

(2018) 07 P&H CK 0314
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 5957 Of 2012

Devi Ram & Ors.	Vs	APPELLANT
Union Of India & Ors.		RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 2(29), 31, 32A, 123(c), 123(c)(2), 124A

Citation : (2018) 07 P&H CK 0314

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Kulvir Narwal, Rohit Suri, Sandeep Vermani

Final Decision : Allowed

Judgement

G.S.Sandhawalia, J

The present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the 1987 Act') is directed against the award dated

25.11.2011 passed by Railway Claims Tribunal, Chandigarh (for short, 'the Tribunal') by the son of the deceased. The claim for compensation was

denied solely on the ground that deceased Shiv Lal had completed his journey and walking along the side of the railway track and had come in front of

the engine and was run over by 3-RD passenger train. Resultantly, it was held that it is not a case of untoward incident within the meaning of Section

123(c)(2) of the Railways Act, 1989 (for short, '1989 Act') and, it was accordingly, held that he has died due to his own criminal act or negligence and

he was not a bonafide passenger having completed his journey and was not covered within the parameters of Section 123(c)(2) of the Act and,

therefore, the case was decided in favour of the respondent - railway

administration.

The deceased, aged 83 years, had left his house on 18.04.2008 for going to Tirpadi to meet the family Vaid and purchased the railway ticket for

Pataudi from railway station Bawal. He had de-boarded the train at Pataudi for going to Tripadi to meet the family Vaid and it was the case of the

claimants that the deceased was walking on the platform and when the train gave whistle he fell from the track on the railway line.

The claim was contested by the respondents on the ground that no untoward incident or railway accident had taken place and it was claimed that the

deceased was not bonafide passenger. Resultantly the claim petition was opposed.

The following issues were framed by the Tribunal:-

1. Whether the deceased was a bonafide passenger?
2. Whether the alleged incident is covered within the ambit of Section 123(c)(2) read with Section 124-A of the Railway Act?
3. Whether the incident falls under exceptions to Section 124-A i.e. criminal act of the deceased thereby respondent is not liable to pay any compensation to the applicant (para 16 of the written statement)?
4. Whether the applicants are the sole dependents of the deceased?
5. Relief.

Son of the deceased, namely, Banwari Lal filed his affidavit in support of the averments as to how the deceased had left house to meet family Vaid at

Tirpadi which is near Pataudi. When he had not reached his niece's house enquiry was made and thereafter on 21.04.2008 they had come to know

that one old man had struck against the train at Pataudi railway station. The dead body was, thus, identified after going to the Railway Police at

Rewari and the claim was made on the basis of a valid ticket.

Respondent â?" railway had filed affidavit of RW-1 Anil Kumar Aggarwal, guard, wherein it was deposed that on 18.04.2008, he was on duty as a

Guard on train No.3-RD passenger from Delhi to Rewari and the train reached at Pataudi Road Railway station at 15.23 hours and left for Rewari at

15.25 hours. He had been informed by the driver that a person had suddenly come in front of the train and accordingly, he had gone to the railway

track and removed the badly injured person. He had contacted ASM Pataudi for medical help and the injured was removed to Rewari. Similarly, the

driver of the said train RW-2 Babu Lal was also examined, who also submitted that one old aged person suddenly came in front of the train, who was

walking parallel to the railway line and had got injured and the guard had lifted the injured man in the train. The injured man had been taken to Rewari

Railway Station. The witness admitted that before they started, a long whistle was blown by the engine which can be heard till one kilometer and it

was his stand that the deceased was walking parallel the railway track. It has also been recorded that after completing his journey on the strength of

journey ticket recovered from the person during the course of his jamatalashi the incident had occurred. The only defence as such of the railway is

that a person was negligent as such he was walking along the railway track on the basis of which his claim was disallowed.

Under Section 124-A no compensation is to be payable if it is a case of suicide or attempted suicide by him, self-inflicted injury, own criminal act and

any act committed by him in a state of intoxication or insanity. Under the explanation (ii) a person who has purchased a valid ticket for traveling by a

train carrying passengers, on any date or has a valid platform ticket can become a victim of an untoward incident. The definition of a passenger which

has been given under section 2(29) of the 1989 Act whereby 'passenger' means a person traveling with a valid pass or ticket.

The explanation of Section 124-A and the definition of Section 2(29) of the 1989 Act reads as under:-

Explanation :- For the purposes of this section, 'passenger' includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for traveling by a train carrying passenger, on any date or a valid platform ticket and becomes a victim

of an untoward incident.

(29) 'passenger' means a person travelling with a valid pass or ticket;

The liability under Section 124 thus is on account of death of passenger as per the explanation given and compensation is liable to be paid towards the

happening of a untoward incident to a passenger. Under Section 123(c)(2) the untoward incident include's the accidental falling of any passenger from

the train carrying passengers is also defined which would make railways to pay compensation on account of the untoward accident under Section 124-

A. The Apex Court in Union of India Vs. Prabhakaran Vijaya Kumar & Ors.,

2008(9) SCC 52 7has also held that no fault liability is provided under Section 124-A in case of railway accidents and only where, if the case falls within the exceptions the compensation is liable to be denied, as it is a beneficial piece of legislation. In the said case the deceased was trying to board a train and had fallen down. The relevant portion reads as under:-

â??11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 19 3(para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11),L alappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a

large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.â??

Similar is the view in *Jameela & Ors. Vs. Union of India* (2010) 12 SCC 443.

In the present case as noticed the deceased has just completed his journey and had got out of the train and was struck by the train while walking along the track as per the respondents whereas the case of the claimants was that he fell off the platform. It is irrespective that whether he was at that

point of time walking on the platform or along the track as he had fallen down in front of the train on account of the whistle having been blown and,

therefore, he is covered under the definition of 'passenger'. The Tribunal was not justified in dismissing the claim petition as his journey had not been

completed as he was still within the railway land, as defined under Section 31 & 32-A of the 1989 Act. The same reads as under :-

â??(31) â??railwayâ?? means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includesâ??

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms,

rest houses, institutes, hospitals, water works and water supply installations staff dwellings and any other works constructed for the purpose of, or in

connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a

railway and owned, hired or worked by a railway dministration, but does not include

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park or any other place solely for the purpose of recreation;

(32-A) :- 'Railway land' means any land in which a Government railway has any right, title or interest.â??

Accordingly the appeal is allowed. The appellant shall be entitled to compensation of Rs.4 lakhs and the interest @6% from the date of the accident,

in view of the judgment of the Apex Court in Civil Appeal No. 4945 of 2018 Union of India Vs. Rina Devi decided on 09.05.2018, which shall be paid

to the appellants within two months.