



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 30th of August, 2024
Pronounced on 25th November, 2024

FAO No.5429 of 2013

Subash
Versus
Union of India

....Appellant
...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Surinder Sharma, Advocate for the appellant.
Mr. Vipul Aggarwal, Sr. Panel Counsel, UOI.

PANKAJ JAIN, J. (ORAL)

- The appeal has been preferred by the injured applicant- Subash.
2. Plead case of the injured/applicant is that on 22.01.2010 he was travelling from Kosi Kalan to Ballabgarh after purchasing a railway ticket. The injured/applicant fell from the moving train on account of jerk of heavy rush of people and sustained injuries and his left leg was amputated below the knee.
3. The respondent/railways contested the claim on the ground that since no untoward incident occurred causing accident of the injured within the meaning of Section 123(c)(2) read with Section 124A of the Railways Act, nor the deceased was a *bonafide* passenger, the present application is not maintainable. It was further alleged that the injuries were self-inflicted.
4. On the basis of the pleadings, following issues were framed:



- “1. Whether the injured/applicant was a bonafide passenger of train at the time of accident?
2. Whether the alleged incident is covered within the ambit of Section 123(C)(2) read with Section 124-A of the Railway Act?
3. What are the scheduled and non-scheduled injuries sustained by the applicant-injured?
4. Relief.”

5. Tribunal rejected the claim, holding that on that day Poorva Express had neither passed through Kosikalan by diversion nor has it route through Kosikalan. Hence, he is not a *bonafide* passenger, and the applicant cannot maintain the claim petition.

6. Counsel for the injured applicant submits that the tribunal has misread the evidence on record and rejected the claim.

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

8. 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).

9. 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 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.*

10. In the present case, applicant/appellant filed an affidavit specifically claiming that he was traveling as a *bona fide* passenger. The evidence adduced by the appellant/claimant has gone unrebutted. In terms of the ratio of law laid down by Apex Court in **Rina Devi's case (supra)**, the Tribunal ought not have returned the finding that the appellant/claimant was not a *bona-fide* passenger.

11. In view of above, the findings recorded by the Tribunal need to be reversed.

12. The applicant has placed on record medical evidence in which applicant is stated to have his left leg amputated below knee. There is no evidence on record to prove any intentional act on part of the applicant which caused the injuries. The incident does not fall within the five exceptions as contemplated under the proviso appended to Section 124A of



the 1989 Act. Thus, the respondent/Railways 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 injured was a *bona fide* passenger, who suffered injuries in an untoward incident. Consequently, the present appeal is allowed.

Relief:

The amputation of leg below knee with stump of 6 inches falls within item No.22 enumerated under Part III of the Schedule. 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 and Untoward Incidents (Compensation) Rules, 1990 prior to amendment dated 1st of January, 2017 i.e. Rs.1,60,000/- along with interest @ 9% per annum payable for the period from the date of application till the date of actual realization.

November 25, 2024

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No