



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

228

FAO-3419-2018 (O&M)

Date of decision : 07.02.2025

Nirmala Devi and others

..... Appellants

versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Narender Kaajla, Advocate and
Mr. Ajay Nain, Advocate
for the appellants.

Ms. Gehna Vaishnavi, Advocate
for the respondent-UI.

PANKAJ JAIN, J. (Oral)

1. The first appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 13.12.2017 by which the Tribunal dismissed the claim filed by the appellants/applicants, who are the widower, parents and minor children of the deceased.

2. The facts of the case are that on 16.07.2014, the deceased was going from Narwana to Ghaso by train No. 54044 after purchasing a valid journey ticket. When the deceased boarded the train, there was a huge rush and due to which she fell down from the running train on platform no. 2 of railway station, Narwana. She suffered multiple injuries and died on the spot.

3. The respondent-department filed a written statement contesting the claim holding that no untoward incident within the



meaning of Section 123(c) of the Railways Act, causing the death of the deceased took place. It was further averred that the deceased was not a bonafide passenger of the train as no ticket was recovered from her during jamatalashi.

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

- “1. Whether the deceased was a bonafide passenger of train at the time of accident?*
- 2. Whether the death of the deceased has occurred in an untoward incident as defined under Section 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. The Tribunal rejected the claim on the ground that no ticket was recovered, hence she would not be a bonafide passenger.

6. The appellants adduced evidence by way of affidavit of AW-1, widower of the deceased. She on oath stated that the deceased purchased ticket and was a bonafide passenger.

7. The counsel appearing for the appellants while assailing the impugned order submits that Tribunal disbelieved the testimony of AW-1, on the ground that no traveling ticket was found from the place of the incident. The Counsel while referring to the law laid down by Apex Court in ***Union of India vs Rina Devi, (2019) SCC 572*** has contended that the appellants cannot be non-suited simply because the travelling ticket was not found from the place of the incident by the concerned officials once claimant has discharged initial burden.



8. The Counsel appearing for the respondent-Union of India has placed reliance on the testimony of RW-1, who was an eye-witness to the incident. It is proved from his testimony that the deceased was trying to board the moving train. The act of boarding a moving train by the deceased has been held to be criminal negligence and self-inflicted injury by the Hon'ble Delhi High Court in ***Santosh and others vs. Union of India*** reported as **2013 ACJ 381**.

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

10. 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 came up for consideration before Supreme ***Court*** in the case of ***Rathi Menon v. Union of India (2001) 3 SCC 714, Union of India v. Prabhakaran Vijaya Kumar and others, (2008) 9 SCC 527, Jameela and others v. Union of India, 2010 AIR SC 3705, Union of India v. Rina Devi , (2019) 3 SCC 572 and Doli Rani Saha v. Union of India, Civil Appeal No.8605 of 2024 (Arising out of SLP (C) No.32962 of 2018)***.

11. After considering the aforesaid precedents, this ***court*** dealt the issue elaborately in the case of ***Sandeep Narula and ors v. Union of India bearing FAO No. 2700 of 2016*** and 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 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 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."

12. It is not disputed that the claimant on oath testified that the deceased purchased the ticket and was boarding the train. The said evidence has gone un rebutted.



13. In view of above thereof, findings recorded by the Tribunal after claimant discharged initial onus, cannot be sustained.

14. Issue with respect to untoward incident is also no more *res integra*. From the perusal of statement of RW-1, it is evident that the injury was suffered by the claimant while boarding the train. There is no intention on her part to cause injury on her own person. Negligence while boarding train in the absence of there being any intention to suffer injury, has been held to be covered under the ambit of untoward incident.

15. In view of above, the findings recorded by the Tribunal cannot be sustained and are hereby reversed.

16. The appeal is hereby allowed. The accident relates to the year 2014. 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 or Rs.8.00 lacs, whichever is higher.

(PANKAJ JAIN)
JUDGE

07.02.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No