

CWP-728-2020

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

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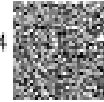
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Date of decision: 18.09.2024

Kamaljit Kaur & another**...Petitioners****Versus****Union of India & another****...Respondents****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ****Present :** Mr. Dinesh Nagar, Advocate,
for the petitioners.Ms. Anita Balyan, Advocate,
for respondent No.1.**VINOD S. BHARDWAJ, J. (Oral)**

Prayer in the present petition is for quashing of the impugned order dated 26.11.2019 (Annexure P-7), whereby execution application filed by the petitioners for execution of the judgment and order dated 03.04.2019 passed by this Court in FAO-4058-2006 was dismissed.

Learned counsel for the petitioners contends that the father of the petitioners Saudagar Chand had died on 08.01.2003 in a railway accident while travelling by train No.11JH DMU. A claim petition was filed by Smt. Gurbaksh Kaur and the petitioners, being wife and children of deceased Saudagar Chand, under Railway Claims Tribunal Act, 1987. The same was registered as OA-II/51/2003. The said claim petition was however dismissed by the Railway Claims Tribunal, Chandigarh vide order dated 23.01.2006. The same was challenged by way of filing FAO No.4058 of 2006 before this Court, wherein the impugned order dated 23.01.2006



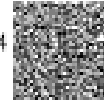
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was set aside by this Court vide order dated 03.04.2019 and compensation to the tune of Rs.4.00 lakhs was awarded to the present petitioners as well as Gurbaksh Kaur, to be paid along with interest @ 9% per annum, from the date of filing of the claim application till the date of payment of the compensation amount. It is further informed that during the pendency of FAO-4058-2006, Gurbaksh Kaur (mother of the petitioners) died on 24.12.2018. However, the factum of her death could not be brought to the knowledge of the Court or the counsel representing the appellants(petitioners herein).

After the passing of the aforesaid order, execution petition was filed by the petitioners for disbursement of the decretal amount. The matter was posted before the Railway Claims Tribunal, Chandigarh for production of the legal heir certificate which was also duly placed on record by the petitioners, but despite availability of the said certificate, the execution petition was dismissed vide impugned order dated 26.11.2019 by holding as under:-

“Memo of appearance filed on behalf of the applicant. Ld. counsel for the applicant submitted that since the main claimant in this case has died and sought the division of her share among the other applicants. Since the award of compensation was made by the Hon’ble Punjab and Haryana High court, so this Tribunal can not interfere into the findings of the Hon’ble High Court relating to the division of shares of the applicants. Moreso, the present execution application also suffer from a number of latches. The same stands dismissed. File be consigned to the record room.”



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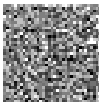
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Aggrieved thereof, the present writ petition has been filed.

Learned counsel appearing for the petitioners has vehemently argued that death certificate as well as the legal heir certificate has been placed on record, which establishes that the petitioners are the only remaining legal heirs of the deceased Gurbaksh Kaur (mother of the petitioners herein) and that division of her share amongst the petitioners was an aspect which the Executing Court could have duly taken into consideration. Dismissal of the execution application was hence improper and the impugned order is thus liable to be set aside.

Learned counsel for respondent No.1 is not in a situation to rebut that the compensation was awarded to all the petitioners (appellants) including Gurbaksh Kaur, who has since passed away. She is also not in a position to dispute that no person, other than the petitioners, has raised any claim to be the legal heirs of deceased Gurbaksh Kaur or to claim compensation or a portion of the compensation. It is also not disputed by her that the legal heir certificate had been duly furnished by the petitioners and despite the same it has not even been discussed in the impugned order dated 26.11.2019 passed by the Executing Court.

Having heard learned counsel for the parties, I am of the opinion that the impugned order dated 26.11.2019 suffers from non-appreciation of the facts and does not take into consideration the powers of the executing Court, which also includes taking note of the subsequent developments that may happen in the interregnum. There is no bar in apportionment of compensation amongst the legal heirs. The legal heir certificate duly issued by the competent authority has already been placed



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on record.

Hence, the present writ petition is allowed. Impugned order dated 26.11.2019 is set aside. The respondent-Executing Court is directed to ensure the distribution of the compensation, as awarded by this Court in its order dated 03.04.2019 passed in FAO-4058-2006, equally amongst both the petitioners.

Writ petition is hence allowed.

18.09.2024
monika

(VINOD S. BHARDWAJ)
JUDGE

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