

(2012) 06 KL CK 0209
In the High Court Of Kerala
Case No : M.F.A. No. 41 of 2011

Achuthan Nair and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Railways Act, 1989 — Section 123, 123(c), 124A, 125

Citation : (2013) 1 ACC 418 : (2012) 3 ILR (Ker) 490 : (2012) 3 KLJ 337

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Sunny Zacharia, for the Appellant; M.C. Cherian, Senior S.C.,
Railways, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—This appeal by the claimants is against an order dismissing an application for compensation filed u/s 125 of the Railways Act, 1989, for short, "Act". Heard the Learned Counsel for the appellants and the respective learned standing counsel for the East Coast Railway and the Southern Railway.

2. The application was for compensation for loss occasioned by death on account of untoward incident. Deceased Aneesh Kumar, the son of appellants 1 and 2 and the brother of the 3rd appellant, was a passenger in Coach No. 12, a reserved compartment, of Howrah-Chennai "Coromandal Express" on 1-12-2008. Local passengers who had not reserved seats intruded into that compartment, leading to an altercation between them and those who had reserved seats and were occupying them. In the course of that, Aneesh Kumar, a member of the Gourkha Regiment, on being provoked, pulled out his Bhujali (Khurpi). Some local passengers who, going by law, were ineligible to travel in that compartment, sustained injuries, statedly, from Aneesh Kumar's Bhujali. The mob turned on Aneesh Kumar. The unreserved local passengers informed about this to other local people over mobile phones. More than 500 local people congregated and attacked the train after stopping it by pulling the chain, near North Cabin of

Khurda Road Railway Station. The mob disconnected the hose-pipe of the train; pelted stones and entered the bogies. The official report itself is that Aneesh Kumar tried to escape, but the mob caught up with him and had beaten him to a senseless condition. Later, he succumbed. A case was registered in relation to that incident and certain persons were arrested. The report of the Railway Police, including the First Information Report registered on the basis of the statement of the police constable who escorted the running train contains the candid admission of the Railway Police and the Railways that there was shortage of police personnel and that the available policemen could not control the mob or protect Aneesh Kumar.

3. The Tribunal dismissed the application holding that the incident is not an "untoward incident" as defined in Section 123(c) of the Act and that even if it were one so, Aneesh Kumar suffered injuries and died only due to his own criminal act and, therefore, the Railway Administration is not liable to pay any compensation in view of clause (c) of the proviso to Section 124A of the Act.

4. The Learned Counsel for the appellants argued that on the admitted and proved facts, the impugned findings are unsustainable in law and are perverse. Criticizing the manner of appreciation of the testimony of the 1st claimant, it is argued that the Tribunal erred in assuming that the father of the deceased ought to have spoken specifically about the incident. Attacking the approach adopted in the interpretation of Sections 123 and 124A as erroneous in law, it is argued that compensation is due.

5. Per contra, it was argued on behalf of the Railways that the sequence of events as disclosed by the materials on record shows that the deceased Aneesh Kumar was the one who ignited the chain of events and, hence, he has to be treated as the one who had caused the incident and that, what all he did, amounted to criminal acts and, therefore, even if the incident is an untoward incident, no compensation is payable by the Railway Administration, since the deceased suffered on account of his own criminal acts.

6. The Tribunal had before it, Exhibits A-1 to A-10 and the testimony of Achuthan Nair, the father of the deceased. Exhibit A-3 is the First Information Report, of which Exhibit A-4 is the First Information Statement. Exhibit A-7 is the intimation of the incident. Death Certificate and Postmortem Certificate are marked as Exhibits A-6 and A-5. The other materials include the heirship certificate, letter sent to the Commanding Officer, etc. There is no contra evidence, either documentary or oral.

7. The Railways admitted the specific details of the incident in their written reply before the Tribunal. The incident as reported in Exhibits A-4 and A-7 is not in dispute and the contents of those documents, as noted by the Tribunal, substantially support the sequence of events as narrated by the claimants. Those documents, as found by the Tribunal, show that the train, proceeding from Howrah to Chennai, was stopped by pulling the chain, immediately after it left

Bhuwaneshwar. The police then found people making noise outside the last compartment of that train, lodged the FIR. The information given by Police Head Constable Seshdev Paikaray in the FIR lodged by him is that while he and his three colleagues, whose identity is also stated in Exhibit A-4, were on scouting duty inside the train in the sector-- Khurda to Bhadrak--to Baharampur and back from Baharampur to Khurda under common certificate and were returning after scouting from Bhadrak to Baharampur; the train was suddenly stopped at Sarkanta Railway Station at 21.45 hours (9.45 p.m.) by pulling the alarm chain after its departure from Bhuwaneshwar. The chain was pulled from the bogie in which those police personnel were available. An injured person with Bhujali (sharp edged weapon) was rushing towards some people and they were trying to escape. While escaping, four passengers got injured. The constables took that injured person from S-12 compartment to S-3 bogie; towards the engine, in order to save him from counter-attack. That injured person was Aneesh Kumar. The incident was informed to the controlling station through telephone. Journey continued. Thereafter, the alarm chain was again pulled and the train stopped while it reached Khurda yard at 22.40 hours. As soon as the train stopped, some people cordoned the train and rushed towards S-3 bogie in which the constables and Aneesh Kumar were there. Seeing that the people were approaching that bogie, the constables shut its doors and windows. At the same time, GRP RPF RFP ASC OIC, GRP OIC and a local police officer along with staff, reached the spot. Going by the records in this case, the constables' version is that, by seeing the other police officials, they became a bit confident; but the aggressive crowd were pelting stones onto the bogie; and armed with sticks and iron rods, they were trying to enter the compartment by breaking the doors and windows. OIC RPF, GRP OIC along with staff, entered the compartment and simultaneously, the aggressive mob also forced themselves into the bogie. The mob started beating Aneesh Kumar and the police constables. The constables, with the help of RPF and GRP staff, managed to take Aneesh Kumar along with another seriously injured person by ambulance to the Railway Hospital. They were admitted to that hospital. The constables, through Exhibit A-4, reported that those persons were then in serious condition and that the constables were also admitted to that hospital for treatment.

8. The incident is well-established with the aforesaid Aneesh Kumar, evidently, a law-abiding citizen, with due ticket, was occupying his reserved seat in S-12 bogie. The testimony of A.W. 1, the father of the deceased, is that his son was travelling from his place of work in the Gourkha Regiment, to his home in Alleppey District in Kerala State. Aneesh Kumar's transit from his station of duty to his home, was on home leave. He is a member of the uniformed armed force. He was authorised to carry the weapon which was in his possession. The entry of the local passengers into S-12 bogie, without reservation of seats is unauthorised entry. The totality of the facts suggests that they wanted to force themselves to be seated dislodging Aneesh Kumar and other passengers with reserved seats. Obviously, this led to exchange of words, altercation and scuffle. We can never

visualise a criminal act at the hands of Aneesh Kumar in that context. Recall here; the police version is that they saw an injured person standing with a Bhujali and that the said injured person was Aneesh Kumar. It was the mob that had violated the law and attacked the passengers in S-12 bogie. They were the aggressors. The police constables had to cordon Aneesh Kumar off, out of S-12 bogie, to move him to S-3 bogie, to be kept safe and secured. This much of the series of transactions and events of the case can be treated as one set of facts disclosing a particular incident. Next, at a different station, i.e., near the North Cabin of Khurda Road Railway Station, the train was again stopped and attacked by the mob. In spite of the O/C GRP and O/C RPF and their men being available, the mob could not be controlled. The materials indicate that the mob first proceeded to set ablaze the bogie or the train as a whole. The police officials entered S-3 bogie, essentially to protect Aneesh Kumar. But, the mob also forced themselves in and carried out their unruly, illegal and pre-planned act of attacking the train including passengers; in particular Aneesh Kumar. As already noted, the official report is that though Aneesh Kumar tried to escape, the mob caught up with him and had beaten him down to a senseless condition. That transaction led to the death of Aneesh Kumar. There is no attribute, whatsoever, of Aneesh Kumar having committed any criminal act or of having even been able to act in self defence. Therefore, this second set of facts relating to the incident that occurred in S-3 bogie, when the train was forcefully halted near the North Cabin of Khurda Road Railway Station, is a complete chain of events by itself, which can never be considered as one where Aneesh Kumar could be treated as the aggressor. The unruly mob, acting against the interest of the Railways and the passengers, had violently attacked and indulged in the dastardly activities resulting in the death of Aneesh Kumar. Violent attack by any person in or on any train carrying passengers is an untoward incident in terms of clause (1) (iii) of Section 123(c) of the Act.

9. Having found that Aneesh Kumar succumbed to the injuries suffered by him as a result of an untoward incident as defined in the Act, what now needs to be examined is as to whether the Railways would stand exonerated from paying compensation on any ground referable to the proviso to Section 124A of the Act. That section provides, inter alia, that when an untoward incident occurs in the course of working a railway, then, whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation in terms of the prescriptions made under the Act. Clause (c) of the proviso thereto is that no compensation shall be payable if the passenger dies or suffers injury due to his own criminal act. That proviso, essentially in the nature of an exemption from liability to compensate, would apply only when the death or sufferance of injury is the result of the criminal act of the person who dies or suffers the injury. The facts of the case clearly show

that the transaction in which the mob caught hold of Aneesh Kumar and injured him seriously, leading ultimately to his death, could have been triggered or motivated by the information, given by the local passengers who had unauthorisedly intruded into S-12 bogie, about Aneesh Kumar allegedly using his official weapon to meet the offensive situation held out to him by the local passengers. The two transactions are entirely different, as already noted. The events in S-12 bogie could have generated the motive and intention for the congregation and assembly of local people near the North Cabin of Khurda Road Railway Station, where the train was stopped with the intention to attack it. That intention fructified in the attack. Such assembly is one liable to be treated as an unlawful assembly. That set of incidents relating to S-3 bogie can never be characterised as involving any act whatsoever, of Aneesh Kumar, who was given protective cover of the Railway Protection Force. Even if the transactions in S-12 bogie are also to be taken into consideration, we visualise the situation where one Jawan had tried to put his foot down on the face of unlawful, irrational, unlawful assembly and unruly mob behaviour in violation of the laws, including the provisions of the Railways Act and the Indian Penal Code. On that premise, we would visualise the attribute made to Aneesh Kumar, of having used the weapon in his lawful possession, as only an exercise of his right of self-defence in the course of the transactions that happened in S-12 bogie. Either way, we find no ground to hold that Aneesh Kumar suffered injuries due to his own criminal act and later succumbed.

10. The death of Aneesh Kumar is the end result of the injuries suffered by him. His death resulted from the untoward incident noted above, which was its proximate cause. Railways are, therefore, liable to pay compensation for death. His dependants/legal representatives are entitled to compensation in terms of the Act and the Rules framed thereunder. The amount payable as compensation for death is Rs. 4,00,000 (Rupees four lakhs only) in terms of Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 read with Part I of the Schedule to those Rules. On the facts and circumstances, we are of the view that the claimants are entitled to interest on such amount at 12% per annum from the date of registration of the application. In the result, the impugned order is vacated and an award is passed directing the railway administration concerned to pay the appellants (claimants) an amount of Rs. 4,00,000 (Rupees four lakhs only) with 12% interest from 4-8-2009, the date of registration of the application. The three appellants are also awarded costs fixed at Rs. 5,000 (Rupees five thousand only) each, here and in the Tribunal.

Having given our anxious consideration to the situation of the family of Aneesh Kumar, aged 26 years at the time of his death, and the fact that he was a serving Jawan, who unfortunately died at the hands of unruly mob which attacked the railways, we feel that the railway establishment concerned should anxiously consider giving some further support to the bereaved family. We see from the application that Aneesh Kumar's father was 72 years old and his mother 55 years old when they filed the application along with their daughter, 23 years of

age. She is shown as unmarried in the Original Application. On our query it is said, she still remains unmarried. We are sure that they would have always looked upon Aneesh Kumar and other siblings to support this sister. At least as a matter of benevolence, the railway administration could consider giving a facility of employment to Anjana, Aneesh Kumar's sister. If such a decision is taken in favour of the family within a period of three months from now, the order for costs imposed as per this judgment will stand recalled and the rate of interest payable on the compensation amount would stand slashed to 6%. At any rate, the entire amount due in terms of this judgment and the decision relating to employment shall be made available to the claimants through the Tribunal without fail on or before the Gandhi Jayanti, 2012. If the 3rd appellant desires appointment as aforesaid, she shall make an application to the competent authority within a period of three weeks from now.