



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

**FAO-626-2011 (O&M)
Reserved on : 30.08.2024
Pronounced on : 29.11.2024**

Ved Parkash Dhanak & anr.

..... Appellants

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Deepak Kundu, Advocate for the appellants.

Mr. S.K.Sharma, Senior Panel Counsel
for the respondent.

PANKAJ JAIN, J.

1 The appellants are in appeal aggrieved of impugned judgment dated 17.08.2010 vide which the review application by the respondent-Union of India was allowed and the claim application filed by applicants was dismissed.

2 Brief facts of the case are that the deceased-Vikram Singh, on 11.03.2008 purchased a ticket from Sonapat to Diwana. He was a daily passenger, but that day his pass had expired. The deceased boarded the train and when the train reached between Sonapat Railway Station and Sandal Kalan railway station, the deceased accidentally fell from the running train and died on the spot. There was heavy rush in train. The GRP recovered a railway ticket from Sonapat to Diwana from the deceased's search. The deceased was travelling on ticket No.G-74041370 2nd class.



3 The appellants approached the learned Railway Tribunal for grant of compensation by way of claim petition, which was found meritorious by the learned Railway Tribunal and an amount of Rs.4.00 lakhs was awarded as compensation in their favour. Aggrieved against the award passed, the respondent-Union of India filed a review application on the ground that due to bonafide mistake, the deceased was declared a bonafide passenger on the basis of one expired MST (Monthly Season Ticket) and to prove this, the respondent wants to summon the IO to tender evidence. The Tribunal recalled the earlier order and dismissed the claim application.

4 Learned counsel appearing for the appellants submits that the respondent was given the opportunity to lead its evidence. While deciding the issue No.1, it was held that as per the report of the DRM, the deceased was a bonfide passenger. Relying upon the DRM report, the order dated 26.11.2009 was passed in favour of the appellants.

5 *Per contra*, learned counsel appearing for the respondent-UOI contends that an error crept in while holding the deceased a bonafide passenger. After the review application, the IO was summoned to tender evidence as to how two version of fard jamatalashi existed. The witness admitted that he had prepared two numbers of fard jamatalashi, one qua recovery of expired MST and the other one qua recovery of railway ticket. But the second one was the final jamatalashi.

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



7 Section 124-A the 1989 Act 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).***

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, decided on 06.11.2024 wherein the court observed as under:

“ 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 The argument of learned counsel appearing for the respondent-Union of India that the deceased was not a bonafide passenger is without merit. Admittedly, one MST No.73624096 in the name of Vikram valid upto 04.03.2008 and a railway ticket No.G-74041370 2nd class from Sonapat to Diwana. Appellant No.1 filed an affidavit while appearing as AW-1



dated 06.11.2008 and discharged burden of proof by establishing that the deceased was a bonafide passenger. Thereafter onus shifted on the UOI to rebut the evidence brought on record by the claimants. Recovery of both expired MST and ticket is not unnatural. Rather it proves that the deceased was a regular commuter. On the fateful day his MST had already expired so he purchased ticket but still was in possession of MST. The aforesaid evidence remained unrebutted.

10 In view of the aforesaid facts and circumstances, the present appeal is allowed.

Relief :-

The accident relates to the year 2010. Thus, the compensation awarded to the appellants shall be as per Part I of the Schedule appended to the Railway Accident & Untoward Incidents (Compensation) Rules, 1990 prior to amendment dated 01.01.2017 i.e. Rs.4.00 lacs along with interest @9% per annum payable for the period from the date of application till actual date of realization.

(PANKAJ JAIN)
JUDGE

29.11.2024
Pooja Sharma-I

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No