



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

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FAO-1435-2016 (O&M)
Date of decision : 28.05.2025

Saroj Bala and others

..... Appellants

versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Subhash Sachdeva, Advocate
for the appellants.

Ms. Monica Chawla, Advocate
for the respondent-UOI.

PANKAJ JAIN, J. (Oral)

CM-5167-CII-2016

This is an application for condonation of delay of 287 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 287 days in filing the appeal stands condoned.

FAO-1435-2016 (O&M)

1. Claimants are aggrieved of the award dated 22.01.2015 passed by RCT, Chandigarh Bench whereby their claim petition seeking compensation on account of death of their son Pankaj Kaushik in an untoward accident dated 09.05.2012 stand dismissed.

2. Claimants approached Tribunal claiming that on 09.05.2012, one Surinder Pal along with their son Pankaj Kaushik went to railway station, Rajpura. Pankaj Kaushik was to travel to Jagadhri. Surinder Pal purchased one ticket from Rajpura to Jagadhri for Pankaj



Kaushik. Train No.4712, Sriganaga Nagar Express was boarded by Pankaj Kaushik. When the train reached between Ambala City and Ambala Cantt., Pankaj Kaushik accidentally fell from the train and received fatal injuries which led to his death. Claimants thus claimed that Pankaj Kaushik having died in an untoward incident, they are entitled for compensation under the Railways Act.

3. Claim petition was contested by the respondent. Respondent denied that deceased Pankaj Kaushik was a bonafide passenger as no ticket was recovered. It was also denied that Pankaj Kaushik fell from the train as claimed. As per respondent, driver of T-Ropar load noticed a dead body lying in the middle of up and down tracks. The body was found in city area of Ambala having residential areas.

4. On the basis of pleadings, Tribunal framed following issues:-

- “1. Whether deceased a bona fide (legitimate) railway passenger at the time of the accident?
2. Whether the deceased died due to an accident which falls within the ambit of section 123(c)(2) of the Railway Act?
3. Whether the applicant(s) is/are the sole legal dependent(s) of the deceased?
4. Relief.”

5. While deciding issue No.1 and 2, Tribunal held that mere finding of a dead body near railway track *per se* does not establish the fact of travelling in any train and thus it is not a case of deceased having died in an untoward accident. Tribunal further held that in the absence of any ticket discovered from the body of the deceased, he cannot be held to be a bonafide passenger.



6. Counsel for the appellant assails the finding of the Tribunal and submits that the case of the claimants is fully covered by the ratio of law laid down by Supreme Court in the case of ***Union of India vs. Rina Devi, 2019 (3) SCC 572***. Counsel for the respondent is not in a position to dispute the same. In ***Rina Devi's case (supra)***, Supreme Court framed following four issues for consideration:-

“(i) Whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application/incident or on the date of order awarding compensation;

(ii) Whether principle of strict liability applies;

(iii) Whether presence of a body near the railway track is enough to maintain a claim.

(iv) Rate of interest.”

7. The issues stand answered as under:-

“15.4 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 (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (supra) 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.

16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree.



Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd. vs. Sunil Kumar, 2018(1) RCR (Civil) 680 : 2017 (13) SCALE 652* laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.

17.4 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.

18. As already observed, though this Court in Thazhathe Purayil Sarabi (supra) held that rate of interest has to be at the rate of 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi (supra), rate of interest has to be reasonable rate at par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises upto the date of payment, without any difference in the stages. Legal position in this regard is at par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner.”

8. Applying the aforesaid parameters to the present case, this Court finds that claimants pleaded that Surinder Pal accompanied

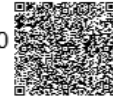


deceased to railway station. It was Surinder Pal, who purchased ticket for deceased Pankaj Kaushik and handed over the same to him. Surinder Pal appeared as AW-2. He reiterated the same. Tribunal while rejecting the claim of the claimants regarding deceased being bonafide passenger, has discarded the testimony of AW-2 only on the ground that he was unaware of the incident. Counsel for the UOI does not dispute that AW-2 Surinder Pal in his testimony stated that he purchased train ticket and handed over the same to the deceased. This evidence has gone un rebutted. Thus, this Court finds that the findings recorded by the Tribunal on issue No.2 are not only in the teeth of ratio of law laid down in ***Rina Devi's case (supra)***, but are also perverse having been recorded ignoring vital piece of evidence.

9. So far as issue with respect to untoward incident is concerned, the Tribunal in its award has referred to the conclusion arrived at by GRP in its statutory investigation wherein, they found that it is a case of falling down from train. The aforesaid report has been discarded by Tribunal without any basis. There is no evidence to point out that the injuries suffered by the deceased was self inflicted injury. This issue is thus also covered by ***Rina Devi's case (supra)***.

10. Accordingly, the findings recorded by the Tribunal cannot be sustained and are hereby set aside.

11. The accident relates to the year 2012. Thus, the compensation shall be as per part I of the Schedule appended to the Railway Accident & Untoward Incidents (Compensation) Rules. Compensation of Rs.4,00,000/- along with interest @ 9% per annum or Rs.8,00,000/- without interest whichever is higher, is payable for the



period from the date of application till the date of actual realization.

12. The claimants shall move an appropriate application giving details of their bank account before the Tribunal within a period of 4 weeks with an advance copy to the Railways. After receiving advance copy with respect to details of bank accounts, Railways shall within a further period of 12 weeks deposit the entire compensation payable to the claimants in the bank accounts. In the event of failure of Railways to deposit the compensation within the prescribed period of 12 weeks, the Railways shall be liable to pay interest @9% per annum from the date of passing of this order till the date of actual realization.

13. Ordered accordingly.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

28.05.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No