi, who was going to pick up his wife-appellant No.1 from Delhi where she had gone to see her ailing aunt. His brother-Sanju purchased a ticket from Kalka to Delhi and had given it to him and the deceased had boarded the train and there was heavy rush in the train. The deceased had fallen down in the intervening night of 08/09.04.2012 and

died on the spot and the dead body remained lying unattended whole night and in the morning a message had been given to the Station Master, Ambala Cantt. Railway Station, who had issued a memo at 6.30 am and the GRP personnel reached the spot and prepared the report. Ticket and bag of clothes were not found and the legal heirs of the deceased were contacted through the contact number which was saved in the mobile diary.

The defence of the Railways was that no such untoward incident had happened and it was also denied that the deceased had boarded the train from Kalka to Delhi and he had fallen down between Mohri and Ambala Cantt. Railway Stations. It was admitted that the dead body was lying near track on 09.04.2012 near DRM office and on the side of the track, there was a residential colony and a purse and cash was recovered from the personal search but no ticket was recovered. It not being a case of passenger falling down from the train and not an untoward incident, resultantly, his *bona fides* as a passenger was also questioned.

It is pertinent to mention that there is no such allegation in the written statement also that the deceased was a resident of the said area or that he would have been entangled in the path of an on-coming train while trying to cross the tracks, which is one of the reasons apart from the report of the DRM given by the Tribunal to deny the claim even in the absence of any such plea having been taken and therefore, the order is not liable to be sustained for one of the reasons.

In support of her claim, appellant No.1 had also filed her affidavit along with her brother-in-law, Sanju. In cross-examination, she further deposed that she was staying at Kalka where her in-laws were residing and that she had come to know about the incident from the police but she did not know the name of the police official. She also further, in her cross-examination, reiterated that her brother-in-law had made her husband board the train and he had not told her about which train the deceased was travelling. She denied the factum of presence of any residential area in the vicinity of the incident and neither they had any relatives living there and that he had died while crossing the line and getting entangled with an on-coming train.

Similarly, in the cross-examination, it would reveal that the brother of the deceased had also submitted that he did not know the name and number of the train but he had given Rs.100/- for purchase of ticket and Rs.15/- had been returned. He further admitted that his brother was driving a taxi at Kalka taxi stand but did not own one. He denied the fact that there was any taxi stand in the vicinity where the accident had taken place and the fact that the deceased had parked his taxi in the close-by area and he was crossing the lines and was run down. He further admitted that jamatalasi was conducted in his presence and no ticket was recovered.

On the other hand, Rajinder Kumar, working as SI, RPF, Railway Station Jagadhri was examined by the Railways who had conducted the enquiry and collected the relevant record and came to the

conclusion that the person was not a passenger. In cross-examination, he admitted that he had not recorded the statement of any person though he had been assigned the enquiry on 05.09.2012, which is after the date of filing of the claim petition on 22.08.2012. On the basis of his enquiry, he deposed regarding the fact that the deceased was not having a ticket and the body was lying near the upline whereas he was travelling in a train which was going on the downline. He admitted that he had not recorded any statement during his enquiry proceedings as he did not feel it necessary.

Similarly, Rajnish Kumar, Station Master Railway Station Ambala Cantt, submitted his affidavit that he was informed at 6.30 am by one unknown person that one dead body was lying out of track at KM 195/07-09 and a memo was issued by him to the GRP for taking necessary action. A perusal of the said memo attached with the affidavit would show that it was received by Bodh Raj, ASI at 7.15 am.

Similarly, affidavit of Lokesh Kumar, who was on duty as Panel Operator was filed that from midnight to 6 in the morning, Kalka-Howrah Express had arrived and left at 2.20 am and numerous trains including the goods trains, had arrived and none of the Drivers had noticed the dead body lying in the track. The details of the three goods rakes which were received immediately prior to the receipt of the incident about the dead body lying near the tracks, was also mentioned. Ext. A-6, which is a copy of the memo forwarded by the Station Master, was addressed to the SHO, GRP regarding the said intimation, in pursuance of

which, the jamatalasi was done by Brij Pal Singh, SI, GRP, who has not been examined, wherein Rs.210/- and some valuables were also recovered including the purse, birth certificate, one watch, four rings, chain etc. Name of the brother of the deceased, Sanju also figures in the said report as witness No.3. The deceased was taken to the Ambala Cantt Hospital by the said police personnel and his body had been identified by his brother, which would be clear from the post-mortem report (Ext.A-8) whereby also, as per the information furnished by the police, it was a case of a railway accident.

The injuries on the person of the person of the deceased, as per the Section 174/175 Cr.P.C. proceedings and the post-mortem report would go on to show that there was crushed injuries present on the right knee and thigh which had crushed the bones and muscles and which were all exposed, which were attached to the leg by a flap of skin and grease was present. Lacerated wound of size 3cm x 1cm was present on the frontal region of the skull. On dissection, it was found that the right frontal portion of the skull had been crushed. Similarly, a lacerated wound of size 2cm x 2cm was there on the occipital region of the skull and a fracture on the bone along with hematoma was present. There was fracture on the right shoulder and there were multiple aberrations on the right end arm and shoulder. Resultantly, the opinion was that due to the injuries on the vital organs and amputations leading to hemorrhage and shock, would be sufficient to cause death in the normal course of nature. The possibility of Railway accident could not be ruled out, as per the

opinion of the Doctor.

In the enquiry proceedings which was conducted after the filing of the petition, the conclusion reached is that he was not a passenger on the train and on account of negligence or trying to cross the track, due to which the accident had happened. It has already been noticed that even the person who conducted the said enquiry was never present and had not even bothered to reach the site to record his statement and reliance upon the same could be of no use to the Railways. Sufficient material has come on record that the deceased and his family members were residents of Kalka from where the Himalayan Queen Express originates on its way to Delhi and passes through Ambala and the place of accident. Merely because the time of starting of the train was 40 mts later than claimed, i.e., 4 pm, could not be, as such, a ground to view the claim of the appellants with suspicion, as has been done by the Tribunal. The fact that the body was found close to Ambala which is 60 kms away from the residence of the deceased, would go on to show that he was travelling on the train and had become the victim of the untoward incident. Merely because the body was not lying on the up-track and was not spotted till morning was one of the grounds which weighed with the Tribunal to reject the case. The said aspect, as such, is not liable to be approved, merely because the body was not noticed for reasonably long time. The case which has been built up that the deceased had died in an accident due to coming in between the on-coming train, for which no evidence, as such, has also been produced that any Driver or passenger,

as such, had seen the accident having taken place in that manner and therefore, such claim does not also merit acceptance.

The definition of untoward incident under Section 123 (c)(2) relates to the accidental falling of a person from a train carrying passengers. 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 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."

Resultantly, in view of the above facts, the findings recorded on issue No.2 that it was not a case of accident which was covered under

Section 123 (c)(2) and 124-A of the Railways Act, are reversed.

Similarly, the issue of non-recovery of the ticket, on the basis of which, the claim has been rejected under Section 2(29), is also liable to be reversed under issue No.1 in as much as the brother had specifically deposed that they had gone to the Railway Station together and he had purchased the ticket for Rs.85/- and it has not been brought on record, as such, that the ticket from Kalka to Delhi on the said train costs less or more as there is no such evidence brought on record. The brother of the deceased was intimated immediately about the accident and he had reached the spot at the earliest, as would be clear from the jamatalasi report where his presence had been shown and the body of the deceased was identified at the time of the post-mortem in the hospital at Ambala. Thus, the body having been found next to the tracks, the onus would shift upon the Railways. It is also to be noticed that the travel distance was approximately more than 2 hours at the time the person boarded the train at Kalka before the train stopped at Chandigarh towards Delhi and the stoppage at Ambala. The Railways authorities would be under an obligation to check the passengers, especially in case of an inter-state travel of a long distance as it would not be expected that the deceased would be travelling between Kalka to Delhi, which would be of around 6 hours of travel. The specific case was that the bag had been misplaced and in all probabilities, the deceased would have put his ticket in his bag and therefore, on account of the fact that it was not known that on which train he was travelling, the ticket was not recovered and neither the bag

was recovered and thus, the inference had wrongly been held against the claimants.

The issue of the non-production of ticket and the passenger having termed as a ticket-less passenger has been subject matter of consideration before various High Courts. The Division Bench Judgment of the Karnataka High Court in '**Leelavathamma Vs. Union of India 2004 (2) RCR (Civil) 757**', followed by the Rajasthan High Court in '**Union of India Vs. Hari Narayan Gupta and another' 2008 ACJ 822**, and the Division Bench of the Allahabad High Court in '**Smt. Akhtari Vs. Union of India' 2008 (16) RCR (Civil) 284**, whereby while examining statutory provisions of the two Acts in question, it came to the conclusion that a person who falls from the train and the body was badly crushed on account of being dragged for more than 100 meters and where no ticket was recovered from the possession of the body as such, the case should be treated as untoward incident. It was held that a presumption has to be drawn that the deceased was a bonafide passenger and the dependents would be entitled for the compensation. The onus of rebuttal was, thus, to be on the Railways to give effect to the statutory provisions of the two Acts. In the said case a finding had been recorded by the Tribunal that the deceased had fallen down because of his reckless and negligent act and since no ticket was recovered, he was not entitled for any compensation. The said findings, accordingly, were reversed.

This Court in '**Union of India Vs. Sarla and others' 2010 (3) PLR 152**, has also held to the same effect. Similar view was taken in

'Shahnaz Begum and others Vs. Union of India' 2017 (4) ADJ 663 and by the Division Bench of the High Court of Kerala in **'Union of India Vs. Parameswaran Pillai and another' 2013 ACJ 635** that the provisions of the Railways Claims Tribunal Act, 1987 were to be kept in mind that it was a social welfare legislation and cases had to be decided in a summary manner on production of the documents, affidavits and the strict rules of the Evidence Act were not to apply and the presumption was that the passenger had purchased a ticket, which was to be shown otherwise.

Keeping in view the fact that the legislation in question has been held to be a social and beneficial piece of legislation, this Court is also of the opinion that once the claimants have discharged their onus as such as to their mode of travel and have deposed to show that the deceased was a bonafide passenger with a valid pass or ticket, the onus thus would shift upon the Railways. To take a contrary view as such would frustrate the purpose of the Act itself as it is not possible for the claimants to produce specific evidence as to the falling of the deceased and to give the details of the train on which the deceased was travelling, specially when there is no eye witness, as to how the deceased even met his maker at the time of death while falling of the train and to deny the relief, would not be justified. Resultantly, the findings on issue No.1 are also reversed regarding the *bona fide* passenger and it is held that the deceased was a *bona fide* passenger on the train travelling through one Union Territory and a different State, namely, Chandigarh and Punjab

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and eventually meeting his death in the State of Haryana.

Resultantly, the present appeal is allowed and the appellants, being the claimants, are held entitled to a sum of Rs.4 lakhs along with interest @ 6% per annum, from the date of the accident, i.e., 08.04.2012, keeping in view of the law laid down by the Apex Court in **Rina Devi (supra)**. The amount of Rs.4 lakhs will be bifurcated in instalments of Rs.2 lakhs, to which the wife would be entitled. The father and the minor daughter would be entitled to Rs.1 lakh each. The amount of the minor, however, will be kept in Fixed Deposit Receipt, to earn the highest rate of interest till she attain the age of majority. The appellant-mother will, however, be entitled to use the interest for the purpose of her welfare.

AUGUST 2nd, 2018
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes