

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

**FAO No.6786 of 2016
Decided on : 04.07.2018**

Pooja

... Appellant

Versus

Union of India

... Respondent

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

Present : Mr. Subhash Sachdeva, Advocate for
Mr. S.K. Rana, Advocate for the appellant.

Mr. Neeraj Madaan, Advocate for the respondent-UI.

G.S. Sandhawalia, J. (Oral)

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, '1987 Act') is directed against the judgment dated 24.05.2016 passed by the Railway Claims Tribunal, Chandigarh Bench. The Tribunal has rejected the claim which was filed by the claimant on account of death of her father, namely, Subhash Chander aged 62 years old.

The reasoning as such given by the Tribunal is that there was no cogent, satisfactory and confidence inspiring evidence in support of the claim application that the deceased had purchased a proper and valid journey ticket to travel. The presence of Vikas Kapoor, the nephew who had deposed as AW-2 was doubted. The *Jamatalashi* had not been submitted and, therefore, in the absence of the ticket found from the body, it was held that he was not a bonafide passenger. It was further held that while trying to catch a fast moving train without purchasing any ticket the deceased met with the accident and died and, therefore, he was held not to be a bonafide passenger.

Counsel for the appellant has taken the Court through the

record of the case to submit that it was the specific case of the appellant as such that her father had gone to meet his sister in Ludhiana where the incident had taken place at the Railway Station. He had purchased one ticket for the express mail train on 24.12.2011 for his journey from Ludhiana to Jalandhar and gone to platform No.2 to board the Train No.14037, Delhi-Pathankot Express. On account of huge rush while trying to board the train, the deceased fell down from the train and got serious injuries on vital organs of his body. He had been taken to Rama Charitable Hospital, Ludhiana where he succumbed to the injuries. The ticket and cash had been lost during the accident.

It is not disputed that a postmortem was also conducted on 25.12.2011 (Ex.A6). A perusal of the same would go on to show that information had been furnished that her father had died in the railway accident and the said report also says that injuries were ante-mortem in nature and it could be in a railway accident. The cause of death as such was heart rupture, ribcage fracture and the right leg fracture which was sufficient to cause death in the ordinary course of nature and were ante-mortem in nature and could be due to railway accident.

It is not disputed that report (Ex.A-1) was also given to SHO, GRP that while trying to catch moving Train No.14037 one man had got injured and the injured had been sent to the Civil Hospital by the Punjab Government Ambulance.

Even in the defence, evidence of the Railways Surender Kumar Bangar who had deposed as Deputy Station Superintendent,

Ludhiana that he was informed by the Guard of Train No.14037 that one person fell down on track while he was trying to catch moving train and got injured at platform No.2 and he had sent a message to GRP, Ludhiana. Similarly, as per affidavit of the Subhash Kumar Saini who was Guard on the said train, the train had reached at Ludhiana at 13:30 and departed at 13:35 after a scheduled stop of 5 minutes. He has deposed that a man had tried to board the moving train after 100 meters and got injured in the process. The deponent had informed the Station Master and the Doctor and RPF. The injured person got injuries due to his own negligence in effort of trying to catch a moving train. He had no idea whether the deceased was a bonafide passenger or not.

The stand of the Railways before the Tribunal was that in an attempt to catch the train the deceased had slipped and fell and no ticket was found during search and therefore, he did not have a valid ticket and, therefore, he is not a bonafide passenger.

It is pertinent to notice that railway authorities had also conducted inquiry into the death of the deceased as such and a conclusion had been arrived at that the deceased had died on account of while trying to board the running train. The allegation as such that the luggage and the ticket had got lost was held to be doubtful.

It is not disputed that Vikas Kapoor, the nephew's statement was recorded in the said proceedings and similarly statement of Subhash Kumar Saini, Guard was also recorded. The Guard had also stated in his statement that from Bogey No.13044 the chain had been pulled and the

deceased was lying on the platform and he had been pulled from the track. The nephew Vikas Kapoor as such had specifically stated that his uncle had come to visit and he had gone to Railway Station to drop the deceased and purchased the ticket on his behalf and ₹100/- had been handed over to him. After the announcement of the train he left the deceased to board the train on his own and went home. Thereafter, he had informed by his relatives that his uncle had met with an accident and then gone to the Civil Hospital and then gone to Rama Charitable Hospital, where his uncle expired. In cross-examination he had stated that it was a general ticket as reservation ticket was not available. He further stated that the deceased had a bag with him which was not recovered. He had denied the fact that he had not purchased a journey ticket and he had boarded the train without any journey ticket as the announcement had already been made and he was in a hurry to catch the train. He had denied the fact that he had not gone to Railway Station to see him off.

From the above, it would be clear that the deceased as such was a passenger and sufficient material as such has been brought on record that he was having a valid pass and would fall under the definition of under Section 2 (29) of the 1989 Act whereby '*passenger*' means a person traveling with a valid pass or ticket. The death took place on account of an untoward accident and it would fall under the definition of under Section 124-A of the 1989 Act. The person who was in a hurry to board the train would not come in the exceptions as such of self-inflicted

injury, own criminal act or suicide or attempted suicide by him, which is provided under Section 124-A of the 1989 Act.

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.”

The onus as such shifted to the railway authorities. It has also come on record that the train had been stopped on account of the untoward accident, which had taken place and even official intimation had been sent. The statement of the nephew Vikas Kapoor was recorded in the proceedings subsequently by making the inquiry under Rule 7 of the The Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003. The proceedings as such were also conducted at subsequent point of time in the year 2013 after filing of the claim petition. The nephew Vikas Kapoor had deposed that he had purchased the ticket for his maternal uncle and dropped him at railway station,

which is natural sequence of event as the deceased was visiting his sister at Ludhiana. The witness had also submitted that he had purchased the ticket for him and his uncle had to board the train and, therefore, merely because the ticket had not been found in the melee, the Tribunal was not justified in disbelieving the said statement.

The circumstances would go on to show that on announcement being made the deceased who was around 62 years old in an attempt to board the moving train got injured. Sufficient evidence has been brought on record to show that the nephew had purchased his ticket and merely because the ticket had got lost on account of the untoward accident and the deceased fell and the train further proceeded and the bag was not found would not as such justify the finding which has been recorded by the Tribunal that the deceased was not a bonafide passenger.

Resultantly, from the above facts and circumstances, this Court is of the opinion that the finding which has been recorded under Issue No.1 and 2 are not justifiable. The Tribunal has not made an effort as such to go through the detailed DRM Inquiry Report and the fact that the Guard himself as such had stated that deceased was lying injured on the platform. The fact as such would go on to show that there was no ground as such that the deceased who was a passenger and travelling back from Ludhiana after visiting his close relatives would but naturally be accompanied with his relative to go to the Railway Station. The story as such which has been put forward in the claim petition was disbelieved without any basis by doubting the presence of the nephew, who in normal

circumstances would have accompanied his uncle and dropped him at Railway Station.

Accordingly, keeping in view the above, it is held that deceased was a passenger having a valid ticket which could not be located as such on account of the untoward incident which happened in a flash of a second and the Act is a beneficial piece of legislation to ameliorate the difficulties of such passengers. In view of the judgment of the Apex Court in the case of **Rina Devi (supra)** and in the facts and circumstances, this Court is of the opinion that the appellant is entitled for the compensation of ₹4,00,000/- alongwith interest @ 6% per annum from the date of accident, which shall be paid to the appellant within a period of two months.

The appeal is, accordingly, allowed.

JULY 04, 2018

Naveen

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

*Whether speaking/reasoned:
Whether Reportable:*

*Yes/No
Yes/No*