

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

204-1

CWP-20798-2014 (O&M)

AMARJIT KAUR

... Petitioner

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

AND

204-2

**CWP-5817-2017 (O&M)
Date of Decision: 10.04.2023**

MANJU BALA AND OTHERS

... Petitioners

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. A.S. Dhindsa, Advocate
for the petitioner in CWP-20798-2014.

Mr. Prateek Sodhi, Advocate
for the petitioners in CWP-5817-2017.

Ms. Indira, Advocate for Mr. H.S. Oberoi, Advocate
for respondent No.1- U.O.I. (in both cases).

Mr. Praveen Chander Goyal, Advocate and
Mr. Chander Mohan Sharma, Sr. Panel Counsel,
Govt. of India, for the respondents in both cases.

VINOD S. BHARDWAJ, J. (ORAL)

Both these petitions are being decided by a common judgment as
the counsel for the respective parties submit that the issues arising in these
petitions are identical.

FACTS OF CWP-20798-2014

This writ petition seeks issuance of directions to the respondents to compensate the petitioner for the death of her husband Sukhdev Singh son of Pritam Singh, which has been denied by the respondents. It is averred in the petition that Sukhdev Singh since deceased was working as Driver of the Van bearing Registration No.MKE-(T)U-0910 and was on duty on 19.12.2011. When around 7.30 AM, while crossing an unmanned level crossing at the railway gate No.82-C KM 96/5-6 between Sunam and Chhajali, the van met with an accident at the railway crossing on account of negligence by the railway department. However, an FIR No.49 dated 19.12.2011 was registered against Sukhdev Singh for the offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860 on the statement of Tarsem Lal, Station Master, Railway Station Chhajali. It is averred that the statement of Tarsem Lal was only a hearsay statement and that he was not an eye-witness of the incident. The deceased Sukhdev Singh had not committed any offence at all, yet the case in question had been registered against him. It is contended that on the said date i.e. 19.12.2011, there was fog at 7.30 AM due to which visibility was heavily impaired. The Railway Authorities did not put any safety precaution at the unmanned level crossing nor did they depute any person over there to caution the public about the passing trains. The level crossing being a public crossing, the Authorities were obligated to put in place a proper security mechanism to caution the travellers about the passing trains. Such requirement is also mandated under The Railways Act, 1989 and instead of adhering to the same, the respondent-Authorities rather contributed towards exposing the husband of the petitioner to a danger that could have been avoided. The

petitioner submitted numerous representations to the Authorities concerned for seeking compensation including a legal notice dated 01.07.2014. The respondent-Authorities have, however, declined the claim of the petitioner vide their response to the legal notice on 19.09.2015. Hence, this petition has been filed for seeking compensation on account of death of Sukhdev Singh- husband of the petitioner due to negligence on the part of the respondents- Railway Administration. It is averred that the deceased was earning Rs.9,000/- per month as salary apart from agricultural income and the family is entitled to a compensation to the tune of Rs.8,00,000/-.

Upon issuance of notice, reply had been filed by the respondents through the Deputy Chief Commercial Manager Claims, Northern Railways, New Delhi. It was averred that the Railway is not liable to pay compensation to the petitioner since the accident in question had occurred due to the fault on the part of the deceased Sukhdev Singh, who did not exercise due care and caution while crossing the unmanned level crossing. It is alleged that the deceased tried to cross the unmanned level crossing hastily, rashly and without taking basic precaution and in that process, he rammed his van into the incoming train, which resulted in his death. The respondent-Railways had adopted adequate precautionary measures and that the train-whistle was duly blown by the pilot of locomotive as per the railway rules. An enquiry into the said incident was also conducted by the Railway-Authorities and no lapse/fault was found on the part of the locomotive pilot. The accident in question took place due to the rash and negligent driving by the Van Driver- Sukhdev Singh deceased. The photographs of the site at the time of accident have also been appended alongwith the reply by the respondents.

FACTS OF CWP-5817-2017

The petitioners in the present writ petition have sought compensation on account of death of Sushil Kumar and also raise challenge to the communication sent by the respondents declining the claim of the petitioners for compensation. It is averred that petitioner No.1 is the widow while the remaining petitioners are minor children of deceased Sushil Kumar. On 21.12.2015, the petitioner No.1 was sitting as pillion rider with deceased Sushil Kumar on the motorcycle bearing Registration No.PB-02-AV-2668 and they were going to meet her sister-in-law in Amritsar. At about 1.30 PM, they reached near the Railway Crossing (Jaura Phatak), Gate No.B-27, which was open. The husband of the petitioner No.1 was trying to cross the railway track, when he was picked by an inbound train. The gates of the level crossing were not closed by the officials/employees of the respondent-Railway Administration even though there was an inbound train. The petitioner No.1 fell on the ground while her husband was dragged alongwith his motorcycle to a distance of 50 meters approximately and was crushed under the train resulting in his death at the spot. It is alleged that the accident in question took place on account of lapse of gateman/employee of the Railway Administration. An FIR No.125 dated 21.12.2015 under Section 304 of Indian Penal Code, 1860 and Section 175 of the Railway Act, 1989 was registered against the respondents at Police Station: GRP, Amritsar. The deceased was working as an employee of one Sukhdeep Singh and was getting a monthly salary of Rs.7,000/-. The petitioner No.3 i.e. the minor child is suffering from permanent physical disability to the extent of 60%. Various representations were sent by the petitioner to the Railway Authorities, however, no decision has been taken

thereupon. Eventually, a legal notice dated 06.04.2016 was served upon the respondents, which was decided by the respondent-Authorities declining the claim of the petitioners. The petitioners further contend in their petition that the accident in question occurred solely as a result of lapse on the part of the respondent-Authorities and due to their failure to close the railway gate (Phatak) when the train was inbound.

Written statement on behalf of the respondents was filed where they have submitted that the accident in question took place as a result of negligence on the part of the deceased who did not stop at the closed railway crossing even though the booms (barriers) were put down. The department inquired into the facts of the case and came to a conclusion that there was no fault on the part of the Railways and that the deceased Sushil Kumar met with the accident on account of his own rash and negligent acts of trespassing/crossing the closed railway crossing before being run over by the train at KM No.508/7-9 near the Railway Station Manawala. It is further averred that the deceased had himself committed offence(s) punishable under law and the Railways cannot be held liable to pay any damages to the petitioners.

A separate reply on behalf of respondent No.2 – Northern Railways through the Railway Locomotive Pilot was also filed. Photographs of the scene showing the people entering into the closed booms (barriers) has also been annexed reflecting the general tendency of the people to pass through the railway crossing notwithstanding the booms (barriers) having been put down and thereby exposing themselves to undesired danger.

No replication/rejoinder has been filed by the petitioners in any of the writ petitions.

The counsel for the petitioner also places reliance on the judgment dated 07.12.2018 passed in the matter of **Meera Devi and others Vs. Union of India and others bearing No.CWP-2185 of 2014** wherein compensation was ordered against the Railways. The aforesaid judgment in my view would, however, not apply to the case in hand since the Court therein had recorded a finding that the circumstances established the negligence on the part of the railways. Whereas the facts of the present case cannot be held to be sufficient to declare that the circumstances by themselves would prove the negligence of the railways. The reply filed by the railways and the stand taken by them have not been controverted by filing any replication/ rejoinder. Hence, at this stage, the uncontroverted stand cannot be dispelled or disbelieved.

The question which thus arises for consideration before this Court is as to whether the petitioners are entitled to any compensation on account of the abovesaid incidents/accidents. The factual distinction in both the petitions is that the accident in the case of Amarjit Kaur took place at an unmanned level crossing on a foggy day whereas in the matter of Manju Bala, the accident had taken place on an manned railway crossing, where the Railway Authorities contend that the booms (barriers) had been put down to stop the commuters from crossing over the railway lines.

Learned counsel for the respective parties have reiterated the facts as noticed above. Learned counsel for the petitioner in CWP-20798-2014 has additionally placed reliance on the provisions of Sections 11 and 18 of The Railways Act, 1989 which deals with the powers of Railway Administration to

execute various works like installing fences, gates and barriers at the railway crossings. He contends that the photographs of the site clearly show that it was a foggy day and that the visibility was very poor on that day. Except for the averment that the locomotive pilot had blown the whistle of the train, no other precautionary step is reflected to have been adopted by the respondent-Authorities. The relevant statutory provisions of the Railways Act, 1989 referred to by the petitioners are extracted as under:

“11. Power of railway administrations to execute all necessary works.—*Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government Railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway—*

- (a) make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aquaducts, roads, lines of railways, passages, conduits, drains, piers, cuttings and fences, intake wells, tube wells, dams, river training and protection works as it thinks proper;*
- (b) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;*

- (c) *make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;*
- (d) *erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;*
- (e) *alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;*
- (f) *erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;*
- (g) *erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and*
- (h) *do all other acts necessary for making, maintaining altering or repairing and using the railway.*

12-17 XXX XXX XXX XXX

18. **Fences, gates and bars.**—*The Central Government may, within such time as may be specified by it or within such further time, as it may grant, require that—*

- (a) *boundary marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;*
- (b) *suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at level crossings;*
- (c) *persons be employed by a railway administration to open and shut gates, chains or bars. ”*

Learned counsel for the railways has however, additionally argued that the Authorities had conducted an inquiry into the incident and had recorded the finding that the Railways Authorities were not at fault and that there was no negligence on their part. Additionally, the deceased in both the

petitions also failed to exercise the necessary precaution and due diligence before crossing the railway tracks/crossings (unmanned railway crossing) and had shown undue haste. So much so in CWP-5817-2017, the deceased crossed over the booms (barriers) even though the same had been put down to stop entry of traffic due to an inbound train. He further contends that the petitioners have lodged a claim with numerous disputed questions of facts including the negligence/contributory negligence on the part of the Railway Authorities, which still remains to be established. Income and computation of the compensation would again be a disputed question of fact. It is further averred that such disputed questions of facts cannot be adjudicated by a writ Court. The circumstances of the present cases do not *ex facie* establish the negligence on behalf of the respondents-Railways Authorities. He, however, does not dispute the fact that an interim compensation of Rs.2,00,000/- was awarded by this Court in CWP-5817 of 2017 vide order dated 17.05.2017.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The law of torts recognizes the jurisprudential concept of negligence. The Hon'ble Supreme Court in the matter of **Jacob Mathew Vs. State of Punjab and others** reported as **AIR 2005 SC 3180** has held that negligence is a breach of a duty caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes

the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damage. The law of torts recognizes the entitlement of a person aggrieved to claim compensation for violation of his civil right apart from being prosecuted for commission of the offence under the criminal law. The computation may vary upon consideration of the evidence brought before the Court and after examining whether it is a case of negligence of one party, contributory negligence or a composite negligence. Such aspect is determined only on the strength of evidence adduced before the Court and apportionment of damages can thereafter be done. Since this Court is not examining the issues on merits, it would not be appropriate for this Court to comment on the culpability or on the merits of the case lest it prejudices respective rights of the parties to plead and establish their cases.

A perusal of the order sheets shows that an amount of Rs.2,00,000/- as interim maintenance has already been ordered to be paid to the petitioners in CWP-5817-2017.

Chapter 12 of the Railways Act, 1989 deals with accidents. Section 113 of the Railways Act, 1989 mandates a notice of such accidents to be given to the District Magistrate and the S.S.P. or S.P. within whose jurisdiction the accident takes place. An inquiry is required to be conducted by the Commissioner notified under the Railways Act, 1989.

Chapter 13 of the Railways Act, 1989 deals with liability of Railway Administration for death/injury to the passengers due to accidents. The abovesaid Chapter deals with the grant of compensation only to the passengers and not to other persons. The person who is not satisfied with compensation may approach the Railway Claims Tribunal for seeking compensation. However, the abovesaid provisions do not deal with compensation to the persons who are not passengers of the Railways. Chapter 12 deals with the accidents which cause any loss to human life or grievous hurt. The Chapter deals with the compensation/liability of the Railway Administration and restricts the liability of Railways only qua the passengers and not for the non-passengers. The same cannot be construed to hold that the Railway is insulated against any claim that may be lodged by the persons, who are not passengers/dependents of passengers. Under such circumstances, the jurisdiction of a Civil Court to determine the question of negligence would not be ousted. It is undisputed that the husband(s) of the petitioner(s) in both the petitions have lost their lives. As to whether the Railways would be exonerated of all its liability by a mere contention that a person crossing the railway track is required to take all precautions and that an occurrence of the accident on a Railway Crossing would entirely shift the burden on the injured/deceased or would give rise to a presumption that the injured/deceased was himself rash and negligent may not be accepted as a founding principle. Such aspect is to be determined only on the strength of the evidence brought before the competent Court. The High Court would not delve into recording evidence where the disputed questions of facts arise and it would be appropriate for the aggrieved parties to approach the competent Court of law for seeking compensation and

its computation after leading evidence. It is noticed that an interim compensation of Rs.2,00,000/- had already been awarded in favour of the petitioners in CWP-5817-2017 and as a period of nearly 6 years has already been elapsed since then, it would not be appropriate for this Court to revisit the grant of interim compensation.

Insofar as the case of Amarjit Kaur in CWP-20798-2014 is concerned, the circumstances show that it was a foggy day and that the visibility may have been grossly impaired.

Per contra, the measures put in place by the Railway Authorities are yet to be ascertained alongwith efficacy of such precautionary measures.

Taking a sympathetic view and considering that the disputed questions cannot be decided by this Court, the present writ petitions are disposed of with liberty to the petitioners to file appropriate proceedings before a competent Court for seeking compensation. As the case of Amarjit has remained pending in this Court for nearly 09 years coupled with the fact that it may not be possible for this Court at this juncture to record a conclusive finding qua fault on the part of the Railways, an interim compensation of Rs.2,00,000/- at par with the compensation awarded to the petitioner in CWP-5817-2017 vide order dated 17.05.2017 is awarded to the petitioners so as to enable them to take recourse to filing an appropriate petition/proceedings before the competent Court of law for redressal of their grievances. No other separate order of any additional interim compensation is being passed in the case of Manju Bala bearing No.CWP-5817-2017 as the interim compensation passed on 17.05.2017 is deemed to be an appropriate measure in the circumstances of the present case.

The petitions are accordingly disposed of with liberties as aforesaid.

Needless to mention that in the event of the petitioners preferring any such claim, the period during which the present petitions remained pending in this Court be taken into consideration while computing limitation.

10.04.2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

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