

UNION OF INDIA

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v.

RADHA YADAV

(Civil Appeal Nos. 1265-1266 of 2019)

JANUARY 29, 2019

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**[UDAY UMESH LALIT AND INDIRA BANERJEE, JJ.]**

*Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 – Schedule to the rules – Compensation payable in respect of death – In the instant case, the accidental death of the deceased-victim took place when he was travelling in a train – Victim peeped his head out of compartment door and his head collided with a post by the side of railway track resulting in accident in which he lost his life – During pendency of the matter by way of amendment, amount of compensation which was earlier at the level of Rs.4 lakhs in case of death was raised to Rs.8 lakhs – Tribunal held that the deceased was victim of his own act and as such no compensation was payable – On appeal, High Court awarded compensation of Rs.8 lakhs with interest – Special Leave Petition was filed in the month of September 2018 i.e. after the decision in Rina Devi in which it was held that wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation – Held: In view of the said decision, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure, reasonable rate of interest would be calculated – If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation – In view of this, High Court was in error in awarding interest on the sum of Rs.8 lakhs in the instant case – Matter adjourned for eight weeks only to consider the issues regarding safety in Indian Railways.*

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Vikramjit Banerjee, ASG, Vikas Singh Jangra, Shashi Bhushan,. A  
Amit Kumar Pathak, Nachiketa Joshi, Ms. Bharti Tyagi, Sachin Sharma,  
A.K. Sharma, Mrs. Anil Katiyar, Raj Bahadur Yadav, Advs. for the  
appearing parties.

The Judgment of the Court was delivered by

**UDAY UMESH LALIT, J.** 1. Leave granted. B

2. While travelling from Burdwan Railway Station to Howrah  
Railway Station on 02.10.2003 in a local train one Dasarath Yadav had  
peeped his head out of the compartment door and his head collided with  
a post by the side of the railway track resulting in an accident where he C  
lost his life. The Railway Claims Tribunal, Kolkata by its judgment and  
order dated 27.09.2007 found that the deceased was a *bona fide* railway  
passenger and that the incident was an “*untoward incident*” in terms  
of the provisions of Section 123 of the Railways Act, 1989 (hereinafter  
referred to as “the Act”). The Tribunal, however, found that the deceased  
was victim of his own act and as such no compensation was payable. D

3. The dismissal of the Claim Petition was challenged by the  
respondent i.e. widow of the deceased by filing FMA No.858 of 2012 in  
the High Court at Calcutta.

4. The Railway Accidents and Untoward Incidents  
(Compensation) Rules, 1990 (hereinafter referred to as “the Rules”) E  
provide for a Schedule prescribing the amount of compensation payable  
in respect of death and injuries. During the pendency of the matter by  
way of amendment, the amount of compensation which was earlier at  
the level of Rs.4,00,000/- in case of death was raised to Rs.8,00,000/-.

5. It was found by the High Court that in terms of Section 124-A F  
of the Act the ‘*Principle of Strict Liability*’ would arise and as such the  
Tribunal was not right in denying compensation to the respondent. While  
allowing the appeal, the High Court held the respondent to be entitled to  
compensation of Rs.8,00,000/- with interest @ 9% per annum. The  
judgment of the High Court in the present case was delivered on G  
03.03.2017. The challenge raised by way of review petition was also  
rejected on 30.11.2017.

6. On 09.05.2018 in the case of *Union of India v. Rina Devi*<sup>1</sup>  
this Court considered the following questions:

<sup>1</sup> 2018 SCC OnLine SC 507 = 2018 AIR 2362 = 2018 SCR 417 = 2018 (7) SCALE 274 H

- A 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;
- B iii) Whether presence of a body near the railway track is enough to maintain a claim;
- iv) Rate of interest.

As regards the first question this Court ruled as under:-

- C “18. .... We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of Workmen Compensation Act can certainly be applied and judgment of 4-Judge Bench in *Pratap Narain Singh Deo*<sup>2</sup> will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation.

- F 19. 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*<sup>3</sup> and *Kalandi Charan Sahoo*<sup>4</sup>

<sup>2</sup> (1976) 1 SCC 289

<sup>3</sup> (2001) 3 SCC 714

H <sup>4</sup> 2018 (7) SCJ 159 = (2017) SCC Online SC 1638

stands explained accordingly. The 4-Judge Bench judgment in *Pratap Narain Singh Deo*<sup>2</sup> 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.”

7. This Special Leave Petition was filed in the month of September, 2018 i.e. after the aforesaid decision of this Court in *Rina Devi*<sup>1</sup>.

8. When the matter was taken up, it was submitted on behalf of the appellant that grant of interest on the sum of Rs.8,00,000/- was not consistent with the law laid down by this Court in the case of *Rina Devi*<sup>1</sup>. It was contended that despite said decision, in number of cases interest was being awarded on the revised amount of Rs.8,00,000/-. In the peculiar facts and circumstances, this Court did not find it appropriate to issue notice to the respondent but appointed Mr. Brijender Chahar, learned Senior Advocate as *amicus curiae* to assist the Court. It was made clear that the respondent shall be entitled to the benefit ordered by the High Court irrespective of the decision as regards question of law raised in the matter.

9. We heard Mr. Vikramjit Banerjee, learned Additional Solicitor General for the appellant and Mr. Brijender Chahar, learned *amicus curiae*.

10. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of *Rina Devi*<sup>1</sup> is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic

- A figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

11. Consequently, we must hold that the High Court was in error in awarding interest on the sum of Rs.8 lakhs in the instant case. Where the accident had occurred before the amendment, it ought to have considered the matter in the light of the principle laid down in **Rani Devi**<sup>1</sup>. We, therefore, set aside the impugned judgment and allow the appeals. However, the respondent, in any case, would not be affected in any manner and will be entitled to the sum awarded by the High Court.

12. We must also note an important aspect which was brought to our notice by the learned *amicus curiae*. He placed summary of four Reports regarding safety in Indian Railways. Those Reports are:-

1. Anil Kakodkar High Level Safety Review Committee, 17.02.2012;
2. Twelfth Report of 16<sup>th</sup> Lok Sabha on safety and security in Railways;
3. Report No.14 of 2016 of the Comptroller and Auditor General of India on Suburban Train Services in Indian Railways; and
4. Twenty-Third Report of Standing Committee on Railways (2013-14) Fifteenth Lok Sabha, Ministry of Railways Report on Suburban Train Services of Indian Railways, with particular emphasis on Security of Women Passengers.

13. The learned Additional Solicitor General readily agreed to the suggestion that the Railways must consider the matter in right earnest and see that the concerns regarding safety are immediately addressed. On the request of the learned Additional Solicitor General, we, therefore, adjourn the matter for eight weeks only to consider the issues regarding the safety as highlighted by the learned *amicus curiae*.

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14. Ordered accordingly.

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15. In view of the order passed in the lead matter, namely, Civil Appeals arising out of Union of India v. Radha Yadav, Civil Appeal Nos 1267-1268 of 2019 @ SLP(C) Nos.2993-2994 of 2019 (D.No.33760 of 2018) are disposed of in the same terms.

B

Devika Gujral

Appeals disposed of.