

[124-21] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-134-2017 (O&M)
Reserved on 23.08.2024

Pronounced on : 22.11.2024

Jasbir Singh @ Kaka ...Appellant

versus

Union of IndiaRespondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. S.R. Chaudhary, Advocate for the appellant.

Mr. Chander Mohan Sharma, Advocate
for the respondent-UOI.

PANKAJ JAIN, J. (ORAL)

[1] The appeal has been preferred by the injured-applicant Jasbir Singh @ Kaka.

[2] Pleaded case of the applicant is that on 31.08.2013 he was traveling from Kiratpur to Morinda. When the train halted at Mianpur railway station, the applicant got down from the train for urination. While he was re-boarding, the train started moving. With the jerk, his foot slipped and he fell down. The accident led to amputation of his left leg below the knee with 60% disability.

[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 124A of the Railways Act, nor the injured was a bonafide passenger, the present application is not maintainable.

[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 incident?*
- 2. Whether the alleged incident is covered within the ambit of Section 123 (c) (2) read with Section 124-A of the Railways Act?*
- 3. What are the scheduled and non-scheduled injuries sustained by the applicant injured?*
- 4. Relief. ”*

[5] Tribunal rejected the claim holding that the applicant failed to produce a valid ticket, hence he is not a bonafide passenger, and the applicant cannot maintain the claim petition.

[6] Counsel for the appellant submits that the Tribunal has totally misread the evidence on record. Applicant appeared as AW-1 and filed his affidavit specifically stating that he was a bonafide passenger. In his cross examination he specifically claims that he was in possession of the ticket which he handed over to the police authorities who came to record his statements and no counter evidence was proved by the railways.

[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, 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.*
- d) 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.*

[10] 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 124A of the 1989 Act. Thus, the respondent/ Railways cannot be absolved of its liability and is required to pay compensation.

[11] 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 left leg below the knee with stump exceeding 3 1/2” but not exceeding 5” falls under the item 20 as enumerated under Part-III of the schedule. The accident is of the year 2013. Thus, the compensation awarded to the appellants shall be as per Part-III 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.2,00,000/- along with interest @ 9% per annum payable for the period from the date of application till the date of actual realization.

(PANKAJ JAIN)
JUDGE

22.11.2024
'R. Sharma'

Whether speaking/ reasoned : *Yes/No*
Whether reportable : *Yes/No*