

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

Date of decision: 16.12.2019

1. **FAO No.1618 of 1998(O&M) &
XOBJC-170-CII of 2019**

Union of IndiaAppellant

VERSUS

Smt. GurmeetRespondent

2. **FAO No.1619 of 1998(O&M) &
XOBJC-171-CII of 2019**

Union of IndiaAppellant

VERSUS

Smt. GurmeetRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jagdish Marwaha, Special Counsel-cum-Senior Panel
Counsel with Mr. Manit Sharma, Advocate and
Mrs. Rupali Marwaha, Advocate for the appellant.

Mr. R.K. Singla, Advocate and
Mr. Tarun Singla, Advocate for the cross-
objector/respondent.

REKHA MITTAL, J.

CM No.17632-CII of 2019

Heard.

Allowed as prayed for.

Disposed of accordingly.

FAO No.1618 of 1998 & XOBJC-170-CII of 2019
FAO No.1619 of 1997 & XOBJC-171-CII of 2019

This order will dispose of FAO Nos.1618 and 1619 of 1998 and cross objections No.170-CII of 2019 in FAO No.1618 of 1998 and No.171-CII of 2019 in FAO No.1619 of 1998 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from FAO No.1618 of 1998.

Ms. Gurmeet widow of Sh. Girdhari Lal filed an application for grant of compensation to the tune of Rs.4 lakh on account of death of her son Kulvinder Heer in a bomb blast at Jalandhar City Railway Station. It was averred that Kulvinder Heer aged 25 years was travelling from New Delhi to Jalandhar City via 2497 on 14.03.1997. After de-boarding the train at Jalandhar City Railway Station, deceased was in the process of coming out of passenger hall and while waiting to get into a three wheeler in the circulating area of Jalandhar City Railway Station, he was badly wounded as a result of bomb explosion. Kulvinder Heer died in the said untoward incident and applicant is entitle to compensation under Section 123(1)(i), (iii) and 123A (ii) of the Railways Act, 1989 (in short 'the Act').

The appellant/respondent – Railway Administration filed written statement raising preliminary objection that no untoward incident within precincts of Railway Station had occurred and as such the application is not maintainable. On merits, it was admitted that Kulvinder Heer died in a bomb blast outside the precincts of Railway Station, Jalandhar. The deceased had completed his journey and had come out of the Railway Station when the mishap occurred and as such it was not an untoward incident within the meaning of Section 124A of the Act. The

Railways had carried the passengers safely to destination and obligation extends up to the exit door of the said station. The deceased had already come out of the exit door and as such the applicant cannot maintain her claim under Section 124A of the Act. All other material averments of the application were denied with a prayer for dismissal of the same with costs.

The respondent/applicant filed replication reiterating her stand taken in the claim application and those of written statement were controverted.

The Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal') framed the issues, read thus:-

1. Whether the deceased was still a passenger at the time of bomb blast? OPA
2. Whether the untoward incident in question occurred within the precincts of railway station? OPA
3. Whether the applicant is the only dependent of the deceased or there are other dependents? OPP
4. To what amount of compensation, if any, is the applicant entitled to recover from the respondents?
OPA
5. Relief.

The Tribunal, in view of findings on issues No.1 to 4, in the light of materials on record, accepted claim of the respondent/applicant and she was awarded Rs.2 lakh, to be shared by Ms. Gurmeet and Akhil Heer in equal share. The Railway Administration was allowed 60 days time to make payment failing which the applicant was allowed interest at the rate of 12% per annum from the date of order till realisation.

The sole submission made by counsel for the appellant is that as the deceased had already completed his journey and crossed the exit point of platform at Jalandhar, the respondent cannot be heard to say that the deceased was a passenger within the meaning of Section 2(29) of the Act for whose death a claim can be maintained under the provisions of Section 123 and 124A of the Act. For this purpose, counsel has referred to definition of passenger in Section 2 (29) and Section 54 of the Act that deals with exhibition and surrender of passes and tickets to railway servant at the end of the journey or if the ticket is issued for a specified period, on expiration of such period. It is vehemently argued that as deceased sustained injuries in a bomb blast after coming out of the premises of the Jalandhar City Railway Station while he was hiring an auto rickshaw for his onward journey to his residence, the Tribunal has wrongly recorded findings on issues No.1 and 2 in favour of the respondent.

Counsel representing the claimant/respondent, on the contrary, has supported the award. It has been argued that occurrence in question took place on 14.03.1997 but the award was passed on 06.03.1998 in an application filed on 03.09.1997. There was amendment in the Railway Accidents (Compensation) Rules, 1990 (in short 'the Rules') that came into force w.e.f. 1st of November 1997 vide notification dated 25.10.1997 issued by Ministry of Railways whereby compensation for death of a passenger was increased from Rs.2 to Rs.4 lakh. It is further argued that since on the day of passing of the award compensation qua death of a passenger was Rs.4 lakhs, the respondent/cross objector is entitle to additional compensation of Rs.2 lakh with interest, ascertained by this Court. In support of his contention, he has relied upon judgments of

Hon'ble the Supreme Court **Rathi Menon Vs. Union of India, 2001(3) RCR (Civil) 224** and **N. Parameswaran Pillai Vs. Union of India, 2002 (2) RCR (Civil) 597.** Reference is also made to judgments of this Court **Union of India Vs. Shri Mohinder Singh, 2011(5) RCR (Civil) 609** and **Subhash Chand Sharma Vs. Union of India, 2016(4) RCR (Civil) 357.**

Counsel for the appellant, in reply, would argue that cross objections were filed on 25.08.2019 and the same are barred by limitation. According to counsel, Sh. Tarun Singla, Advocate caused appearance on behalf of the respondent on 20.05.2016 and made a request for allowing some time to file his power of attorney and submit arguments. It is further argued that since the cross objections have been filed much later than 30 days from receipt of notice of actual hearing of the appeal and cross objector has not filed an application for condonation of delay in filing the cross objections, the respondent cannot assert her right for allowing additional compensation by referring to the Rules and judgment of Hon'ble the Supreme Court in **Rathi Menon's case** (supra).

Counsel representing the cross objector/respondent would argue that there was no notice issued by this Court with regard to actual date of hearing of the appeal, admitted on 17.08.1999, therefore, the cross objections cannot be said to be barred by limitation. In the alternative, it is argued that this Court in exercise of jurisdiction under Order 41 Rule 33 CPC, can pass a judgment that ought to have been passed by the Tribunal, even if no cross objections have been filed by the respondent/claimant. For this purpose, reference has been made to judgments of Hon'ble the Supreme Court **Panna Lal Vs. State of Bombay and others, AIR 1963 SC 1516** and **Koksingh Vs. Smt. Deokabai, AIR 1976 SC 634.**

I have heard counsel for the parties, perused the paper-book and records.

It is undisputed position of the case that Kulvinder Heer son of the respondent/claimant was a bona fide passenger of railway from New Delhi to Jalandhar City and deboarded the train at Railway Station, Jalandhar City on 14.03.1997. Before the deceased could leave the railway precinct/boundary of the Jalandhar City Railway Station and was in the process of hiring auto rickshaw for going to his house, unfortunate occurrence of bomb blast happened and the deceased sustained injuries that proved fatal. One of the witnesses examined by the Railway Administration produced plan of Jalandhar City Railway Station depicting the site of blast. Counsel for the appellant has not disputed that occurrence in question took place within the boundary of Jalandhar City Railway Station and at the site shown in the plan.

The Tribunal, while deciding issue No.2 has held, reads thus:-

"The counsel for the respondent railway administration has argued that the bomb blast took place outside the railway station and near the taxi stand. This site was not within the station building but only in the circulating area of the station. It was further argued that the bomb blast did take place within the railway boundary but the claim for compensation can be allowed only when the incident take place within the railway station building. Counsel for the applicant, however, argued that Section 124A of the Railways Act states that whenever untoward incident take place within the railway station premises, compensation can be allowed to the passengers who

sustain injuries or die. The counsel for the respondents also furnished a map showing the location where the bomb blast took place. This location is within the precincts of railway station and in the circulating area. We, therefore, consider that the untoward incident took place within the precinct of railway station and is covered for compensation under Section 124A of the Railways Act.”

Section 2(29) defines 'passenger' means a person travelling with a valid pass or ticket. Section 123 (c) defines 'untoward incident'. A relevant extract therefrom reads as follows:-

"Untoward incident means the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers or in a waiting hall, cloakroom or reservation or booking office or on any platform or in any other place within the precincts of a railway station.."

Since the untoward incident in the present case occurred within the precincts of Railway Station, covered under Section 123(c) of the Act, it is difficult to accept contention of the appellant that respondent/claimant is not entitle to compensation because the deceased had already crossed exit point of the platform even though had not crossed the precincts of the Railway Station.

Counsel for the appellant has failed to point out any provision in the Act that says that a person after de-boarding the train ceases to be a passenger even if he is within the precincts of the Railway Station and becomes victim of an untoward incident defined in Section 123(c) of the

Act. In this view of the matter, contention raised by the appellant is not meritorious, thus, untenable.

The Tribunal awarded Rs.2 lakh and interest at the rate of 12% per annum if payment was not made within 60 days from the date of order. Counsel for the appellant has not disputed that on the date of passing of the award the Railway Accidents (Compensation) Rules, 1997 were in force whereby compensation was increased from Rs.2 to Rs.4 lakh when the case is examined in the light of judgment of Hon'ble the Supreme Court in **Rathi Menon's case** (supra) and **N. Parameswaran Pillai's case** (supra), the respondent was entitle to compensation of Rs.4 lakh with interest.

The question that arises for consideration is, whether the respondent can press for additional compensation even if cross objections are not filed within the prescribed period of limitation. Taking into consideration the interim orders passed by this Court starting from 20.05.2016, there is no escape from conclusion that cross objections were filed beyond period prescribed in the Code of Civil Procedure. Undisputedly, the Act is a benevolent social legislation and proceedings before the Tribunal are summary in nature. The provisions dealing with grant of compensation invite liberal construction so that purpose of the Act is not frustrated and tortfeasor is not able to go scot-free by pressing into service technical considerations. Counsel for the respondent, is right in his submission that even if the respondent had not filed any cross objection, the award can be modified in exercise of jurisdiction under Order 41 Rule 33 CPC by passing a judgment that ought to have been passed by the Tribunal. Counsel for the appellant has not disputed that on the date of

passing of the award, respondent was entitle to compensation to the tune of Rs.4 lakhs. He has also not disputed the enunciation laid down by Hon'ble the Supreme Court in **Rathi Menon's case** (supra). That being so, the respondent shall be entitle to additional amount of Rs.2 lakhs, payable with interest at the rate of 9% per annum from the date of award till realization, to be paid to the person(s) in terms of the award.

In view of what has been discussed hereinbefore, the appeals are dismissed and cross objections are allowed in the aforesaid terms. No order as to costs.

DECEMBER 16, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no