

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CWP-11325-2018

Date of decision: 15.01.2024

GURVINDER SINGH AND ANOTHERPetitioners

VERSUS

UNION OF INDIA AND ANOTHERRespondents

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

Present: - Mr. S. S. Sahu, Advocate
for the petitioner.

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

VINOD S. BHARDWAJ, J. (Oral)

Prayer in the present writ petition is for seeking directions to the respondents to pay compensation to the petitioners for death of their father late Harjinder Singh, aged 45 years in an accident, that occurred while crossing an unmanned gate No. 0155-C, with train No.019023, Janta Express coming from the side of Jind junction and going to Bathinda.

2. Learned counsel for the petitioner contends that the petitioners are son and daughter of late Harjinder Singh who was working as a Driver on a road roller with Contractor and was being paid a monthly salary of Rs.

12,000/- On 26.03.2017, the petitioner was coming from the side of village Kalwan at 21:35 hrs and was crossing an unmanned gate No. 0155-C. While he was crossing, the aforesaid train came from the side of Jind junction being driven by Gagan Singh-the Locomotor Pilot. When the train reached near Kilometer No. 188/2 on up line gate 0155-C, the road roller was crossing the Railway line and that despite the Locomotor Pilot having seen the said road roller, he did not/could not stop the train which struck against the road roller. The father of the petitioners died on the spot. An information in this regard was sent to the Guard MR Mina, who was on duty in the train, and information was also sent to the ASI on duty at Railway Station Damtan Sahib to handover body to the RPSF staff. A memo in this regard was received by Balwant Singh, Sub Inspector, JRP, Narwana. An endorsement was made thereupon and proceedings under Section 174 Cr.P.C. were initiated. FIR No. 0018 dated 27.03.2017 was registered at Police Station, Jind, District GRP Ambala regarding the incident and for commission of offences under Section 161, Railways Act read with Section 279 and 304-A IPC against deceased Harjinder Singh. The statement of the Railway staff was also recorded that the deceased had brought the Road Roller on the Railway crossing track in a negligent manner and had struck against the Train No.019023, Janta Express and died due to his own fault. Since the deceased Harjinder Singh had passed away in the said incident, a final report under Section 173 Cr. P.C. was filed by the Police since no further investigation was to be conducted, and an untraced report was submitted. The dead body of deceased Harjinder Singh was handed over to his LRs (Petitioners herein) and the road roller was taken in possession. The post mortem report established that death was due to head injuries and multiple

injuries described therein and found the same to be ante mortem in nature and sufficient to cause death. It is however alleged that deceased Harjinder Singh died on account of negligence of the Driver of Janta Express and the Railways Department for not having deployed any person on the crossing point No. 0155-C due to which the accident in question took place. Further, the locomotive pilot also did not stop the train when deceased was on the crossing track.

3. Counsel for the respondents on the other hand has submitted that the speed breaker board, railways track board and stop boards are provided at adequate distance on both side of approach road and were available at the unmanned level crossing No. 0155-C for information and caution. It was infact deceased Harjinder Singh-Driver of the road roller himself who was negligent and careless in crossing the unmanned level crossing despite an approaching train. The deceased failed to observe the traffic rules before crossing the railway track. He did not halt in the face of an approaching train despite approaching train being visible. The Railways thus cannot be held liable to compensate the petitioner for lapse of their father. It is submitted that as per Section 161 of the Railways Act, if any person is driving or leading an unmanned level crossing negligently, he himself is rendered liable for punishment of imprisonment upto a period of one year. It is also contended that Section 131 of the Motor Vehicle Act, casts duty to observe on a Driver, before crossing an unmanned level crossing, and that the deceased Harjinder Singh failed to observe the mandatory safeguard prescribed either under the Railways Act as well as under the Motor Vehicle Act. Hence, the Railway authority or its officials cannot be held liable for not compensating the petitioners. A further

argument is raised by the respondent that a detailed enquiry was also held by Railways by constituting a Committee of three Gazetted Officers and the said enquiry report has been attached alongwith the reply. Statements of as many as 06 witnesses was recorded by the Enquiry Committee and after collecting all the evidence at the site, it was reported as under”

PREAMBLE

On date 26/03/17, the train no.19023 UP passed on through signals at DTN station at 17:20 hrs. While the train was approaching at U/M L-Xing No 155-C between DTN-TUN at Km. 180/9-181/0, a Road Roller entered from Up side/South side approach road and dashed with the Engine No 18991 WDM-3A LDH of the train at 17:24 hrs.

The enquiry officers examined various probabilities on account of which the accident could have occurred. These are discussed one by one as under:-

OBSTRUCTED VISIBILITY

As mentioned in Joint note the visibility to train driver and road users on both sides was clear. Also it is observed by the undersigned that the visibility on UP side is more than 1000M and on DN side it is more than 800M. Also the weather was clear at the time of accident as per cross examination of LPM and ALP.

Therefore, the cause of accident due to obstructed visibility is ruled out.

LACK OF INFRASTRUCTURE AND WARNING ROAD SIGN BOARDS AT L-XING.

As per statement and cross examination of Joint note signatories, the L-Xing warning boards, speed breaker boards and stop boards were provided on both side approach roads of L-Xing No 155-C. The road surface was level and

smooth and speed breakers were available on both side approach roads. Also the W/L and RW/L boards were available as per cross examination of LPM & ALP.

Therefore, the cause of accident due to lack of infrastructure and non displaying of road sign boards to warn the road users is ruled out.

(S.K. Walia)	(R.L. Tomar)	(Randhir Singh Graak)
ADME/P/DLI	ASC/H.Q/DLI-W	ADEN/JHI
MEMBER	MEMBER	PRESIDENT

NEGLIGENCE OF LPM/ALP

In the cross examination of LPM & ALP, they revealed that the speed of the train was 95 to 97 KMPH at the time of application of emergency brakes anticipating the danger at U/M L-xing No 155-C. Also the time-distance Speedo graph of Loco No 18991 WDM-3A LDH shows the speed was 95 KMPH just before the application of emergency brakes.

*It is also clear from the time-distance Speedo graph that the continuous whistling was done by LPM/ALP for more than 900M before applying emergency brakes in approach of the U/M L-xing No 155-C. The emergency brakes were applied approximate 150M before dashing of the Engine with Road Roller at the U/M L-xing No 155-C and the dragging after derailment at the L-xing was found 280M. **(Copy of time-distance Speedo graph is attached with the enquiry report).***

*Also the result of ALCOHOL (ETHANOL) test of LPM & ALP found negative **(Copy of the Test Reports also attached).***

Therefore, the cause of accident due to negligence on the part of LPM/ALP is ruled out.

NEGLIGENCE OF ROAD ROLLER DRIVER

As per statement and cross examination of ALP, though, the Road Roller driver stopped in UP side/South side approach road of U/M L-Xing no 155-C but he tried in haste to cross the L-xing before passing the train, resulting dashing with the train engine and consequently the derailment of the Engine of Train no 19023 UP. The Road Roller driver failed to observe the traffic rules for passing the unmanned L-xing and tried to cross the track in the face of approaching train.

Thus, the cause of accident due to negligence of the Road Roller driver for not obeying the traffic rules to cross the unmanned L-xing cannot be ruled out.

<i>(S.K. Walia)</i>	<i>(R.L. Tomar)</i>	<i>(Randhir Singh Graak)</i>
<i>ADME/P/DLI</i>	<i>ASC/H.Q/DLI-W</i>	<i>ADEN/JHI</i>
<i>MEMBER</i>	<i>MEMBER</i>	<i>PRESIDENT</i>

FINDINGS

The Road Roller driver tried in haste to cross the U/ML-xing No 155-C in face of the Train No. 19023 UP, resulting dashing with the train engine and consequently the derailment of Engine No 18991 WDM-3A LDH. He failed to observe the traffic rules for passing the unmanned L-xing and did not follow the traffic rules of motor vehicle act and made an sumed attempt to cross the U/ML-Xing by ignoring the warning road signage's.

<i>(S.K. Walia)</i>	<i>(R.L. Tomar)</i>	<i>(Randhir Singh Graak)</i>
<i>ADME/P/DLI</i>	<i>ASC/H.Q/DLI-W</i>	<i>ADEN/JHI</i>
<i>MEMBER</i>	<i>MEMBER</i>	<i>PRESIDENT</i>

4. The above said enquiry report establishes that the visibility to the Train Driver as well as road user on both side was clear and visibility of upside is more than 1000 meters and on down side it was more than 800 meters. The weather was clear and all the warning Boards and infrastructure

had been duly affixed along the approach roads. The road surface was level and smooth and speed breakers were available on both sides of the approach road. The cause of accident on account of lack of infrastructure and non-displaying of the road sign Board was thus ruled out. It was further recorded by the Enquiry Committee that the deceased Harjinder Singh himself tried to cross the Railway crossing in haste before passing of the train resulting in dashing with the train engine. A consequent derailment of the engine of the train also took place. It was also recorded that the Locomotive Pilot had duly blown the horn and had taken all precautionary measures. The deceased had himself ignored the same, compelling the loco-pilot to apply emergency brakes from a distance of 150 mtrs. The track marks corroborated the findings of the Committee. The road roller Driver failed to observe the traffic rules while passing the unmanned Railway crossing notwithstanding in the face of an approaching train. It was specifically recorded that the accident in question took place on account of the lapse of the Driver of the road roller.

5. Even though, the above said reply alongwith the copy of the enquiry report had been filed by the respondents in December, 2018, however, no replication/rejoinder controverting any of the said assertions as well as the findings of the report was filed by the petitioner. Hence, the stand of the respondent-Department has remained uncontroverted and undisputed.

6. Counsel for the petitioner, has made a reference to the judgment of a Division Bench of Orissa High Court in the matter of ***“Shyam Naik & Phula Naik and others versus General Manager, East Coast Railway, Bhubaneswar and others”*** reported as ***2011 (29) RCR (Civil) 113*** to contend that as per Section 124 of the Railways Act, the circumstances

mandate that the respondents should treat the case of the father of the petitioner at par with a passenger travelling on Board and that the compensation as prescribed under the Railway laws for payment to the passengers/non-passengers travelling on the Railway is also required to be extended to the persons who died in an accident. Paragraph thereof relied upon by the counsel for the petitioner is extracted as under:-

*“12. Under Section 124 of the Railway Act read with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the no fault liability of the passenger who expires in a railway accident has been fixed at Rs. 4.00 lakh. In the instant case, the victim lost his life in the accident due to the negligence on the part of the Railway Administration in not putting gates at the level crossing and the general public are allowed to cross the railway line without providing precautionary measures as indicated above. Reliance is also placed on a decision of the apex Court in **Rudul Sah v. State of Bihar and another, AIR 1983 SC 1086** wherein the apex Court has observed that in appropriate cases, the court discharging Constitutional duties can pass orders for payment of money in the nature of compensation. Consequent upon deprivation of the fundamental right to life and liberty of a petitioner the State/Railway Administration must repair the damage done by its officers to the petitioner's right.*

*13. The apex Court in the case of **Smt. Kumari v. State of Tamil Nadu and others, AIR 1992 SC 2069**, the apex Court overruling the decision of the High Court of Tamil Nadu observed that the writ jurisdiction under Article 226 of the Constitution can be invoked for awarding compensation to a victim, who suffered due to negligence of the State or its functionaries. The same view has been taken by this Court in **Parikhita Behera and another v. the Divisional Railway Manager, South Eastern Railway, Khurda Division, 1997 (II)***

OLR, 69, wherein it is observed that jurisdiction under Articles 226 and 227 of the Constitution can be invoked and direction for payment of compensation can be given if there is deliberate act of negligence on the part of the Railway Administration.

14. In this regard, the undisputed fact is that in the accident the deceased Pradeep Nalk died. Under Section 124 of the Railway Act read with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, no fault liability of the passenger who expires in a railway accident has been fixed at Rs. 4.00 lakh. The same amount can be awarded to the petitioners for the reason that there cannot be any discrimination between passenger and non-passenger who died in railway accident. Keeping the aforesaid decision in view in awarding the compensation, Section 124 of the Railways Act, 1989 read with the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 provides for a compensation for no fault liability to the passenger who expires in railway accident is Rs. 4,00,000/-.

7. Reference was also made to a single Bench judgment of Orissa High Court in the matter of “**Sarat Gouda and another versus Divisional Railway Manager, East Coast Railway and another**” reported as **2015 (3) Civil Law Journal 365** which reiterates the same position.

8. It is contended that in both these cases the accident in question took place at unmanned Railway crossing and the death in question occasioned as a result of the same.

9. I have heard learned counsel for the parties and have gone through the judgment cited by the counsel for the petitioner.

10. Before proceeding further with the matter, Section 124 of the Railway Act, 1989 is extracted as under:-

124. Extent of liability.—

When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident. Explanation.—For the purposes of this section “passenger” includes a railway servant on duty.

11. It is evident from perusal of the aforesaid judgment as well as substantive provision that Section 124 of the Railway Act, 1989 read with Railways accidents and untoward incidents (compensation) Rules, 1990 stipulates compensation to the passenger who dies in a Railway accident and quantify the said compensation at Rs. 8 lakhs. The above said benefit has also been extended to non-passengers as well by subsequent judgments in an established case of negligence. Even though, the above said judgments pertain to the accidents that have taken place at unmanned Railway crossing, however, I find myself unable to agree that the judgment of Division Bench of the Orissa High Court and followed subsequently by a Single Bench would be applicable to the facts of the present case.

12. The claim of the petitioner for payment of compensation is based on the doctrine of strict liability. To invoke doctrine of strict liability,

it is required to be established that the respondent, who is sought to be burdened with cost/liability, has brought a danger/nuisance and failed to take adequate measures and obligation to safeguard victims from the potential harm. Mere occurrence of an event or accident can not be deemed sufficient to attract strict liability. Just as the government cannot be held liable for construction of road, by applying the doctrine of strict liability and negligence needs to be established and claim to be raised against the violators, similarly, laying of railway infrastructure cannot be termed as an act of endangering.

13. Further, the parameters of safety required to be adopted are prescribed in the works guidelines. The said safety measures are deemed reasonable and appropriate by the experts. A person is at best expected to and required to adopt safety measures from the perspective of a reasonable person and considering the precautions which a reasonable person would adopt before approaching any place which may have a potential danger.

14. Once the specific safety guidelines and requirements have been satisfied, the person would be deemed to have discharged his onus. Doctrine of strict liability would not ipso facto be applicable and negligence/failure to act would be required to be established. The Hon'ble Division Bench of the Orissa High Court, however, did not delve into the said issues and as to whether the prescribed safety measures had been adopted and applied or not. The precautionary measures at unmanned crossing were separate from the manned crossing and the requirement of having only a manned crossing, may be desirable, but not prescribed. There is no reference in the judgment as to whether the accident report was exhaustive or not. The report annexed with the reply however gives reason for its conclusions and does not find the

Locomotive pilot or the Railways at lapse. The test of ordinary prudence, care and precaution cannot be substituted for absolute protection.

15. In the present case, the report of the Enquiry Committee, which has remained uncontroverted, establishes that the respondents had not by Act or conduct or omission brought any external danger to the petitioner. Merely because, a railway crossing is unmanned, it cannot be ipso facto construed that the lapse has to be on the part of the Railways on occurrence of an incident. The contours of a equitable jurisdiction cannot substitute a statutory provision and lay a binding law. A Court may while deciding a similar issue, take aid of such equity for granting a parity based compensation. The judgment in question thus cannot be read any further.

16. The factual aspects as regards the report submitted by the respondent-Department having remained uncontroverted, hence, there is no material before this Court on the basis whereof it can be construed that the lapse was on the part of the respondents either on the principles of strict liability or by applying the statutory provisions giving rise to disputed questions of fact which cannot be determined by this Court. At the same time, this Court is also conscious of the fact that Harjinder Singh has lost his life while crossing an unmanned railway crossing. The Railways have themselves discontinued the unmanned Railway crossings, taking into consideration the risks involved to the safety of the public at large. Notwithstanding the checks/measures adopted by the respective parties, the accident of such nature were on the rise. It is also evident that the incident in question took place at around 9:35 pm and the same being in a rural area, it cannot be presumed that the signage/the Boards would be well lit. Besides, the road roller, as a motor vehicle does not have much of lighting equipment.

Mere installation of the signages, which may go unnoticed, would not be construed as a sufficient discharge of obligation by the respondents.

17. Taking into consideration, the totality of the circumstances, an interim compensation of Rs. 2 lakhs is awarded to the petitioners. Liberty is, however, granted to the petitioners to file an appropriate petition for seeking just and appropriate compensation, by establishing their claim as well as the negligence of the respondents, if any, before a Civil Court/Court of competent jurisdiction. Let the compensation of Rs. 2 lakhs as ordered above be released in favour of the petitioners within period of 08 weeks of receipt of a certified copy of this order, failing which the petitioner shall be entitled to interest @6% per annum from the date of filing of present writ petition.

Disposed of in above said terms.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 15, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No