



FAO-2928-2021 (O&M)

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

135-16

FAO-2928-2021 (O&M)

Date of decision : 25.10.2024

Tetari Devi and others

..... Appellants

versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Atul Bhatia, Advocate
for the appellants.

Mr. Amit Sharma, Senior Panel Counsel
for the respondent.

PANKAJ JAIN, J. (Oral)

1. This appeal has been preferred by defendants of deceased - Sunil Ram @ Sunil Kumar.
2. Claimants filed claim application pleading that on 19.09.2017, the deceased while travelling by Jammu Tawi express train accidentally fell from the moving train at platform No.7 of railway station Amabala Cantt., due to sudden jerk sustained injuries and died on the spot.
3. Claim was resisted by the railways claiming that the incident does not fall within the provisions of Section 123(c)(1) read with Section 124-A of the Railways Act and that the deceased was not a bonafide passenger being not in possession of a valid railway ticket. On the basis of pleadings, following issues were framed:-

*“1. Whether the deceased was a bonafide
passenger of the train at the time of incident?”*



2. *Whether the alleged incident is covered within the ambit of section 123(c)(2) read with section 124-A of the Railways Act?*
3. *Whether the applicants were the sole dependent of the deceased?*
4. *Relief.”*

4. Tribunal rejecting the claim filed by the claimants, held that no evidence was produced by the applicants to prove that the deceased was having a valid train ticket and thus, he being not a bonafide passenger, claimants cannot maintain the claim petition.

5. Counsel for the appellant submits that the Tribunal has totally misread the evidence on record. Claimant filed an affidavit and appeared as AW-1. It was specifically stated by the claimant in her affidavit that the deceased purchased a railway ticket.

6. I have heard counsel for the parties and have carefully gone through the records of the case.

7. Section 124A deals with liability of Railways to pay compensation to the victims on account of injuries/loss of life suffered owing to untoward incidents and accidents involving Railways. The aforesaid provision came on the statute book by way of Railways Amendment Act, 28 of 1994. The same has come up for consideration before Supreme Court in the case of **Rathi Menon vs. Union of India (2001) 3 SCC 714, Union of India vs. Prabhakaran Vijaya Kumar and others, (2008) 9 SCC 527, Jameela and others vs. Union of India, 2010 AIR SC 3705, Union of India vs. Rina Devi, (2019) 3 SCC 572 and Doli Rani Saha vs. Union of India, Civil Appeal No.8605 of 2024 (Arising out of SLP (C) No.32962 of 2018).**

**FAO-2928-2021 (O&M)**

8. After considering the aforesaid precedents, this Court dealt the issue elaborately in the case of **Sandeep Narula and ors versus Union of India** bearing FAO No. 2700 of 2016 and culled out the following parameters:

“15 In view of above, the following proposition can be culled :

(i) Railway is liable to pay to an injured passenger or to the dependents of a passenger killed in an untoward incident involving railways. The passenger for the purpose of Chapter XIII of the Railways Act does not necessarily mean a passenger as contemplated under Section 2(29) of the 1989 Act. Rather explanation appended to Section 124A provides that the passenger shall include:

- a) a railway servant on duty;*
- b) a person who has purchased a valid ticket for traveling by a train carrying passengers on any date; or*
- c) a valid platform ticket and becomes a victim of an untoward incident.*

The definition is inclusive. It does not exclude any category. Definition of ‘passenger’ as appended to Section 124A by explanation is much wider than the definition of ‘passenger’ as provided under Section 2(29) of the 1989 Act.

(ii) As per the dictum of law laid down in Rina Devi’s case (supra), once an affidavit is filed by the claimant that the victim was traveling on a valid ticket, the initial burden to prove that the victim was a bona fide passenger stands discharged. Thereafter, it is for the Railways to rebut the same to prove otherwise.



(iii) *Untoward incident is different from accident. 'Untoward incident' is defined under Section 123(c) of the 1989 Act. Under five situations as contemplated under proviso appended to Section 124A, the Railway Administration may be absolved of its liability. Any other situation that does not fall within the ambit of proviso appended to Section 124-A, invites liability of Railway Administration to pay compensation. The compensation needs to be paid as per the mandate of statute as interpreted by the Supreme Court in **Rina Devi's case (supra)**.*

(iv) *The liability of the Railway Administration is based on the 'principle of strict liability'. Plea of 'no fault of railways' or 'negligence of the victim' is not available to the Railway Administration."*

9. In the present case, claimant filed affidavit specifically claiming that her deceased husband was travelling as a bonafide passenger on general railway ticket which was valid. The ticket was unfortunately lost due to accident, thereby discharging initial burden of proving that the deceased was a bonafide passenger. The evidence adduced by the claimant has gone unrebutted. In terms of ratio of law laid down by Apex Court in **Union of India vs. Rina Devi'** reported as **(2019) 3 SCC 572**, the Tribunal ought not have returned the finding that the deceased was not a bonafide passenger.

10. In view of above, the finding recorded by the Tribunal needs to be reversed.

11. The precise case of the claimant is that deceased was travelling from Nagar Untari to Jammu Tawi Railway Station. He fell down from moving train at platform No.7 of Ambala Cantt. Railway Station. The deceased was resident of Untari, District Garhwa, State of



Jharkhand. Thus, apart from the railway journey, there was no reason for him to reach platform of Railway Station Ambala Cantt. The post mortem evidently concludes that the death occurred on account of injury suffered in the railway accident. Death report also notices railway accident as cause of death.

12. There is no evidence on record to prove any intentional act on part of the deceased which let to loss of his life. The incident does not fall within in the fine exceptions as contemplated under the proviso appended to Section 124-A of the 1989 Act. Thus, the respondent/railway cannot be absolved of its liability and is required to pay compensation.

13. As a sequel of the discussion held hereinabove, it is held that the deceased was a bona fide passenger, who lost his life in an untoward incident. Consequently, the present appeal is allowed.

Relief:

The accident is of the year 2017. Thus, the compensation awarded to the appellants shall be as per Part I of the Schedule appended to the Railway Accident and Untoward Incidents (Compensation) Rules, 1990 prior to amendment dated 1st of January, 2017 i.e. Rs.4.00 lacs along with interest @ 9% per annum payable for the period from the date of application till the date of actual realization.

(PANKAJ JAIN)
JUDGE

25.10.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No