

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

Date of decision: 20.12.2019

1.

FAO No.2081 of 1999(O&M)

Union of India

.....Appellant

VERSUS

Durga Dass and another

.....Respondents

2.

FAO No.2780 of 1999(O&M)

Union of India

.....Appellant

VERSUS

Smt. Soma Devi and another

.....Respondents

3.

FAO No.2781 of 1999(O&M)

Union of India

.....Appellant

VERSUS

Smt. Soma Devi and another

.....Respondents

4.

FAO No.2923 of 1999(O&M)

Union of India

.....Appellant

VERSUS

Durga Dass and another

.....Respondents

5. **FAO No.2924 of 1999(O&M)**

Union of IndiaAppellant

VERSUS

Durga Dass and anotherRespondents

6. **FAO No.3079 of 1999(O&M)**

Union of IndiaAppellant

VERSUS

Om Parkash and anotherRespondents

7. **FAO No.3088 of 1999(O&M)**

Union of IndiaAppellant

VERSUS

Om Parkash and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Karminder Singh, Advocate for the appellant (in FAO No.2081, 3079 of 1999).

Mr. Yogesh Saini, Advocate for the appellant (in FAO No.3088 of 1999).

Mr. Jagdish Marwaha, Special Counsel-cum-Senior Panel Counsel for the appellant (in FAO No.2923, 2924, 2780, 2781 of 1999).

Mr. Surinder Sharma, Advocate for the respondents (in FAO Nos.2081, 2923, 2924 of 1999).

Mr. Raman Sharma, Advocate for the respondent (in FAO No.3079 and 3088 of 1999).

None for the respondents (in FAO No.2780 and 2781 of 1999).

REKHA MITTAL, J.

This order will dispose of FAO Nos.2081, 2780, 2781, 2923, 2924, 3079 and 3088 of 1999 as identical questions of law and fact are involved for adjudication

The issues that fall for consideration are:-

1. Whether the grand-parents can claim compensation with regard to death of their grand-children (minor)?
2. Whether parents in law are entitle to compensation with regard to death of their daughter in law?

Chapter XIII of the Railways Act, 1989 (in short ‘the Act’) deals with liability of railway administration for death and injury to passengers due to accidents. Section 123 under Chapter XIII defines ‘dependant’ and a relevant extract from Section 123(b) of the Act, reads as follows:-

“123. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) xx xx xx

(b) “dependant” means any of the following relatives of a deceased passenger, namely:—

- (i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

- (ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;
- (iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;
- (iv) the paternal grandparent wholly dependant on the deceased passenger.”

The use of word ‘means’ indicates that the definition is a hard and fast definition and no other meaning can be assigned to the expression than put down in the definition.

Perusal of sub-clause (iv) of clause (b) of Section 123 makes it evident that paternal grandparent wholly dependant on the deceased passenger comes within the definition of ‘dependant’ for claiming compensation.

The matter came up for consideration before Division Bench of this Court in **Dhyan Singh and another Vs. Union of India and others, 2009(2) RCR (Civil) 26.** In that case, there was death of two sisters namely Harpreet Kaur and Baljinder Kaur of petitioner No.2 – minor brother of the deceased in a railway accident and claim was preferred by minor brother and grand-father of deceased persons. It was held in para 12 that minor brother shall be dependant on his sisters for protection, love and affection by the deceased, therefore, he would be dependant within the meaning of sub-section (ii) of Section 123(b) of the Act but claim made by grandfather was rejected. A relevant extract from paras 12 and 13 of the judgment reads as follows:-

“12. The matter can be examined from another angle as well. Section 123(b) of the Railways Act defines "dependent" to include minor brother if dependent partly or wholly on the deceased passenger. The word dependency is not restricted to economic dependence but dependence of love, affection, care and protection of the deceased passenger as well. The word "dependent" in clause (ii) or Section 123(b) of the Railways Act is not to be given restrictive meaning but contextual meaning keeping in view the objective of the statute so as to compensate unfortunate death of a passenger in railway accident. Such provision cannot be interpreted so as to benefit the tortfeasor which in the present case would be the Railways. Sub-section (ii) of Section 123(b) of the Railways Act deals with dependency wholly or in part, therefore, the dependence of care at protection, love and affection by the deceased on their minor brother would be dependence within the meaning of the Act. It may be noticed that the parental grand parents can be said to be dependents only if they are wholly dependent on the deceased passenger. Such dependency is in contravention to even par dependency of a minor brother under clause (ii) of Section 123(b) of the Railways Act.

13. In view of the above, we are of the opinion that the order passed by the Tribunal is not based upon correct interpretation of law. Consequently, we set aside the same holding petitioner

No. 2 i.e., minor brother to claim compensation as legal representative and dependent of the deceased.”

In view of enunciation laid down in **Dhyan Singh and another case (supra)**, there is no escape from conclusion that paternal grandparents of deceased passenger, in the given circumstances, neither can be heard to say that they were wholly dependent on the deceased passenger nor are entitle to get compensation by pressing into service sub-clause (iv) of Section 123(b) of the Act. Accordingly, the first question is answered in favour of the appellant and against the respondents.

The parents in law of a deceased passenger are not there within the meaning of dependant under the Act. As has been noticed hereinbefore, use of the word ‘means’ indicates that the definition is hard and fast. Equally true is that if there is direct conflict between the general legislation and special legislation, the special legislation will over-ride the general legislation.

The Division Bench in **Dhyan Singh and another case (supra)**, in para 11, has held that the Act will only supersede the provisions of Section 1A of the Fatal Accidents Act, 1855 whereas loss to the estate computable under Section 2 of the Fatal Accidents Act, 1855 can be claimed by the legal representatives but from a forum created under the RCT Act in view of the bar of jurisdiction of civil Court. Further held that provisions of Section 2 of the Fatal Accidents Act, 1855, cannot be deemed to be superseded by enactment of Railways Act and the Railway Claims Tribunal Act, 1987. The substantive right created by the Fatal Accidents Act, 1855, cannot be deemed to have been curtailed in any

manner by the enactment of the aforesaid Acts. The subsequent enactment has only changed the forum from the Civil Court to Tribunal constituted under the Railway Claims Tribunal Act, 1987. Thus, the compensation on account of loss of estate could be claimed by the eligible legal representatives from the Railway Claims Tribunal in accordance with the procedure prescribed under the Railways Act.

A relevant extract from Section 2 of the Fatal Accidents Act, 1855 reads thus:-

"Claim for loss to the estate may be added. - Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for, and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased."

The daughters in law in regard to whose death, claim for compensation has been made are not proved to be earning hand and as such the question for any pecuniary loss to the estate of the deceased by such wrongful act, neglect or default does not arise in the given circumstances. Analyzed from any angle, the parents in law are not entitle to compensation with regard to death of their daughter in law. Accordingly, question No.2 is answered in favour of the appellant and against the respondents/claimants.

As the respondents, in view of discussion hereinbefore, cannot maintain their plea for grant of compensation, findings of the Tribunal

allowing compensation by enlarging the purview of definition of ‘dependant’ cannot be allowed to sustain and accordingly set aside.

Before parting with this order, it is pertinent to note that this Court is not oblivious of the fact that the Act is a benevolent social legislation, thus, provisions thereof invite liberal interpretation for granting compensation to the victim family and tortfeasor should not be allowed to go scot-free. However, Section 123(b) giving meaning to the word ‘dependant’ does not admit of any clarification/interpretation for there is no ambiguity and same invites strict and literal interpretation, there is no escape from conclusion that respondents/claimants are not entitle to maintain their plea for grant of compensation. In view of the above, the awards passed by the Tribunal are set aside.

For the foregoing reasons, the appeals are allowed. The awards passed by the Tribunal are set aside. The applications for grant of compensation are dismissed, leaving the parties to bear their own costs.

DECEMBER 20, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no