
(2014) 02 DEL CK 0040
In the Delhi High Court
Case No : FAO No. 401 of 2010

Gaurav Kapoor and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123 123(c) 124A 124-A 154

Citation : (2014) 3 ACC 639 : (2014) 142 DRJ 125

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Sameer Nandwani, for Mr. Naveet Goyal, for the Appellant; Sharat Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J. Mehta, J.—This first appeal is filed u/s 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 22.7.2010 which has dismissed the claim petition filed by the applicants/claimants by holding that the deceased Smt. Ramesh Rani was not a bonafide passenger at the Shivaji Bridge Railway Station from where the train Paschim Express was sought to be boarded for travel to Ludhiana. The facts as found by the Railway Claims Tribunal are that the deceased Smt. Ramesh Rani alongwith her minor daughter Baby Priya were to travel from New Delhi to Ludhiana by a train no. 2497, but since they missed the train, they cancelled the old tickets and purchased new general tickets for travel from New Delhi to Ludhiana. The deceased Smt. Ramesh Rani and her daughter were misguided by some people to board a wrong train and which was not going from New Delhi to Ludhiana but on the opposite direction towards Ghaziabad. After boarding the wrong train when the mistake was realized, the deceased Smt. Ramesh Rani and her daughter immediately de-boarded the train at Shivaji Bridge Railway Station which is just about 2-3 kms or so from New Delhi Railway Station. At the Shivaji Bridge Railway Station, the deceased Smt. Ramesh Rani with her daughter

sought to board the Paschim Express for travel to Ludhiana, and in the process of boarding whereas the minor daughter Priya got on the train but the deceased Ramesh Rani slipped and fell down because the train suddenly moved and thereby the deceased Smt. Ramesh Rani died by coming under the train. Railway Claims Tribunal has held that the deceased Smt. Ramesh Rani was not a bonafide passenger because the ticket for travel was from the New Delhi Railway Station to Ludhiana Railway Station whereas the train Paschim Express was being boarded at Shivaji Bridge Railway Station and not from New Delhi Railway Station.

2. Legislature has specifically enacted Section 123(c) and Section 124-A of the Railways Act, 1989, and imposed strict liability thereby upon the Railways. As per the judgments of the Supreme Court in the cases of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, and Jameela and Others Vs. Union of India (UOI), the liability of Railways is a strict liability even if there is negligence of a passenger i.e. unless and until the negligence is a criminal negligence or a case of suicide or self inflicted injuries, Railways are held liable on account of an untoward incident which causes death of a passenger. The entire emphasis of Sections 123(c) and 124A are to give relief to a bonafide passenger on account of an "untoward incident". Once a person is found to be a bonafide passenger travelling on a valid train ticket, in my opinion, there should be liberal and purposive interpretation of Sections 123(c) and 124A of the Railways Act. In this regard, it would be relevant to refer to the Explanation (ii) of Section 124-A and which states that a bonafide passenger includes a person who has purchased a valid ticket for travel by a train on any date and the expression "bonafide" passenger includes a person who has purchased a valid platform ticket and becomes a victim of an "untoward incident". In this Explanation once again the stress is on the aspect of a person having a valid ticket as against an unauthorized trespasser on railway premises. Even a person having a platform ticket is entitled to compensation under the Railway Claims Tribunal Act if there is an "untoward incident" within the meaning of this expression as found in Section 123(c) read with Section 124-A of the Act.

3. In the present case, the admitted position is that the deceased Smt. Ramesh Rani had a valid train ticket which was for travel from New Delhi Railway Station to Ludhiana. Therefore, it is not as if the deceased Smt. Ramesh Rani was a totally unauthorized passenger. Further, Shivaji Bridge Railway Station is also within the city of New Delhi itself and barely about 2/3 kms from New Delhi Railway Station. The issue is that can a person who travels by a mistake just a few kilometers in the opposite direction, automatically ceases to be a bonafide passenger as per the meaning of expression u/s 124-A of the Act. In this regard, I take note of the fact that there are rules of the Railways by which a person who has purchased a journey ticket for a limited distance travel, can extend the travel beyond the destination by paying the necessary charges to the Railways for extra distance, even if the original ticket is purchased for a lesser distance. I would like to apply the intendment of these rules of the Railways in a case such as the

present where the travel in the opposite direction is proved to be a bonafidely mistaken travel and that too of just about 2/3 kilometers in opposite direction and within the same city. In my opinion, in a case such as the present, in view of the intendment of the legislature in enacting Sections 123(c) and 124-A, a person will not cease to be a bonafide passenger unless travel in the opposite direction is deliberate and for quite a few stations of unnecessary long travel from the original point of commencement of the journey which would indicate the travel not to be as a bonafide passenger. Accordingly, in my opinion, once the deceased had a valid journey ticket, albeit for travel from New Delhi to Ludhiana, in my opinion, the deceased Smt. Ramesh Rani is a bonafide passenger within the Explanation (ii) to Section 124-A and it is held that the deceased was a bonafide passenger even at the Shivaji Bridge Railway Station which is in the New Delhi city itself but a few kilometers from the New Delhi Railway Station. Therefore, I set aside the findings of the Tribunal and held that the deceased was a bonafide passenger.

4. So far as the issue with respect to whether or not the deceased died in an untoward incident is concerned, it is not the case of the respondent/Railways that the deceased was trying to board a fast moving train and the train had picked up a speed by passing of a few coaches. Admittedly, the minor Ms. Priya had boarded the train, and the deceased Smt. Ramesh Rani was in the process of boarding the train when train suddenly started. As held by the Supreme Court in the cases of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, and Jameela and Others Vs. Union of India (UOI), that negligence of a passenger does not disentitle such passenger for compensation unless negligence is a criminal negligence. In my opinion, endeavouring to board a train which thereafter starts, is not such a negligence to become a criminal negligence as per the ratios of the judgments in the cases of Prabhakaran Vijaya Kumar (supra) and Jameela (supra). Relevant paras of these judgments read as under:-

(i) Prabhakaran's case

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an "accidental falling of a passenger from a train carrying passengers". Hence, it is an "untoward incident" as defined in Section 123(c) of the Railways Act.

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 (UOI) and Another, , B.D. Shetty and Others Vs. M/s Ceat Ltd. and Another, , Transport Corporation of India Vs. Employees' State Insurance Corpn. and Another,

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, Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others, , Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd., S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, etc.

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.

15. Section 2(29) of the Railways Act defines "passenger" to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines "untoward incident" to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states:

124A...

17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.

52. In view of the above, we are of the opinion that the submission of learned Counsel for the appellant there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected.

(underlining added)

(ii) Jameela's case (supra)

6. Before the High Court, reliance was placed on behalf of the Railway on the proviso to Section 124A of the Act which provides that no compensation will be payable under that section by the railway administration if the passenger died or suffered injury due to (a) suicide or attempted suicide by him, (b) self-inflicted injury or (c) his own criminal act. A reference was also made to Section 154 of the Act which provides that if any person does any act in a rash and negligent manner, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. It was further contended on behalf of the Railway that the deceased M. Hafeez who was travelling in a negligent manner was standing at the door from where he fell down near the Magarwara Railway Station, where the train does not stop. (It needs to be pointed out that this contention could only be based on speculation, as admittedly there was no eyewitness to the accident). The High Court accepted the contentions raised on behalf of the Railway and allowed the appeal observing as follows:

On the basis of the law & facts indicated by the learned Counsel for the parties, we find that in the present case the victim is to be blamed for the incident being negligent and therefore this case is not covered by the definition of the untoward incident. However, so far as the compensation is concerned the case of the claimant is covered by the provision of Section 124A as because of his own negligence the deceased had fallen down from the train which caused his death. Further in the light of the fact that the deceased acted in a negligent manner without any precaution of safety by station going at the open door of the running train which resulted into his death.

(Emphasis added)

7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation u/s 124A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable u/s 124A of the Act.

8. Chapter XIII of the Railways Act, 1989 deals with the Liability of Railway Administration for Death and Injury to Passengers due to Accidents. Section 123, the first section of the Chapter, has the definition clauses. Clause (c) defines

"untoward incident" which insofar as relevant for the present is as under:

123 (c) untoward incident means-

(1) (i) -(iii)

(2) the accidental falling of any passenger from a train carrying passengers.

9. Section 124A of the Act provides as follows:

124A. Compensation on account of untoward incident. - When in the course of working a railway an untoward incident occurs, 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 to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation-For the purposes of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

(Emphasis added)

10. It is not denied by the Railway that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a "passenger" for the purpose of Section 124A as clarified by the Explanation. It is now to be seen, that u/s 124A the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. But the proviso to the section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in Clauses (a) to (e).

11. Coming back to the case in hand, it is not the case of the Railway that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

12. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in Clause (c) to the proviso to Section 124A. A criminal act envisaged under Clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.

(underlining added)

5. In view of the above, the appeal is allowed and the impugned judgment of the Tribunal dated 22.7.2010 is set aside. Appellants will be entitled to statutory compensation of Rs. 4 lacs alongwith interest at 6% per annum from the date of filing of the petition in the Railway Claims Tribunal on 16.9.2009 and till payment, and which will be in the proportion of 1/3rd for each of the claimants/appellants. Since appellant no. 3/applicant no. 3-Ms. Priya is a minor, the amount of her share of compensation will be deposited in a fixed deposit in a Nationalized Bank, and only the interest thereof will be used for upkeep and maintenance of minor Ms. Priya. In case there is any pressing necessity or urgency for taking out whole or part of the lumpsum amount for the benefit of Ms. Priya, then at that stage, an application can be moved before the Railway Claims Tribunal which will be decided in accordance with law. The appeal is accordingly allowed and disposed of in terms of the aforesaid observations, leaving the parties to bear their own costs.