

In the High Court of Punjab and Haryana at Chandigarh

**FAO No. 885 of 1998 (O&M) and
Cross objections No. 42-CII of 2003 (O&M)
Date of Decision: 17.9.2019**

Union of India

---Appellant

vs.

Anju Kalra and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanyam Malhotra, Advocate
for the appellants
Mr. Paul S.Saini, Advocate and
Mr. Vipul Sharma, Advocate
for respondent No. 1-cross-objector
None for respondents No. 2 and 3

Rekha Mittal, J.

This order will dispose of FAO No. 885 of 1998 and Cross objections No. 42-CII of 2003 as these have emerged out of the same award dated 6.1.1998 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short “the Tribunal”) whereby compensation has been awarded on account of death of Aruna in an untoward incident that took place on 2.12.1996.

The Tribunal awarded Rs. 2 Lakh and interest @ 15% per annum from the date of order in case the appellant fails to pay the amount within 60 days from the date of order.

Counsel for the appellant has assailed the award primarily on two counts. It is argued that Anju Kalra respondent is the minor sister of Aruna (since deceased) and she cannot claim to be dependent upon Aruna, therefore, is not entitle to get compensation. It is further argued that prior to application filed by Anju Kalra, two applications were filed by the parents and parents-in-law respectively of Aruna, therefore, the present application for grant of compensation is not maintainable. He has also made an attempt to argue that since there is no evidence with regard to earning of Aruna, the respondent is not entitle to get compensation.

Counsel representing the respondent-claimant, on the contrary, would argue that Anju Kalra being the minor sister of deceased, falls within the definition of 'dependant' under Section 123(b) of the Railways Act, 1989 (in short "the Act"), as such she is competent to maintain application for grant of compensation.

With regard to previous applications filed by the parents and parents-in-law of deceased Aruna, it is argued that the same were withdrawn without any adjudication. To refute contention of the appellant that respondent was obligated in law to prove income of deceased for assessment of compensation, it is argued that there is no such requirement in view of provisions of the Act as the legislation in its wisdom has pre-determined the compensation payable to dependants of deceased. However, counsel would state that he does not press the cross objections preferred by the respondent-claimant as grant of compensation of Rs. 2 lakh with interest is more beneficial viz-a-viz allowing a sum of Rs. 4 lakh

available at the time of passing of award but without interest.

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

There is no denial that Anju Kalra is the minor sister of deceased Aruna. Section 123(b) of the Act, defines 'dependant' in the following terms:-

“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.”

A perusal of the aforesaid extract would reveal that minor brother or unmarried sister besides others shall also fall within the purview and ambit of 'dependant' if dependent wholly or partly on the deceased passenger. In the instant case, the claimant raised a plea that at the time of settlement of marriage of deceased, it was mutually agreed between the two families that deceased would continue to support the claimant financially otherwise she was fully dependent on the deceased for all intents and purposes.

Sh. Y.S.Kalra, father of deceased as well as respondent through whom the petition was preferred by the minor claimant appeared in the witness box and tendered into evidence his duly sworn affidavit. In para 2

of the affidavit, he reiterated the averments raised in the claim application with regard to dependency of the claimant upon the deceased. The witness was cross examined but no such fact has been elicited to discard or disbelieve his testimony. In this view of the matter, I do not find any reason to differ with findings of the Tribunal that respondent-claimant was dependant upon the deceased and entitle to get compensation.

Indisputably, earlier the parents and parents-in-law of the deceased filed separate applications for grant of compensation but the same were withdrawn. The parents of deceased were even given liberty to file fresh application on the same cause of action. Since the present claimant was minor at the time of institution of proceedings, her claim cannot be rejected on technicality that claim applications were filed by the parents and parents-in-law of the deceased.

So far as contention of the appellant that as the deceased did not have any source of income at the time of unfortunate incident, the claimant is not entitle to compensation is highly misconceived and liable to be rejected. Since the legislature in its wisdom has determined and quantified the compensation payable in respect of death of person(s) in respect whereof provisions has been made in the Act, the appellant cannot escape its liability to pay compensation.

The Tribunal awarded Rs. 2 lakh and interest @ 15% per annum to be paid in case the amount is not paid within sixty days. The penal interest awarded by the Tribunal cannot be allowed to sustain and is set aside in view of judgment of Hon'ble the Supreme Court **National**

Insurance Co. Ltd.Vs. Keshav Bahadur, 2004 ACJ 648. The respondent-claimant shall be entitle to Rs. 2 lakh with interest @ 9% per annum from the date of application till realization.

In view of what has been discussed hereinbefore, the appeal and cross objections stand disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

17.9.2019.
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No