
(2011) 03 P&H CK 0269

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10749 of 2009

Baljit Kaur and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Railways Act, 1989 — Section 124

Citation : (2011) 163 PLR 732

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—Petitioner No. 1 along with her two minor daughters has filed this writ petition to seek compensation on account of death of her husband Pappi Singh. Late Pappi Singh has died under very unfortunate circumstances. On 16.1.2006, he along with his father was returning to his village. When he reached at Railway Gate No. C-61 Dholewala, he found the gate closed. There was rush and it was traffic jam like situation. Late Pappi Singh was waiting at the Railway crossing for Railway gate to open and when it opened, he preceded ahead. While he was in the process of crossing the Railway gate, its wing broke and fell down on his head. Pappi Singh was seriously injured and was shifted to hospital. Ultimately, he succumbed to his injuries on 17.4.2006. Railway Police had registered report No. 13, dated 13.4.2006. Since the late husband of Petitioner No. 1 had died primarily because of the negligence of the Railway, the Petitioners have filed this writ petition to seek compensation from the Railways.

2. The perusal of the postmortem report would show that cause of death is due to complication on account of the deceased being bed ridden. It was resulted in fracture dislocation at D5-D-6 level of spine. This injury was considered to be sufficient to cause death in ordinary course of nature. The Petitioners have placed on record the postmortem report.

3. In response to notice issued by this Court, the Respondent-Railway has filed reply. Though it is admitted that there is a report showing that Gate No. 61 was broken at 10.45 hours on 16.1.2006, as in this regard a message was received at Dhuri, but it is stated that there is no record regarding any injury or casualty of any person, which may have resulted on account of breaking of the gate. The Respondents, accordingly, would deny the accident on the ground that there is no proof of the same. The Respondents would also ultimately contest the liability of Railways by making reference to the provisions of Railways Act, by referring to Section 124 thereof. Accordingly, it is prayed that no case for grant of any compensation is made out.

4. I have heard counsel for the parties.

5. Learned Counsel for the Petitioners has drawn my attention to the statement made by the deceased Pappi Singh, which was recorded by the Police while he was admitted at PGI Chandigarh. The statement shows that the deceased was doing the work of loading the tractor/trolley etc. His brother was driving the tractor/trolley and some other people were also working along with them. The Petitioner along with other persons had loaded the tractor/trolley with waste of paddy from the sheller of Vakil at Man Wala Road and were going to A.P. Solvex factory. The deceased has clearly stated that while he along with others was waiting for opening of the Railway gate and crossing underneath, it suddenly fell on him as the wing of the gate broke and hit on his head. He became unconscious and regained his conscious in the PGI. Still the deceased stated that he did not wish to take any action against any person. Autopsy report is placed on record and this record along with the statement of eye-witness, would clearly establish that deceased Pappi Singh suffered injury on account of breaking of wing of railway gate, which fell on him.

6. Plea raised on behalf of the Railways that the Petitioners have not been able to establish the accident, is only to escape their liability. The Railways being a Government organization can be expected to behave in a better manner. There is clear evidence of breaking of railway gate. Ignoring the material placed by the Petitioners on record to show that the gate fell on the head of late husband of Petitioner No. 1 the simple denial by the Respondents would not suffice. There is, thus, clear and cogent evidence available on record that the death of late husband of Petitioner No. 1 was due to the reasons disclosed in the petition. The manner, in which Railways had maintained the gate, would be enough to show that they were not vigilant enough to ensure safety of public at large. The negligence from the manner in which the accident has taken place, would clearly emerge. The Respondents, thus, are seen liable for causing this death due to negligence. This negligence is gross and has led to the loss of bread earner for the Petitioners. The clear case for grant of compensation, therefore, is made out.

7. The aspect of grant of compensation by way of public law proceedings is by now fully established. There is no much dispute on the fact that the writ Court is competent to assess and grant compensation in case of negligence. In this

regard reference can be made to Nilabati Behera (Smt.) alias Lalita Behera (through the Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , Sebastian M. Hongray Vs. Union of India (UOI) and Others, , Sebastian M. Hongray Vs. Union of India (UOI), Bhim Singh v. State of J and K 1984 Supp SCC 504, Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, and State of Maharashtra and Others Vs. Ravikant S. Patil, .

8. The next question to be determined is about the quantum of compensation. The counsel for the Petitioner submits that the late Pappi Singh was working as a daily wager and as per the rate then prevalent could be assessed as earning Rs. 3000/- per month. Reference is made to the case of Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. 2009 (3) RCR (Civil) 77, where the Hon'ble Supreme Court has now given very fair, clear and elaborate direction as to how to work out the quantum of compensation. Though this is in cases of Motor accident but the same method can fairly be adopted in such like case and has been so done in similar case. As per Smt. Sarla Verma's case (supra), not only the earning at the time of death is required to be taken into consideration, but any salary or any earning at the later stage of life is also to be kept in view. The dependency is also to be calculated on the basis of number of persons living to share the income earned by the deceased. Even the multiplier, which is required to be adopted, has been noticed. It is observed that if the deceased person had a permanent job then an addition of 50% of actual salary may have to be added towards the future prospects. Similarly 30% may have to be added where deceased was below 40 to 50 years. No addition may have to be made in those cases, where deceased was more than 50 years. Taking into consideration all these factors, I would take the income of the deceased to be Rs. 3000/- by excluding the dependency and by adding 30% of the amount as a future prospect. Taking this as basis and applying the multiplier of 16 considering 32 years age of the Petitioner, compensation awarded would roughly work out to be between Rs. 5.00 lacs to Rs. 6.00 lacs. By taking into consideration the other factors as noticed by the Hon'ble Supreme Court in Sarla Verma's case (supra) I would grant the lump sum compensation of Rs. 6.00 lacs to the Petitioners. The writ petition is accordingly allowed. Let the compensation awarded be disbursed to the Petitioners within two months from the date of receipt of certified copy of this order. In case this compensation is not disbursed within this period, the Petitioners shall be entitled to an interest @ 9% per annum from the date it is due to the date of payment.