

2024.11.11:HC:13/7633



FAO-5319-2016 (O&M)

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

FAO-5319-2016 (O&M)
Reserved on : 30.08.2024
Date of decision : 28.11.2024

Sh.Jagdev Yadav & anr.

..... Appellants

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Mukesh Singla, Advocate
for the appellants.

Mr. Piyush Khanna, Advocate
for the respondent.

PANKAJ JAIN, J.

1. The appeal has been preferred by the dependents of deceased-Dharmendra Kumar.
2. Plead case of the claimants is that on 25.09.2012, the deceased was traveling from Ludhiana to Gaya. When the train reached Ambala Cantt., the deceased accidentally fell down from the running train and died on the spot.
3. The respondent-railway contested the claim on the ground that since no untoward incident occurred causing injury to the applicant within the meaning of Section 123 (c) (2) read with Section 124-A of the Railways Act (for short 'the 1989 Act'), nor the deceased was a bonafide passenger, the present application is not maintainable.



4. Based on the pleadings following issues were framed:

- “1. Whether the deceased was a bonafide passenger of train at the time of incident?*
- 2. Whether the alleged incident is covered within the ambit of Sect.123(C) (2) read with Section 124-A of the Railways Act?*
- 3. Whether the applicant(s) is/are the sole dependent(s) of the deceased?*
- 4. Relief.”*

5. Tribunal rejected the claim, holding that though from the Jamatalashi a ticket was recovered. The ticket was of no significance as the same was ante dated and was for travel from Ludhiana Junction to Gaya via Saharanpur whereas the body was found between Ambala Cantt. And Mohri. Hence, the claim petition cannot be maintained.

6. Counsel for the appellants submits that the Tribunal has totally misread the evidence on record. Appellant No.1 appeared as AW-1 and filed his affidavit specifically stating that the deceased was a bonafide passenger. Post-mortem report of the deceased also shows the cause of death due to fall from the train.

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

8. Section 124-A of 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 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, claimants filed an affidavit specifically claiming that their son purchased the ticket and was a *bonafide* passenger. The ticket purchased by the deceased has also been placed on record as Ex.A-4. The evidence adduced by the claimants 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 deceased was not a bona fide passenger.



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

11. According to the post-mortem report, the cause of death is due to head injury/multiple injuries. The injuries are said to be ante-mortem in nature and are possible in railway accidents. There is no evidence on record to prove any intentional act on part of the deceased which led to loss of his life. The incident does not fall within the five exceptions as contemplated under the proviso appended to Section 124-A of the 1989 Act. Thus, the respondent/ Railways cannot be absolved of its liability and is required to pay compensation.

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

Relief:-

The accident is of the year 2012. 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.

28.11.2024

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No