2024:PHHC:146864

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7262 of 2016
Date of decision : 25.10.2024

Rattan Kaur ....Appellant

Versus

Union of India ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Atul Bhatia, Advocate
for the appellant.

Mr. Amit Arora, Advocate
for the respondent/Union of India.

PANKAJ JAIN, J. (ORAL)

The appeal is at the behest of the claimant seeking compensation from Railways on account of death due to untoward incident. Chapter XIII of the Railways Act, 1989 (hereinafter referred to as the '1989 Act') deals with the liability of Railway Administration to pay compensation on account of death of passengers and injury to the passengers due to accidents and untoward incidents.

2. Claimant filed claim application pleading that on 12.07.2013 the deceased Satnam Singh went to Kishangarh railway station and purchased the ticket of Rs.190/- and boarded the train from Punjab side. The deceased accidentally fell down from the running train at Chawa Railway Station yard due to jerk and jolt of the train, received multiple injuries. The

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deceased was later taken in injured condition to civil hospital where he died.

3. Claim was resisted by the railways claiming that the incident does not fall under the provisions of Section 123(c)(2) read with Section 124A of the Railways Act and that the deceased was not a *bonafide* passenger being not in possession of a valid railway ticket.

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

(i) whether the deceased was a bona fide passenger or not?

(ii) Whether the death occurred on account of untoward incident?

5. Tribunal on the first issue found that the deceased was not a *bona fide* passenger. While referring to the pleadings, Tribunal recorded that it has been mentioned in the pleadings that the deceased boarded the train from Punjab side in the afternoon at about 2.00 PM and nothing was said about the destination of the journey of Satnam Singh. The finding is perverse being against the pleadings. The claim petition specifically mentions at Item No.7(A) as under:

7-A.	Journey	:	From Railway Station Kishangarh (Rajashtan) to Jalandhar

6. Counsel for the appellant submits that the Tribunal has totally misread the evidence on record. AW-1 the claimant as well as AW-2 Kulwinder Singh who accompanied the deceased up to the railway station

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specifically tendered their affidavit that the deceased boarded train after purchasing ticket.

6. Learned counsel for the railways, however, submits that in the absence of there being any railway ticket brought on record by the claimant, no fault can be found with the findings recorded by the Tribunal.

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

8. Section 124A deals with compensation on account of untoward incident. The said provision came on the statute by way of Railways Amendment Act, 28 of 1994. Supreme Court in the case of **Rathi Menon vs. Union of India (2001) 3 SCC 714** spelling out the purpose and the import of the provision observed as under:

> "13. Appellant's claim for the compensation was based on Section 124A of the Railways Act, 1989 (for short "the Act"). The said Section itself was introduced as per Railway (Amendment) Act 28 of 1994. The Section provided for awarding compensation to victims of any "untoward incident" which occurs in the course of working of a railway. The expression "untoward incident" was alien to Railway Act before Parliament inserted such an expression in the statute as per the Amendment Act 28 of 1994. Prior to it the Railways could have granted compensation only to the victims of "Accident". As the definition of accident in the Act did not embrace instances of other types of disasters which frequently happened during train journeys, the Parliament in its wisdom, decision to insert a new category of disasters, both man-made and otherwise, to be the causes of action for claiming compensation.

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14. It was in compliance of the aforesaid intention of the Parliament that the category "untoward incident" was included by defining its contours in section 123 of the Act. The Sections consists of two segments. In the first segment acts such as terrorists acts, riotous attacks, robbery and decoity which visit the passengers in the train as well as those who wait within the precincts of Railway Station are included. In the second segment, which is the relevant part for the purpose of this case, is included "the accidental falling of any passenger from a train carrying passengers."

15. Now we have to see Section 124A which is the provision imposing liability on the Railway Administration to pay compensation to the victims of untoward incidents. Its proviso excuses from its purview persons who committed or attempted to commit suicide, persons who inflicted injury by self, and those who committed criminal act or acts done in a state of intoxication or insanity and also the cases affected by any natural cause of disease etc. After excluding such persons and cases, Section 124A can be read thus :

> "When in the course of working a railway an untoward incident occurs, 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 the dependent of a passenger who has been killed, 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, or injury to a passenger as a result of such untoward incident."

9. Doctrine of strict liability was applied to adjudicate the claims arising out of Section 124A of 1989 Act by Supreme Court in the case of

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Union of India vs. Prabhakaran Vijaya Kumar and others, (2008) 9 SCC 527. Rejecting the plea of 'no fault on part of the railways' Apex court observed as under:

> "17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.
>
> 18. The theory of strict liability for hazardous activities can be said to have originated from the historic judgment of Blackburn, J. of the British High Court in Rylands v. Fletcher, 1866 LRI Ex 265.
>
> xxxx
>
> 55. In view of the above, we are of the opinion that the submission of learned counsel for the appellant there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected."

10. The exceptions carved out under the proviso attached to Section 124A were interpreted by Supreme Court in the case of **Jameela and others vs. Union of India, 2010 AIR SC 3705**. Explaining the meaning of the expression 'his own criminal act', Supreme Court observed as under:

> "7. ……. It is now to be seen, that under section 124A the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. But the proviso to the section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).
>
> 8. Coming back to the case in hand, it is not the case of the Railway that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died

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due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour."

11. Principal Bench Railway Claims Tribunal submitted before Apex Court seeking clarification on the following four issues repeatedly arising before the Tribunal**:**

"(i) **Quantum of compensation**: It is stated that there is a conflict in the decisions in Rathi Menon (supra) and Kalandi Charan Sahoo (supra) which needs clarification. We have already taken note of this issue.

(ii) **Definition of passenger**: Whether any person found dead near the track on Railway Precincts can be held to be a bona fide passenger for maintainability of a claim for compensation in absence of recovery of a ticket from his body. Conflicting decisions of Andhra Pradesh High Court in Agam Shanthamma v. Union of India, (2004) 1 ACJ 713; Kerala High Court in **Union of India v. Leelamma, 2009 (1) KLT 914;** Bombay High Court (Nagpur Bench) in **Union of India v. Surekha, (2011) ACJ 1845; Ramdhan v. Union of India, (2009) ACJ**

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2487; & Union of India v. Nandabai, (2016) ACJ 411; Calcutta High Court **in Asharani Das v. Union of India, 2009 (2) CalLT 467**; and Madhya Pradesh High Court in **Raj Kumari v. Union of India, (1993) ACJ 846** are required to be resolved on this subject.

(iii) **The concept of self inflicted injury**: Whether attempt of getting into or getting down a moving train resulting in an accident was a case of 'self inflicted injury' so as not to entitle to any compensation or no such concept could not apply under the scheme of law which casts strict liability to pay compensation by the Railway under Sections 124 and 124A. In this regard views of the High Courts of Kerala in **Joseph PT v. Union of India, AIR 2014 Kerala (12)**, Bombay in **Pushpa v. Union of India, (2017) III ACC 799 (Bom)** and Delhi in **Shayam Narayan v. Union of India, (2018) ACJ 702**, may appear to be against the decisions of this Court in **Union of India v. Prabhakaran Vijaya Kumar, 2008(3) RCR (Civil) 577 : (2008) 9 SCC 527 and Jameela v. Union of India, 2010(4) RCR (Civil) 362 : (2010) 12 SCC 443**.

(iv) **Award of interest.** The Act is silent about the interest. In **ThazhathePurayil Sarabi v. Union of India, (2010) 1 TAC 420 SC**, this Court held that the CPC could be invoked and interest awarded at the rate of 6% p.a. from the date of application till the date of award and 9% p.a. interest from the date of award till the date of payment. In **Mohamadi v. Union of India, 2011(4) RCR (Civil) 692 : (2011) ACJ 2356**, interest at the rate of 9% was awarded without any difference between the date of application and date of award or for subsequent award."

12. Deciding the reference, in the case of **Union of India vs. Rina Devi, (2019) 3 SCC 572,** the Apex Court framed the following four issues:

"15. We now proceed to deal with the following issues seriatim:

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(i) Whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order awarding compensation;

(ii) Whether principle of strict liability applies;

(iii) Whether presence of a body near the railway track is enough to maintain a claim.

(iv) Rate of interest."

13. The aforesaid issues have been answered as under:

19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon* [*Rathi Menon* v. *Union of India*, (2001) 3 SCC 714, para 30 : 2001 SCC (Cri) 1311] and *Kalandi Charan Sahoo* [*Kalandi Charan Sahoo* v. *South-East Central Railways*, (2019) 12 SCC 387 : 2017 SCC OnLine SC 1638] stands explained accordingly. The four-Judge Bench judgment in *Pratap Narain Singh Deo* [*Pratap Narain Singh Deo* v. *Srinivas Sabata*, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

25. We are unable to uphold the above view as the concept of "self-inflicted injury" would require intention to inflict such

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injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on "no fault theory". We may in this connection refer to the judgment of this Court in *United India Insurance Co. Ltd.* v. *Sunil Kumar* [*United India Insurance Co. Ltd.* v. *Sunil Kumar*, (2019) 12 SCC 398 : 2017 SCC OnLine SC 1443 : (2017) 13 Scale 652] laying down that plea of negligence of the victim cannot be allowed in claim based on "no fault theory" under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an "untoward incident" entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.

29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.

Re: (iv) Rate of interest

30. As already observed, though this Court in *ThazhathePurayil Sarabi* [*ThazhathePurayil Sarabi* v. *Union of India*, (2009) 7 SCC 372 : (2009) 3 SCC (Civ) 133 : (2009) 3 SCC (Cri) 408 : 2010 TAC 420] held that rate of interest has to be @ 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in *Mohamadi* [*Mohamadi* v. *Union of*

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> *India*, (2019) 12 SCC 389 : 2010 SCC OnLine SC 19] , rate of interest has to be reasonable rate on a par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises up to the date of payment, without any difference in the stages. Legal position in this regard is on a par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner.

14. The test laid down in **Rina Devi's case (supra)** stands reiterated by Supreme Court in the case of **Doli Rani Saha vs. Union of India, Civil Appeal No.8605 of 2024 (Arising out of SLP (C) No.32962 of 2018)** observing as under :

> "13. …..In **Rina Devi** (supra), a two-Judge Bench of this Court considered the question of the party on which the burden of proof will lie in cases where the body of the deceased is found on railway premises. This Court held that the initial burden would be on the claimant, which could be discharged by filing an affidavit of the relevant facts. Once the claimant did so, the burden would then shift to the Railways. Significantly, it also held that the mere absence of a ticket would not negate the claim that the deceased was a bona fide passenger. The relevant extract from the ruling of the Court is reproduced below:
>
> > "29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. **However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an**

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affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

(emphasis supplied)

14. In the present case, the appellant had duly filed an affidavit stating the facts and adverting to the report arising from the investigation conducted by the respondent, which showed that the deceased was travelling on the train and that his death was caused by a fall during the course of his travel. The burden of proof then shifted to the Railways, which has not discharged its burden. Therefore, the presumption that the deceased was a bona fide passenger on the train in question was not rebutted.

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18. The decision in **Rina Devi** (supra) holds as follows on the aspect of compensation:

> "19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon [Rathi Menon v. Union of India, (2001) 3 SCC 714, para 30 : 2001 SCC

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(Cri) 1311] and Kalandi Charan Sahoo [Kalandi Charan Sahoo v. South-East Central Railways, (2019) 12 SCC 387 : 2017 SCC OnLine SC 1638] stands explained accordingly. The four-Judge Bench judgment in Pratap Narain Singh Deo [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given."

The decision in **Rina Devi** (supra) has subsequently been followed in **Union of India v. Radha Yadav (2019) 3 SCC 410** and in **Kamukayi and others v. Union of India and Others 2023 SCC Online SC 642**.

19. In **Rina Devi** (supra), this Court held that the claimant would be entitled to interest from the date of the accident and, in case the amount so calculated is less than the amount prescribed as on the date of the grant of compensation, the claimant would be entitled to the higher of the two amounts. The principle which has been laid down in **Rina Devi** (supra) serves a salutary purpose. This was noticed in the decision in **Radha Yadav** (supra) where it was observed that "*the idea is to afford the benefit of the amendment, to the extent possible*".

15. In view of above, the following proposition can be culled:

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(i) Railway is liable to pay to an injured passenger or to the dependants 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 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

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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.

16. In the present case, counsel representing Union of India is not in a position to dispute that the claimants filed affidavit testifying purchase of the ticket by the deceased. Thus, initial onus in terms of law laid down by the Supreme Court in Rina Devi (supra) stands discharged. It was thereafter for the railways to prove that the deceased was not a *bona fide* passenger. No evidence was led by railways to rebut the evidence of the claimants.

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17. So far as Issue No.2 is concerned, no finding has been recorded by the Tribunal and the said issue has been totally evaded holding that since the deceased has already held to be not a *bona fide* passenger, there is no requirement to go to the same.

18. The deceased lost his life after falling from train on account of jolt and jerk. The said situation does not fall within the exceptions as carved out in the proviso appended to Section 124A of the Act. There is no evidence or plea that there was any intentional act on part of the deceased to take his life thus the aforesaid issue also stands covered by the ratio of law laid down in *Rina Devi's* case (supra).

19. In view of above, the findings recorded by the Tribunal cannot be sustained being in teeth of ratio of law laid down by Supreme Court in the case of **Rina Devi** (supra)**.**

20. In view of above, present appeal is allowed. Claimant is held to be entitled to compensation on account of death of the deceased-Satnam Singh as per schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as applicable on the date of the accident along with interest @ 9% per annum payable for the period from the date of application till the date of actual realization.

October 25, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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