

134/17

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

**Reserved on 25th of October, 2024
Pronounced on 14th November, 2024**

FAO No.4337 of 2017

Joginder Thakur

....Appellant

Versus

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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

Mr. Arihant Goyal, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

The appeal has been preferred by the Applicant- Joginder Thakur.

2. Plead case of the claimant/appellant is that on 24.09.2013 when the appellant was travelling from Darbhanga to Jagadhri, when the train reached near Jagadhri Railway Station, due to push of passengers, the appellant got imbalanced; fell down from the train and sustained injuries. The fall from the train resulted in partial amputation of right foot of the appellant besides implanting of iron rod in left arm and head injury.

3. The respondent/Railways contested the claim of the claimant on the ground that he was neither a *bonafide* passenger of the train as he was

not travelling in the train on that day nor any such incident, within the meaning of Section 124A of Railways Act took place on 24.09.2013 near Jagadhri Railway Station.

4. On the basis of the pleadings of the parties, 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 Sec. 124-A of the Railways Act?
3. What are the scheduled and non-scheduled injuries sustained by the applicant-injured.
4. Relief.

5. Tribunal rejecting the claim petition holding that no evidence was produced by the claimant to prove that he was having a valid train ticket and thus, the claimant being not a *bonafide* passenger, he cannot maintain the claim petition.

6. Counsel for the appellant submits that the Tribunal has misread the evidence on record. Applicant/claimant appeared as AW-1 and has also placed on record the journey ticket as Ex. A-4 which was issued on 23.09.2013 for a journey from Darbhanga to Jagadhri.

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

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 **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.

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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 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**; ***Ramadhan v. Union of India*, (2009) ACJ 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:

- (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 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 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 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 (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:

- (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 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 respondent/Union of India is not in a position to dispute that the appellant has placed on record the purchase of ticket by him. Thus, the 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 *bonafide* passenger. No evidence was led by railways to rebut the evidence of the applicant.

17. The appellant sustained injuries due to sudden jerk and jolt of the train. The said situation does not fall within the exceptions as carved out in the proviso appended to Section 124A of the Act.

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

19. In view of above, present appeal is allowed.

Relief:

The accident is of the year 2013. Thus, the compensation awarded to the appellant 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.

November 14, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes