



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

**FAO No.5360 of 2019 (O&M)
Date of decision : 21.03.2025**

Lachmi and others

...Appellants

Versus

Union of India

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. P.P.S. Tung, Advocate for the appellant.

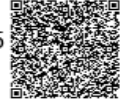
Mr. Shubham Thakur, Central Govt. Counsel, UOI.

PANKAJ JAIN, J. (ORAL)

1. Present Appeal is directed against order dated 03.07.2019 passed by the Railway Claims Tribunal, Chandigarh Bench, whereby the claim application filed by the appellants seeking compensation of Rs.8,00,000 on account of death of one Lilu Ram, was dismissed.

2. As per claimants on 18.11.2017, the deceased purchased one ticket for his journey from Jethuke to Bhuchchu Mandi. While he was trying to board, the train started with a jerk and suddenly sped up. Deceased Lilu accidentally fell down from the train and sustained grievous injuries. Later on, he scummed to his injuries.

3). The respondent-railways contested the claim by filing a written statement raising preliminary objections that no untoward incident had occurred within the meaning of Section 123(2) of the Railway Act causing



the death of the deceased. It was further averred that the deceased acted negligently and was trying to board moving train when he sustained injuries and is thus not entitled for compensation.

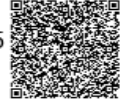
4). On the basis of pleadings of the parties, Tribunal framed the following issues:

- (1) Whether the deceased was a bonafide passenger of train at the time of incident?
- (2) Whether the alleged incident is covered within the ambit of Section 123(c)(2) read with Section 124-A of the Railways Act?
- (3) Whether the applicants are the sole dependents of the deceased?
- (4) Relief.

5). In order to support her version, the wife of the deceased- Lachmi, appeared as AW-1 and tendered her affidavit. She placed reliance upon Fard Jamatalashi (Ex.A-4). According to which, card ticket bearing No.91955 was recovered during physical search of the dead body.

6). Respondent-railways have placed on record the DRM report. As per which the deceased was running on the platform and in the process of boarding the train, he fell down and therefore it would come under the ambit of 'self-inflicted' injury. It was further held that in the inquest report, nothing was mentioned if any article was recovered from the body or around the body of the deceased. Therefore, the ticket was a procured one.

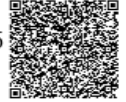
7). I have gone through the records of the case and carefully perused the records.



8). Once the claimants/appellants stated on oath that the deceased purchased the ticket, the burden shifted upon the railways to prove that the deceased was not a *bonafide* passenger. The evidence adduced by claimants has remained un rebutted. The same now stands settled by Supreme Court in **Union of India vs Rina Devi, 2018 SCC Online SC 507** observing as under:

“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.”

9) As far as issue with regard to the accidental falling of the deceased while boarding the moving train is concerned, the same is no longer *res-integra* as the Supreme Court in the case of **Union of India vs. Prabhakaran Vijaya Kumar and others, 2008(3) RCR (Civil) 577** has opined in clear terms that whether the deceased was actually inside the train at the time of accidental fall or he/she was only trying to board the train and in that process he/she fell down, both would amount to accidental falling of the passenger from the train and would be covered under ‘untoward incident’ as defined under Section 123(c) of the Railways Act. The Supreme Court in



the case of *Rina Devi's* case (supra) also held that in both the cases, it has to be held as an 'untoward incident'. Supreme Court observed as under:

“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. v. 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.”

10). This Court holds that the deceased was a *bonafide* passenger and the incident is an untoward incident as enumerated under the definition of Section 123(c)(2) of the Act. Thus, the appellants are held to be entitled for compensation under Section 124A of Act.

11). The accident relates to the period post the Amendment of 2017 which came into effect w.e.f. 01.01.2017. Thus, the compensation payable shall be as per amended schedule appended to the Railway Accident and Untoward Incidents (Compensation) Rules, 1990. Compensation of Rs.8,00,000 along with interest @ 9% per annum is payable for the period from the date of application till the date of actual realization.



12). Appeal stands allowed.

March 21, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No