

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

FAO No.16 of 2008 (O&M)  
Date of decision: 16.07.2019

Ishar Singh and another

... Appellants

Versus

Union of India

... Respondent

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Somesh Gupta, Advocate for the appellants.  
Mr. Sanyam Malhotra, Advocate for the respondent.

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**REKHA MITTAL, J. (Oral)**

**CM No.5916-CII of 2019**

Heard.

Allowed as prayed for. Affidavit of DRM, Ferozepur and  
Annexures R1 and R2 are taken on record, subject to just exceptions.

Disposed of accordingly.

**CM No.45-CII of 2019**

Heard.

Allowed as prayed for. Reply to the application for additional  
evidence is taken on record, subject to just exceptions.

Disposed of accordingly.

**Main Case**

Ishar Singh and another, sons of Smt. Surjeet Kaur are in  
appeal to assail the award passed by the Railway Claims Tribunal,

Chandigarh whereby application for grant of compensation under Section 124-A of the Railways Act, 1989 read with Section 16 of the Railways Claims Tribunal Act, 1987 was dismissed in view of findings recorded on issues No.1 to 3, taken up jointly.

Counsel for the appellants would argue that issues No.1 to 3 were determined against them on the ground that they did not adduce any oral evidence to substantiate their plea that Smt. Surjeet Kaur was a bona fide passenger in the train in question and she died due to an untoward incident while travelling in the said train. It is further submitted that an application under Order 41 Rule 27 read with Section 151 CPC has been filed for permitting the appellants to place on record affidavit of Ishar Singh in support of claim application. It is argued that affidavit of Ishar Singh may not be taken into consideration till an opportunity is provided to the respondent to cross examine the witness. It is further argued that the award may be set aside and the matter be remitted to the Tribunal for decision afresh after permitting the appellants to adduce additional evidence by examining Ishar Singh, one of the claimants and on the basis of materials already on record.

Counsel representing the respondent, on the contrary, has opposed the application for additional evidence with the submission that the same does not fall within the purview of Order 41 Rule 27 CPC when examined in the view of Clause a and aa of Rule 27 thereof. It is further submitted that in case the appellants are permitted to adduce additional

evidence and eventually their claim for grant of compensation is allowed, the appellants should not be allowed interest of the intervening period as failure for non-examination of Ishar Singh is solely attributable to them.

Be that as it may, perusal of findings of the Tribunal on issues No.1 to 3 leaves no manner of doubt that findings on the material issues have been recorded for want of examination of applicants to prove the averments raised in the claim application. The provisions of the Railways Act, 1989 are benevolent social legislation enacted with an intent to make good the loss, victim or victim family has suffered. If the Tribunal was not convinced with materials available on record, it could suo motu call upon one of the claimants to examine himself to substantiate their pleadings.

Taking into consideration the legislative intent behind the provisions providing for compensation to the victim or victim family, interest of justice commands that an opportunity is provided to the claimants to examine Ishar Singh as a witness. Accordingly, application filed by the appellants for additional evidence is allowed. Since, it is for the Tribunal to record additional evidence and thereafter decide the case on the basis of materials already on record and additional evidence to be adduced by the claimants and rebuttal evidence, if any, to be led by the respondent, the matter needs remittance to the Tribunal for decision afresh after setting aside the award impugned.

In view of what has been discussed hereinbefore, the appeal is allowed; award passed by the Tribunal is set aside and the matter is

remitted to the Tribunal for decision of the case afresh in view of the aforesaid observations. It would be open for the respondent to make submissions before the Tribunal that since delay in concluding the proceedings is solely attributable to the claimants for their failure to adduce oral evidence at an appropriate stage of the proceedings, they are not entitle to interest for a particular period and the same shall be decided by the Tribunal in accordance with law. The parties through their counsel are directed to appear before the Tribunal on 16.08.2019.

Records of the Tribunal, if received by the Court, be sent back.

16.07.2019

ashok

**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned:  
Whether reportable:

Yes / No  
Yes / No