

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

**FAO No.7716 of 2015
Decided on : 14.09.2018**

Naresh Kumar Sharma and others

... Appellant

Versus

Union of India

... Respondent

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

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

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

G.S. Sandhawalia, J.

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') is directed against the order dated 23.07.2015, whereby Railways Claims Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') has dismissed the claim petition of the appellants, which has been filed on account of the death of Bhimsen Sharma, father of appellants No.1 to 5.

The reasoning given by the Tribunal to deny the claim was that the body was found in two parts and there were two *Jamatalshi* reports. In one Ex.A2 there was no mention of the ticket being recovered, wherein in Ex.A3, the mention of ticket at Serial No.5 appears to be a added one afterwards. Accordingly, it was held that the deceased was not a passenger on the train. It was further held that no untoward incident was reported either by guard or driver of Hirakund Express, which had arrived at 5:47 and departed at 5:49 from Panipat Station and if the deceased had fallen from the train, there would have been hue and cry by the persons standing

nearby. The intimation of dead body lying on down line below platform No.2 at Panipat Station was received at 6:01/6:05 AM i.e. after the departure of goods train, which had been reported by the Loco Pilot and therefore, it was not a case of falling down from the train and it was a case of accident which happened on unauthorized crossing of the railway line and the deceased was run over by the train and body was cut into two parts. On issue No.3, it was held that the appellants being sons and daughters are only dependents of the deceased as his wife had expired earlier.

A perusal of the record would go on to show that the claim petition was filed on account of the death of the deceased who was 70 years old, by the children on 21.08.2012, with the pleadings that on 04.07.2012 the deceased had boarded the Mail Express train from Railway Station, Amritsar, which was bound for Agra. The deceased had fallen down at Panipat Railway Station when the train in question had started and caught speed. On intimation being received by the Station Master, Panipat that a body was lying at platform No.2 towards Delhi side, he forwarded the same to the GRP, Panipat. The investigation officer of GRP reached at the place of occurrence and recovered ₹500/-, one identity card, three slips, one purse and one railway ticket bearing No.71431840 for Senior Citizen, which has been brought on record as Ex.A4, which was issued by the Railway Station, Amritsar, as the deceased was travelling from Amritsar to Agra Cantt. The postmortem had been conducted by Medical Officer at General Hospital, Panipat on 05.07.2012 itself. The relevant documents including the *Jamatalshi*,

ticket, statement of Shiv Kumar, Manmohan Singh, Narinder Sharma, Voter Card of Naresh Kumar Sharma and postmortem report were attached alongwith the claim petition.

The defence of the railways in the written statement was that no untoward incident within the meaning of Section 123 (c) of the Railways Act, 1989 (for short '1989 Act') causing death of Bhimsen Sharma had taken place and the deceased was not a passenger of the train at the relevant time. It was denied that the deceased had boarded the train as alleged for travelling from Amritsar for going to Agra or he had purchased the ticket. The plea taken was that on account of injuries suffered as such the half of the dead body of the deceased was found in the middle of the track and other having been cut into pieces, which is not possible as a result of accidental fall from a moving train. The plea, thus, taken was that the deceased had suffered injuries due to entanglement with some moving train and, therefore, the case was rebutted. The alleged ticket was neither valid for a Mail/Superfast Express Train nor is meant for a senior citizen.

The appellant No.2-Narinder Kumar Sharma, who examined himself is a resident of village Majhita, District Amritsar, at the time of occurrence who was posted at Army Airborne Training School, Agra, by giving the affidavit, whereby he deposed regarding his father having purchased the ticket and having sat in the express mail train and regarding the fact that he had fallen down at Panipat Station and died at the spot, on account of grievous injuries sustained by him. He further deposed that on 05.07.2012 his brother Naresh Kumar Sharma, appellant

No.1 had received a phone from the GRP, Panipat regarding the death of the father on account of having fallen down from the train. His brother had thereafter informed him about the incident on the phone. Accordingly, he had informed his brother-in-law Manmohan, husband of appellant No.5-Sushma Sharma and other relatives who had identified the deceased body. He deposed about the factum of the senior citizen ticket purchased which was issued at Amritsar Railway Station and recovery of other items and further deposed that the original ticket was attached with the police file.

In the cross-examination, he deposed that he was not with his father at the time of the accident. His father used to work in the coal mines and was an employe of the Central Government. He further deposed that his father was coming from Amritsar to Agra, where the witness was posted. He denied the fact that the ticket with his father was reserved and that it was a general ticket and that the train continued to South India from Agra. He denied the suggestion that some person of the village has made his father sit in the train. He also denied the knowledge whether his father had some work at Panipat and that he had no ticket and that he had not died in a train accident and that the ticket had been planted subsequently.

The Railways examined Dalip Kumar, Station Master, Railway Station, Panipat who submitted his affidavit that he was on duty from 12:00 hours to 8:00 hours on 05.07.2012 and had come to know that one dead body was lying at platform No.2 and a memo had been issued for necessary action. The train No.18508 Down, Hirakund Express had

arrived at platform No.2 at 5:47 and left at 5:49 and, thereafter, a Goods Train XXR Shahbad to BGB (Bajbaj) arrived at platform No.2 at 6:00 hours and departed at 6:33 hours.

In cross-examination he deposed that prior to Hirakund Express, Train No.14034 reached at Railway Station, Panipat at 4:52 and departed at 4:54 and Hirakund Express starts from Amritsar. He was not aware whether it went to Agra or not. The intimation had been received at 6:10 hours regarding the dead body lying at the platform No.2 which was 21 minutes after the departure of the Hirakund Express. He was not intimated by the driver of goods train, which came after departure of Hirakund Express about lying of dead body. Intimation had, accordingly, been given to conduct the proceedings and he denied the suggestion that he received the intimation within 5 minutes after the departure of the Hirakund Express.

Similarly, Shri N.K. Wadhwa, Guard on the Hirakund Express was examined, who deposed that it arrived at 5:47 and departed at 5:49 after its two minutes scheduled halt. He was watching the platform for clearance and exchange of signal with the Loco Pilot and on that day nobody had fallen down, neither injured nor entangled. He denied the suggestion that a person fell down from the train and had been sandwiched between the platform and train.

Brijesh Kumar Singh, Loco Pilot on the Goods Train XXR which was from Shahbad to Bajbaj deposed that the train arrived at 6:00. He deposed that no dead body was lying on the track on which the goods train was being driven by him nor anybody had entangled with the train.

He tendered into evidence the Driver Book dated 05.07.2012.

The postmortem report Ex.A9 would go on to show that the dead body was identified by his son-in-law Manmohan and Narinder Sharma, his son and had been brought by Shiv Kumar, ASI. An information had been furnished by the police that it was due to a railway accident. In the opinion of the doctor cause of the death was due to a railway accident. The lower part of the body and abdomen had been totally crushed and the left side had a abrasion. Similarly, the right side had a abrasion of 2x2 cm and the right ankle and leg were fractured. The abdominal wall was totally crushed.

The matter had also been inquired into by the Railways and further report dated 10.01.2014 had been submitted to the Tribunal that the deceased was run over, which resulted into his death due to his carelessness and mistake. The report would also go on to show that there is mention of the ticket No.71431840 Ex. Amritsar to Agra Cantonment.

A perusal of the ticket (Ex.A4) would also go on to show that it was issued for Amritsar to Agra, bought for ₹79/- and for a senior citizen. The *Jamatalshi* itself which was prepared on 05.07.2012 by the GRP personnel would also go on to show that the factum of the ticket is mentioned at Serial No.5 and the same was witnessed by Lalwa and Shiv Kumar. As noticed from the evidence, the son and son-in-law had thereafter arrived to identify the dead body on getting intimation and done the needful at Civil Hospital, Panipat. It is to be noticed that appellant No.4-Rajni is married to Sunil who is resident of Amritsar. The deceased was not a resident of Panipat and was not residing in the close

vicinity. It was the specific case of the appellants that the deceased was travelling from Amritsar to Agra where his son Naresh Kumar Sharma was posted. Nothing has been brought on record that the ticket which was produced (Ex.A4) issued from Amritsar is bogus in any manner and was not issued on 04.07.2012, when the deceased started his journey. It was always open to the Railways to rebut this aspect, once they had taken the stand that the ticket was not valid and the questions had been put to the witnesses that it was planted one and the onus lay upon them.

The factum of the train as such leaving Panipat in the early hours of the morning has been admitted by the Railways itself that Hirakund Express had arrived at 5:47 and left at 5:49 after its two minutes scheduled halt. The deceased having been fallen within intervening two minutes halt on the inter State travel is highly likely and not an unexpected event, specially keeping in view the fact that he was a senior citizen.

Sufficient material had been brought on record by the claimants as such that the deceased was a victim of an untoward incident as defined under Section 123 (c) (2) of the 1989 Act, whereby on account of the accidental falling of any passenger from a train carrying passengers would cover the case of the appellants and they would be entitled for the compensation. Section 124-A provides that the person who had purchased a valid ticket for travelling and becomes a victim of an untoward incident would entitle the dependant of the deceased to maintain an action. The Railways would, thus, be liable to pay compensation as provided, as the case does not fall within any of the

exceptions under Section 124-A and it was not a case of suicide or self inflicted injury. Merely because the deceased body was found between the tracks and was badly mutilated on the lower portion, as noticed from postmortem report, it would not mean that it was not a case of untoward incident. The appellants upon whom the initial onus lay have produced sufficient material on record regarding the fact that the deceased was a bonafide passenger at the time of the accident and the same would be covered under the definition of untoward incident, on account of death of their father. The onus had shifted upon the Railways to rebut the same.

It is necessary to notice that the Railways produced as many as 3 witnesses and had taken a stand that it was a case of run over by another train, on account of the negligence as such of the deceased which has also been wrongly accepted by the Tribunal. None of the witness of the Railways also deposed regarding this fact that the deceased was run over by some other train which arrived subsequently at Panipat Railway Station on account of the deceased crossing the track. Once the stand of the Railways as such was that it was a case of entanglement with some moving train, it was for them to prove this fact and bring on record sufficient material and evidence regarding this aspect, but they had failed to prove.

Resultantly, keeping in view the above facts and circumstances, the Tribunal was not justified in coming to the conclusion that the deceased was not a bonafide passenger under issue No.1 and similarly the findings recorded under issue No.2 that the incident was not covered within the ambit of Section 123 (c) (2) read with Section 124-A

of 1989 Act is without any basis. Merely because the dead body was cut into two pieces would not mean that the deceased had been run over. In what circumstances the person get injured and the effect of the injuries upon such a person could be different and depend upon various factors on account of the fall of the deceased and whether he is sucked between the wheels or just died on account of the fall from the train on account of high speed. The observations that because the dead body was found in two parts would not as such mean that it cannot be from a fall from train. The observations of the Tribunal, thus, to deny the claim are not justified and, accordingly, are set aside.

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.

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.

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.

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.”

Accordingly, keeping in view the above, the present appeal is allowed. The appellants are held entitled for a sum of ₹4 lakhs along with interest @ 6% per annum from the date of the incident, keeping in view the judgment of the Apex Court passed in **Rina Devi (supra)**, which will be divided equally amongst all the legal heirs of the deceased.

SEPTEMBER 14, 2018

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No