



208-10

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

FAO-15972-2018 (O&M)

Date of decision : 07.03.2025

Puja @ Pooja Kumar and others

....Appellants

Versus

Union of India

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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

Mr. Satish Saini, Sr. Panel Counsel, UOI.

PANKAJ JAIN, J. (ORAL)

CM-28535-CII-2018

This is an application filed under Section 151 CPC seeking condonation of delay of 43 days in refiling the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 43 days in refiling the instant appeal is hereby condoned.

FAO-15972-2018 (O&M)

Claimants are in appeal aggrieved of the award passed by Railway Claims Tribunal whereby their claim application seeking



compensation on account of death of Vijay Mandal in an untoward incident while travelling by train, stands dismissed.

2. At the outset, counsel for the appellants submits that inadvertently, the legal representative of deceased namely Vivek, the son, could not be impleaded. He makes an oral request to implead Vivek minor son through appellant No.1 Puja @ Pooja Devi being a natural guardian.

3. Prayer is allowed.

4. Vivek the minor son of the deceased is ordered to be impleaded as appellant No.4 in the arraign of the parties. Registry to do the needful.

5. As per the claim petition, deceased accidentally fell from the train in between railway station Khalilpur and Rewari while travelling from Delhi to Rewari on ticket no.03872438, dated 26.10.2014.

6. Claim was resisted by the respondent/railways denying that the deceased died of injuries suffered in an untoward incident. It was claimed that the claimant died due to his own criminal act.

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

- “1. Whether the deceased was a bonafide passenger of train at the time of accident?
2. Whether the alleged incident is covered within the ambit of Sec. 123(c)(2) read with Section 124-A of the Railways Act?
3. Whether the applicants are the sole dependents of the deceased?
4. Relief.”



8. Tribunal rejected the claim petition disbelieving the claimants holding that the story of the claimants that the deceased was working as a cook on the residence of some leader at Gurgaon and Rewari is not believable. As per the post-mortem report Exhibit AW1/19, the dead body of the deceased was found mutilated with various parts amputated. The ticket was issued at 11.49 hours on 26.10.2014 whereas the dead body of the deceased was noticed by the railway staff in the morning hours of 27.10.2014 and in these circumstances, the possibility of the deceased travelling in some train on the strength of the said ticket during day time though cannot be ruled out. The facts and circumstances of the case go to prove that the deceased was run over by some unknown train after he had completed his journey. Tribunal thus holding that deceased has not died in an untoward incident, dismissed the claim petition.

9. Ld. counsel for the appellant submits that the Tribunal has totally misread the evidence on record. So far as journey ticket is concerned, it is evident that the ticket was recovered from the dead body of the deceased even as per railways. He submits that even though the ticket was issued at 11.49 hours on 26.10.2014 for journey commencing from Delhi to Rewari, but it is evident that the dead body of the deceased was noticed on the very next early morning hours of 27.10.2014. Moreover, the body of the deceased was found in between Khalilpur and Rewari which is on the way from Delhi to Rewari. He thus submits that the only inference that can be drawn is that the deceased in fact fell down from the train while travelling



from Delhi to Rewari on the ticket which was recovered from his dead body. In order to support his contention, he relies upon post mortem report wherein the time between the death and post mortem has been opined to be 12.00 to 36.00 hours and the post-mortem was conducted on 27.10.2014 at 4.00 PM. He thus submits that the death of the deceased was on 26.10.2014 itself. He further relies upon ratio of law laid down 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)** wherein Supreme Court while dealing with the similar circumstances, held as under:

“13. From the recapitulation of the various judicial pronouncements leading to the present appeal, it can be seen that the primary issue is whether the deceased was travelling on the train in question. 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.

15. Further, the report of the IO indicates the details mentioned in the post-mortem report. It states that the cause of death was due to an injury sustained on the head and that all injuries were antemortem and caused by "blunt force impact". It also states that forty-eight to seventy-two hours had passed since the time of death.

16. The High Court noticed the time of death estimated by the post-mortem report. From this, it concluded that it was not possible to hold that the deceased died on 5 September 2003 because the post-mortem examination was conducted on 9 September 2003 at about 1:30 pm. It appears that the High Court was of the opinion that the deceased died later than 5 September 2003 because the postmortem report indicated that forty-eight to seventy-two hours had passed since the time of death. However, the High



Court did not notice that the IO indicated that the deceased fell off the train at approximately 11:15 pm on 5 September 2003.

17. Seventy-two hours prior to the conduct of the post-mortem would be about 1:30 pm on 6 December 2003. This would be about thirteen to fourteen hours after the deceased fell off the train. Conclusions in post-mortem reports as to the time of death are approximations. This is also indicated by the fact that they usually provide a window of time in which the deceased may have died. A margin of error of about half a day in cases where compensation is at issue is not disproportionate, where the evidence is otherwise corroborated by the material on record. In this case, the estimation as to the time of death in the post-mortem report differs from the time at which the IO stated that the deceased fell off the train by about half a day. The report of the IO otherwise corroborated that the deceased fell from the train. Further, the post-mortem report also stated that the deceased sustained antemortem injuries due to blunt force. Hence, from the material on record, it can be concluded that the deceased was a bona fide passenger on the train in question and that he sustained grave injuries leading to his death, due to his fall from the train. Compensation is therefore due to the appellant.

D. Compensation and interest

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*".

10. Mr. Satish Saini, Advocate representing the respondent, is not in position to dispute the fact that as per the records, ticket was found from the *jamatalashi* of the deceased. Though, he submits that the nature of injuries found on the body of the deceased itself shows that it was not a case of fall from the train rather having been run over.

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

12. In the considered opinion of this Court, there being no evidence to show that there was any intent on part of the deceased to suffer self inflicted injuries, there being overwhelming evidence of him having travelled by the train and his body having been found from the railway track, the issue would be covered by the ratio of law laid down by Apex Court in the case of **Union of India vs. Rina Devi, (2019) 3 SCC 572**.

13. In view of the aforesaid discussion, the findings recorded by the Tribunal cannot be sustained and need to be reversed on issues No.1 and 2. Resultantly, issues No.1 and 2 are decided in favour of the appellants. It is



held that the deceased Vijay Mandal died of injuries suffered in an untoward incident while he was travelling as a *bona fide* passenger.

14. As a sequel of the discussion held hereinabove, the claimants are held entitled for an amount of Rs.8.00 lacs without interest as the date of accident is 26.10.2014. Out of Rs.8.00 lacs, each of the claimants will be entitled to get Rs.2.00 lacs. So far as the amount of Rs.2.00 each, payable to Santosh Kumari and Vivek, the minor children, is concerned, the same shall be kept in FDR with a Nationalized Bank till the age of majority.

15. Ordered accordingly.

March 07, 2025						(Pankaj Jain)
Dpr						Judge
	Whether speaking/reasoned	:				Yes/No
	Whether reportable	:				Yes/No