



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

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**FAO-1936-2015 (O&M)
Date of Decision: 27.11.2024**

MAHESH DUBEY AND ANOTHER

...Appellants

Versus

UNION OF INDIA

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Ujval Mittal, Advocate
for the appellants.

Mr. Shivoy Dhir, Sr. Panel Counsel
for the respondent-UI.

PANKAJ JAIN, J. (Oral)

1. Claimants are in appeal aggrieved of order passed by the Railway Claims Tribunal dismissing their claim petition filed under the Railways Act, 1989 seeking compensation on account of death of Dhanu Dubey, who died on the railway track on 18.09.2012.

2. The case pleaded by the claimants is that the deceased-Dhanu Dubey aged about 23 years was going from Phagwara to Jalandhar City and was travelling alone. He was seen of by his sister Rinku Devi, who claims to have seen him purchasing ticket for travelling from Phagwara to Jalandhar City. There later on GRP officials informed Rinku Devi that one boy has fallen down from the train and has died on the spot and a telephone number slip has been recovered during his search. On receiving this information she brought her relatives and identified the deceased as her brother Dhanu Dubey at Civil Hospital, Phagwara.

3. Claim petition was registered by respondent-Railways denying that the deceased was travelling from Phagwara to Jalandhar City in a train.



It was also denied that he was having a railway ticket or that the train was over crowded which led to fall of Dhanu Dubey.

4. On the basis of pleadings, the following issues were framed:

“1. *Whether the deceased was a bonafide passenger as alleged?*

2. *Whether the incident in question is covered within ambit of Section 123(c)(2) read with Section 124A of RCT Act?*

3. *Whether the applicants are the only dependents of the deceased?*

4. *Relief.”*

5. Tribunal while returning finding on issue No.1, disbelieved the testimony of Rinku Devi by holding that her statements suffers from inherent contradictions and her credibility is under cloud.

6. On issue No.2, Tribunal found that mere recovery of the body from a place near railway line is not sufficient to establish that he fell from some train and died and thus, the same does not fall within the ambit of untoward accident as contemplated under Section 123(c) of the 1989 Act.

7. Learned counsel appearing for the appellants while assailing the impugned order passed by the Tribunal refers to the testimony of AW2-Rinku Devi and submits that she categorically testified that she saw her brother purchasing a ticket when she went to see him off. Her testimony has been disbelieved by the Tribunal only on the ground that she could not disclose the name and number of the train. He further submits that so far as statement alleged to have been given by Rinku Devi to the GRP Authorities during the course of investigation relied upon by the Tribunal is concerned, the same is never put to Rinku Devi. He relies upon ratio laid down in **“Union Of India vs Rina Devi”, 2019 (3) SCC 572** to submit that once the claimant testified with respect to the purchase of ticket by the deceased and the said evidence has gone unrebutted. The Tribunal erred in holding that the deceased was not a *bona fide* passenger.



8. He further submits that finding recorded by the Tribunal on issue No.2 also cannot be sustained. It has come on record that the dead body of the deceased was recovered from a place near railway track. The investigation carried out by Railway Authorities at every instance shows that the death is on account of fall from the train. The post-mortem report shows that there were only 05 injuries on the body of the deceased and thus, the conclusion arrived at by the Tribunal with respect to the deceased having been hit by a speeding train cannot be sustained.

9. Per contra, learned Senior Panel counsel for UOI submits that a well reasoned order has been passed by the Tribunal. Bare reading of the testimony of the AW2-Rinku Devi when compared to her statement given to the GRP during the course of statutory inquiry makes it abundantly clear that she has improved her version and thus, has been rightly held to be not worthy credit. However, Mr. Dhir does not dispute that in the investigation conducted by the GRP Authorities, it was mentioned that the death is on account of fall from the train. He also is not in a position to dispute that as per the post-mortem, no crush injury on the body of the deceased.

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

11. This Court after considering series of judgments, carried out the legal proposition as under:-

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).

12. 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 travelling 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 travelling 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 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.

13. The counsel for the Railways as well as the Tribunal have tried to dislodge Rinku Devi on the strength of her statement alleged to have been recorded to GRP. However, from the records, it is evident that the said statement which is claimed to be have been recorded by the GRP Authorities was never put to Rinku Devi while she stepped into the witness box before the Tribunal. Thus, the said statement cannot be read in evidence to dislodge the testimony of Rinku Devi. She in her testimony explicitly claimed that she went to see of her brother. While her brother was purchasing tickets from the ticket window, she was standing by his side. The aforesaid testimony of Rinku Devi has gone un rebutted, no evidence has been led by the Railway Authorities. In terms of ratio of law laid down by the Supreme Court of India in **Union Of India vs Rina Devi", 2019 (3) SCC 572**, the claimants testified that the tickets was purchased, initial burden was discharged and the burden thereafter shifted upon the Railways to prove otherwise. There being no evidence on the record to rebut the testimony of Rinku Devi and the findings recorded by the Tribunal on issue No.1 cannot be sustained and are hereby reversed.

14. There being of evidence on record, which shows that even as per Railway Authorities, the cause of death of deceased was fall from



unknown train. This Court is of the considered opinion that the incident shall fall within the ambit of untoward incident as contemplated under Section 163(c) of the 1989 Act and does not fall in the exceptions as carved out under Section 124A of the Act.

15. In view of the above, the impugned order passed by the Tribunal is hereby set aside and the claim by the claimant is accepted. The claimants shall also be entitled to the interest of @ 9% from the date of filing of the application till the date of its realisation.

(PANKAJ JAIN)
JUDGE

November 27, 2024
Mohit Bishnoi

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