
(2018) 08 P&H CK 0218

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No.5381 of 2014

Susheela Devi and others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Railways Act, 1989 — Section 2(29), 123 (c)(2), 124A

Citation : (2018) 08 P&H CK 0218

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

Bench : Single Bench

Advocate : Paul S. Saini, Amit Kumar

Judgement

The present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') has been filed against the order dated 30.09.2013

passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, by the widow and two children, on account of death of Inderjeet Singh.

The claim has been denied by the Tribunal on account of the fact that the injury on the person of the deceased would indicate that he was run over by

some moving train and it was not a case of falling down from a train, as his head was separated from the body. It was held that since the village of the

deceased was Jahidpur and residents of the village would normally go by train from Nangal Pathani Railway Station, which is just 3 Km away from

the village and the spot of incident was closer to the village of the deceased. The deceased having come from Rewari while crossing the track had

been run over and, therefore, it was not a case of falling down from a train. The DRM report case of being involved with a incoming train, was,

accordingly, accepted while recording the finding on issues No.1 and 2 of being a

bonafide passenger and the incident not being covered within the ambit of Section 123 (c) (2) read with Section 124-A of the Railways Act, 1989 (for short '1989 Act'). A finding was, however, recorded under issue

No.3 that the present appellants are the dependents of the deceased.

It is not disputed that railway ticket No.B80041032 dated 03.08.2011 from Rewari to Kosli was recovered from the person of the deceased and,

therefore, it has been argued by Mr. Paul S. Saini, Advocate for the appellants that Tribunal was in a error in holding that it was a case of being run

over while crossing the tracks in an attempt to take a short cut to the village and in the absence of the plea having been taken by the Railways. The

Jamatalshi had showed that a purse and ticket were recovered and the nature of injuries as per the postmortem report, the railways proceeding, which

had been conducted by the railways authorities on 04.08.2011 would go on to show that the body was recovered early in the morning and, therefore,

the finding recorded as such was not sustainable.

Mr. Amit Kumar, Advocate appearing on behalf of Union of India on the other hand submits that order of the Tribunal does not suffer from any

infirmity. The deceased being a resident of the neighbouring area had opted to get out of the station and taken a short-cut to go to home and in this

process had been run over by a running train and, therefore, it was not a case of an untoward incident of falling down from a running train

accidentally, as has been put forth by the claimants.

A perusal of the record would go on to show that the case of the appellants is that Inderjeet Singh had died on 03.08.2011 at Railway Station, Nangal

Pathani while returning from Rewari. His body had been found by Lallu, Gangman of the Railway and resultantly the Station Superintendent, Jatusana

Railway Station had been informed and the Railway Police had, thus, come to the spot. The body had been identified by Ram Kumar and Dharambir

brothers of the deceased and the memo was prepared that a railway ticket dated 03.08.2011 from Rewari to Kosli was recovered. It is in such

circumstances, compensation was claimed for.

The defence of the Railways was that the deceased was not a passenger of the train at the relevant time and not a bonafide passenger and death had

not been caused within the meaning of Section 123 (c) (2) of the Railways Act, 1989 (for short '1989 Act'). It was admitted that the dead body was

found lying in the middle of the track in station yard of Railway Station, Nangal Pathani and it appeared to be a case of run over by some moving train.

Neither the train number nor the time commencing of journey had been furnished.

In support of the claim, the appellant No.1 had furnished her affidavit and duly cross-examined. The intimation sent by Station Superintendent on

04.08.2011 at 7:40 AM (Ex.A3) to the SHO GRP would go on to show that one Guard had given information that there was a dead body lying at

KM21/9-22/10, which had been handed over to the Lallu, Gangman to attend and do the needful.

The postmortem report (Ex.A12) would go on to show that that body was brought by Rajinder Singh, ASI and had been identified by Ram Kumar and

Dharambir sons of Ram Narain who are the brothers of the deceased. The postmortem was conducted at 2:00 PM on 04.08.2011. The skull was

completely crushed above eyes and whole of the brain matter was coming out and a information was furnished by the police that it was a case of

being crushed by a train. The cause of death was also on account of injury to brain and hemorrhage due to a shock and possibility due to a railway

accident was not ruled out. As per the inquiry report which was made, it was found that the ticket had been issued from Rewari. However, it could

not also be held that from which train he had fallen out and had been noticed by the Gangman Lallu, during his course of duty. The confirmation of the

ticket was also part of the inquiry proceedings from the Chief Supervisor.

The affidavit of RW-1 Lallu, Gang Jamadar was brought on record by the Railways regarding the said aspect that on 04.08.2011 at KM 21/9-22/0 at

6:00 AM he had found a dead body lying in the middle of the track. He had given a red signal for stopping and the train was stopped and the Guard

was informed and, thereafter, he had stayed at the said place till the arrival of the GRP. Similarly, the statement of RW-2 G.D. Sharma, who was

working as a Guard (Passenger) on the train which had come from Bhiwani to Rewari and left for Kosli was to this effect that the train had been

stopped between Kosli and Jatusana at the instance of Gangman, Lallu who had given red signal. As the dead body was not causing any hindrance to

the movement of the train as such the train was passed with caution and a memo was issued by him and train was detained for 16 minutes on the

single track. The Jamatalshi (Ex.A5) would go on to show that purse along with ` 50/- was recovered from the deceased along with his ticket which

had been issued, which was done in the presence of the brothers of the deceased and the Gangman by Banwari Lal, ASI.

The facts, thus, would go on to show that at the first instance itself the ticket had been recovered from the body of the deceased and as noticed ticket

was got issued from the Rewari Railway Station to Kosli (Ex.A6) by the authorities themselves. Once the person was travelling on a valid travel ticket

and he was permitted to do so till Kosli and merely because his body was found close to his village, the finding which has been recorded by the

Tribunal that he was not a passenger on the train is not justified.

The Act is a social beneficial piece of legislation to protect the bona fide travellers who have a valid travel ticket/pass as per the definition of Section 2

(29) of the 1989 Act. The action claimed under Section 124-A of the 1989 Act is, thus, maintainable and it has been held to be in a form of a no fault

liability for which the Railways are liable to pay compensation and an action is liable to be maintained on that account and compensation is to be paid.

The Act being a social beneficial piece of legislation has been noticed by the Apex Court in 'Union of India Vs. Prabhakaran Vijaya Kumar & others'

2008 (9) SCC 527, which has been further followed in 'Jameela & others Vs. Union of India' 2010

(12) SCC 443. The relevant portion of the judgment 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 193 (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), *Lalappa 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.

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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??

The reasoning, thus, which has been given by the Tribunal that there was no witness to the incident is without any basis. It is not disputed also that the

body was found on a running track and the chances of a passenger falling down and not being witnessed by any other person can arise. It is neither

the specific case of the Railways that the deceased was run over by a moving train while he was trying to cross the track in an attempt to reach his

village and while taking a short cut and in the process was run over. Therefore, in the absence of any specific pleadings the Tribunal was not justified

in coming to this conclusion. Neither there was any evidence to this effect also produced by the respondent. If the said process had also happened and

a person had come under any train, some railway employee/Guard should have been examined under which train the deceased had been run down.

Therefore, the finding recorded under issue No.1 qua a bonafide passenger is, thus, reversed and it is held that the deceased was a bonafide

passenger at the time of the incident having a valid pass and travel ticket.

Regarding issue No.2, the onus, thus, shifted upon the Railways once the deceased was a bonafide passenger and having a travel ticket. The nature of

injuries as such as noticed in the postmortem report and the body being found on the track is sufficient as such to shift the onus. The claimant in her

affidavit has stated that the deceased had gone to Rewari and was travelling back to his village. The body, thus, found on the track itself justified the

claim which had been made as such on account of the fact that it was a case of untoward incident of a passenger falling out of a train carrying

passengers and as defined under Section 123 (C) (2) of the 1989 Act. The Tribunal was not justified in the facts and circumstances to hold that it was

a case of being run down. In the absence of any specific pleadings and defence taken by the Railways, the finding recorded under issue No.1 that

while trying to take a short cut, the deceased was crossing the lines, is liable to be reversed.

Resultantly, keeping in view the above, the present appeal deserves acceptance and, accordingly, same is allowed. The appellants are held entitled for

a sum of `4 lakhs along with interest @ 6% per annum from the date of the incident, keeping in view the judgment of the Apex Court passed in Civil

Appeal No.4945 of 2018 'Union of India Vs. Rina Devi', decided on 09.05.2018.

The amount of compensation will be bifurcated between the widow and the two minors to the extent that the widow is liable to receive `2 lakhs

alongwith interest, which will be paid to her in her bank account in three equal annual installments by the Tribunal in view of the judgment of the Apex

Court in 'General Manager, Kerala State Road

Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others', 1994 AIR (SC) 1631.

The amount of two minors will be bifurcated in two equal shares i.e. `1 lakh each and will be put in the form of Fixed Deposit Receipts by the Tribunal

till they attain majority to earn the highest rate of interest and the interest can be used for their benefit by their mother.