
(2008) 04 P&H CK 0112
In the Punjab And Haryana At Chandigarh

Satyabir and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Railways Act, 1989 — Section 123, 125, 175, 27

Citation : (2009) ACJ 2093 : (2008) 3 PLR 185 : (2008) 3 RCR(Civil) 721

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sabina, J.—Petitioners have filed this petition for issuance of a writ in the nature of mandamus directing the official respondents to pay compensation to the petitioners to the tune of Rs. seven lakhs for the death of Smt. Santosh. Petitioners are husband and children of deceased Santosh, who had died due to falling of a pole of a railway crossing claiming compensation from the respondents on the allegations that the death of Santosh had occurred on account of negligence of the railway officials.

2. Case of the petitioners, as stated in the writ petition, in brief is that on 21.5.2004, Smt Santosh, wife of petitioner No. 1 and mother of petitioner Nos. 2 to 4 was returning back to her village after purchasing household articles and medicines along with her daughter Jyoti. While they were crossing the railway gate 60-B, situated on Kuchha Beri Road, Rohtak, all of a sudden, the pole of the railway gate fell on Smt. Santosh and her daughter Jyoti and others. As a result of this, Smt. Santosh and Jyoti suffered multiple grievous injuries and were removed to Post Graduate Institute, Rohtak. Smt. Santosh, however, died on the way to the hospital and was declared "Brought dead". Jyoti was given treatment for her injuries in the hospital and was subsequently discharged. An information regarding the incident was sent by Station Master, Railway Station Rohtak to SHO Government railways Police Rohtak vide memo No. 57/88/04 dated 21.5.2004.

The information regarding death of Smt. Santosh was also sent by the Casualty Medical Officer, PGI Rohtak on the same day to incharge Police Post. The dead body of Smt. Santosh was sent for post mortem examination on 22.5.2004 to Civil Hospital, Rohtak. The cause of death, as stated in the post mortem report, was shock and hemorrhage as a result of injuries suffered which were ante mortem in nature and was sufficient to cause death in the ordinary course. Respondents paid sum of Rs. 4,000/- as ex-gratia payment on account of death of Smt. Santosh on 22.5.2004. From this, it was evident that the death had occurred due to the negligence of the Railway Administration. A news item was also published in Dainik Bhaskar on 23.5.2004 wherein it was stated that the Railway Administration had admitted its fault and a Committee has been formed to fix responsibility for the mishap. FIR No. 106 dated 30.5.2004 u/s 175 of the Railway Act and Section 304A of the Indian Penal Code was also got registered. Smt. Santosh was aged about 40-42 years at the time of the accident. The incident had taken place due to the negligence and fault of the Railway Department as they had failed to maintain the pole of railway gate.

3. Respondents in their written statement took up the preliminary objection that the writ petition was not maintainable. On merits, it was admitted that Smt. Santosh, wife of petitioner No. 1 suffered injuries due to sudden falling of pole of Gate No. 60-B due to wind. The Station Master communicated to SHO GRP Rohtak that three persons had sustained injuries. The gate man on duty informed that while opening the gate No. 60-B for passing road traffic and road users, one pole of the Mandi fide suddenly broke and fell from horizontal to vertical position.

4. Earlier the petitioners had filed C.W.P. No. 18549 of 2004 which was disposed of by the Division Bench of this Court on 30.5.2006 by passing the following order:

The petitioners have approached this Court for seeking writ of mandamus for directing the official respondents No. 1 and 2 to pay, compensation of Rs. 7 lacs to the petitioners for the death of Smt. Santosh wife of Satyabir Singh, Petitioner No. 1.

No written statement has been filed by the respondent's so far. We further find that a legal notice dated June 23, 2004 Annexure P4 has been served by the petitioners which remains unresponded.

At this stage, Mr. Jagdish Mawaha, learned Counsel for respondents No. 1 and 2 points out that an appropriate action was to be taken at the end of the Chief Claims Officer, Northern Railway, New Delhi, who has not been impleaded as party respondent in the present writ petition.

Consequently, we dispose of this writ petition with liberty to the petitioners to file a detailed and comprehensive representation before the Chief Claims Officer, Northern Railway, New Delhi within a period of four weeks from the date a certified copy of the order is received. Along with the aforesaid representation,

the petitioner shall be required to annex all the relevant judgments upon which they rely. On receipt of the aforesaid representation, the Chief Claims Officer shall take a final and appropriate decision thereupon by passing a detailed speaking order, within a period of four months from the date of the receipt of the aforesaid representation. Copy of the order be given dasti on payment of usual charges.

In terms of the said order, petitioners approached the Chief Claims Officer, Northern Railway, New Delhi. The said claim was declined vide order dated 12.9.2006. The relevant portion reads as under:

The claim office of Northern Railway working under Chief Claims Officer deals claim cases strictly in accordance with the relevant provisions of the Railway Act, 1989. So far as the compensation cases involving loss of life and injuries are concerned, compensation is awarded by the Railway Claims Tribunals in accordance with the provisions of the Railway Act under Chapter XIII-Liability of Railway Administration for death and injury to passengers due to accidents and railway accidents (compensation) Rules, 1990.

The claim office makes payment of decretal amount as awarded by RCT under Sections 123 to 125 of Railway Act, 1989 in exercise of power conferred u/s 27 of Railway Act. However, the office of CCO is not competent to determine/grant compensation suo moto.

In the case under your representation, the Gangman on duty while working on 21.5.2004 at Gate No. 60-B, opened the Gate/Barrier for passing road traffic, the barrier suddenly broke and fell down from horizontal to vertical position causing serious injuries to late Smt. Santosh which resulted in her unfortunate death & injuries to her daughter. However, the incident by its nature is not covered under the definition of either "accident" or "untoward incident" as defined in Section 123 of Railway Act. The victim was also not a passenger. Under the circumstances, you may like to file suit in RCT/CDG or seek compensation for loss of life/injuries to appropriate legal Forum/Civil Court for grant of compensation.

Sd/- (Vijay Kumar) 12.9.2006 Chief Claims Officer

5. We have heard the learned Counsel for the parties and perused the record of the case.

6. Learned Counsel for the petitioners has argued that admittedly Smt. Santosh had died due to the falling of the pole of the railway gate while she was crossing the railway line. Respondents had paid Rs. 4,000/- as ex-gratia to the petitioners on account of death of Smt. Santosh. The pole had fallen due to the negligence of the respondents. As per Schedule, (Rule 3) Rs. 4 lakhs were liable to be awarded as compensation on account of death of Smt. Santosh.

Learned Counsel for the respondents has argued that the writ petition was liable to be dismissed as disputed questions of facts were involved. Smt. Santosh was

not a passenger and as such, the petitioners were not entitled for compensation.

7. Facts in the present case are not in dispute. Admittedly, Smt. Santosh had suffered injuries when pole of railway gate fell on her while she was crossing the railway line along with her daughter. As per Annexure P2, Smt. Santosh was brought dead to the hospital. The incident was informed by the concerned Station Master, Railway Station, Rohtak to SHO Government Railway Police, Rohtak on 21.5.2004. Admittedly, ex-gratia payment of Rs. 4,000/- was made by the respondents to meet put the immediate requirement of the injured. Annexure P3 is the receipt issued by the petitioner No. 1 in this regard. From this, it can be inferred that the pole had fallen due to the negligence on the part of the official of the railway department. It was the duty of the officials of the railway department to maintain the poles of the railway gate. The accident could have been averted in case the respondents had done proper maintenance of the pole of the railway gate from time to time. Respondents are therefore, liable to pay compensation to the petitioners for accidental death of Smt. Santosh. Deceased, Smt. Santosh, was a house wife and was aged about 40-42 years at the time of accident. Petitioner No. 1 is the husband of the deceased and petitioner Nos. 2 to 4 are the children of the deceased and have thus, suffered a great loss due to her untimely death. Although Smt. Santosh was not a passenger yet she has died due to negligent act on the part of the railway department and as such, petitioners are entitled to receive compensation on account of her untimely death. As per Rules 3 and 4 of the Railway Accident (Compensation Rules) 1990, in case of death of a passenger, Rs. 4 lakhs is to be awarded as compensation. Applying the same analogy and keeping in view the facts of the case in mind, it would be just and fair to award Rs. 4 lakhs as lump sum compensation to the petitioners on account of death of Smt. Santosh. All the petitioners shall share the amount of compensation equally. The respondents are directed to make payment of compensation within a period of three months from today.

Writ petition is accordingly allowed. No costs.