

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

**FAO No.858 of 2014
Decided on : 27.07.2018**

Manjit Kaur and others

... Appellants

Versus

Union of India

... Respondent

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

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

Mr. Amit Kumar, Advocate
for the respondent-UI.

G.S. Sandhawalia, J. (Oral)

The present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') is directed against the order of the Tribunal dated 27.09.2012 of the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), which has declined to grant the compensation, on account of the death of the deceased Gurnam Singh on 20.09.2010, to the appellants who are wife, children and mother of the deceased.

The reasons for the denial of the relief by the Tribunal is that there is no mention of any train number or time of the boarding of the train and no ticket had been recovered from the body of the deceased. A diary and driving licence was recovered by the GRP in *Jamatalashi* and in the absence of the ticket it was held that he was not a bonafide passenger. Rather the DRM's Inquiry Report was considered to hold that the deceased was not a passenger of any train and had got entangled with some train

while crossing railway line unauthorizedly for which railway administration was not responsible.

The statements recorded by the GRP on 07.10.2010 were discarded and it was held that by finding a dead body near the railway track, it could not be said to be a case of falling down from the train carrying passengers. The place of incident was near Gate No.32-C where nearby villagers came in the morning for relieving themselves led to the conclusion to the Tribunal that the deceased was entangled in a train passing by and he had not fallen down from any train. Resultantly, issue No.1 and 2 that whether he was a bonafide passenger and it was not a case of untoward accident was recorded against the claimants/appellants.

Under issue No.3 it was held that they are the dependents as they had filed a copy of ration card and the said issue was decided in favour of the appellants, but compensation was denied on account of the findings which have been recorded under issue No.1 and 2.

Counsel for the appellants has vehemently submitted that from the record it would be clear that the deceased was travelling from Beas to Amritsar and was not a resident of the said area. Therefore, the finding which has been recorded by the Tribunal that the deceased was entangled with a train in the early morning on 20.09.2010 are without any basis and neither it was the case which had been pleaded by the Railways. The dead body was lying outside the station which was held out by the Anurag Jaichand, Station Master at Maanwala Railway Station, who had not even visited the site of the incident, but the said finding has been

recorded. It is further submitted that neither any valuable as such were recovered from the body of the deceased and chances of having been picked up by the villagers who had noticed the body would as such be in the normal course and, therefore, the benefit has to go to the claimants.

Counsel for the respondent on the other hand submitted that the findings recorded by the Tribunal are justified and under Section 2 (29) Railways Act, 1989 (for short '1989 Act') the passenger has to have a valid pass or ticket which would be the *sine qua non* for maintaining an action under Section 124-A of the 1989 Act to claim compensation. It is submitted that the order is liable to be sustained.

After hearing counsel for the parties and perusing the record of the Tribunal, this Court is of the opinion that the finding recorded by the Tribunal are not justified, in the facts and circumstances.

The claim petition is very specific that the deceased was a resident of village Jai Singh Pura, Ramgarh, District Panchkula and was working at Punjab Chemicals and Crop Protection Ltd. at Dera Bassi. He had visited Radha Swami Dera at Beas and was going to Golden Temple, Amritsar after purchasing a second class ticket on 19.09.2010, which had been lost during the incident.

The defence of the Railways was that no ticket was recovered in the *Jamatalshi* from the deceased and no untoward accident causing death of the deceased within the meaning of Section 123 (c) (2) read with Section 124-A of the 1989 Act took place. A diary and driving licence had been recovered in the *Jamatalshi* and, therefore, the claim

was opposed.

As noticed nothing was as mentioned that the deceased was a resident of that area or that he had been run over by a passing train while crossing the track in a negligent manner or while attending to the call of nature and it was not a case of untoward accident, which has been wrongly been accepted by the Tribunal only on the ground of the report of Station Master.

The evidence of AW-1 Manjit Kaur widow of the deceased Gurnam Singh is very specific before the Tribunal and rather it has come in the cross-examination that the deceased had a mobile phone on which he had talked to her on 19.09.2010 around 7:30 PM that he was going to Golden Temple, Amritsar to pay his obeisance. She had also stated that mobile phone No.98149-65984 had not been recovered in the *Jamatalshi* which had been done by the railways authorities.

The inquest proceedings would go on to show that the deceased was lying between the up and down track at Point A and there was also a condemned railway line also which was on the other side and closer to the Cremation Ground of village Mehka. Ex.A3 is the diary which was recovered as per *Jamatalshi* (Ex.A2) of the deceased, which shows the name and phone number of Jasbir Singh who is none else but brother-in-law of the deceased and who had been contacted by the police. Even as per the statement of the wife, she had stated that her brother Jasbir Singh had been informed by the Railways about the incident. The name of the Jasbir Singh has been mentioned on the slip, on the basis of

which the railways authorities got in touch with the brother-in-law of the deceased. Ex.A4 was the driving licence which had been recovered in the *Jamatalshi*. As noticed no purse and valuables were recovered from the body of the deceased. The railways had been informed by the villagers as such of the said village that the dead body was lying which would be clear by the intimation sent to the Incharge, GRP Manawala by the Harpinder Singh, Gateman that one dead body was lying at KM 500/27 between up and down track and necessary action was to be taken. This information was obviously, thus, received early in the morning when the villagers had gone to attend the call of nature and likelihood of valuable and purse having been take away would be on higher side.

The inquest report would go on to show that Gurpal Singh the brother and Jasbir Singh brother-in-law had arrived at the spot on being informed and had identified the body. In the inquest report it has been mentioned that the blood was soaked which was lying on bricklins after flowing out of the head and mouth and death seemed to happen on account of railway accident. The mention of the mobile number was also there that Jasbir Singh was informed about the incident and the fact that he had asked to do the legal proceedings and they would reach at spot with family members. The statements of Gurpal Singh the brother was recorded on 20.09.2010, wherein the same plea had been taken that his brother had come to Dera Radha Swami, Beas and had to Golden Temple to pay his obeisance and he had no suspicion over the death of his brother and his brother had died due to falling down from an unknown train

while travelling.

A perusal of postmortem report (Ex.A8) would go on to show that Gurpal Singh and Jasbir Singh had identified the body at 4:45PM on 20.09.2010 at Amritsar and they had reached there from the Tri-City, Chandigarh. The postmortem report goes on to show the extent of injuries on the body of the deceased, which would also show that there was a fracture on the right orbit and underlying bones of nose and the right eye ball was crushed. Similarly, a lacerated wound of 3.4x2 cm was found on the forehead. The cause of death was also on account of compression of brain due to injuries, which is sufficient to cause death in the ordinary course of nature as also reported by the Medical Authorities that death was due to a railway accident.

These facts, thus, go on to prove as such that the deceased was a victim of an untoward accident and had died due to falling down while travelling in a train. Harpinder Singh, Gateman in his cross-examination also stated that he never went on the spot of incident as he was on duty and he could not leave the gate. Similarly, Anurag Jaichand, Station Master, in his cross-examination stated that he had not seen the dead body as he never visited the spot. Accordingly, findings which have been recorded by the Tribunal under issue No.2 that it was not a case of an untoward accident are not justified and accordingly reversed.

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.

xxxx xxxx xxxx

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.

xxxx xxxx xxxx

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 Civil Appeal No.4945 of 2018 '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.

XXXX XXXX XXXX

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 appeal is, accordingly, allowed and the appellants who are the wife, children and mother are, thus, held entitled for a sum of ₹4 lakhs along with 6% interest per annum from the date of the accident, in view of the law laid down by the Apex Court in **Rina Devi (supra)** decided on 09.05.2018. The share of the children of ₹2 lakhs alongwith interest will be put in a Fixed Deposit Receipt till they attain majority to give the highest rate of interest and the same can be used for the benefit of the said appellants No.2 and 3 by the other appellants.

JULY 27, 2018

Naveen

Whether speaking/reasoned:

Whether Reportable:

(G.S. SANDHAWALIA)
JUDGE

Yes/No

Yes/No