
(2004) 09 KL CK 0041

In the High Court Of Kerala

Case No : M.F.A. No. 1407 of 1997 from T.A. 261 of 1996

Geetha

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-09-2004

Acts Referred:

Railways Act, 1989 — Section 124A

Citation : (2005) 1 ACC 402 : (2005) ACJ 817 : AIR 2005 Ker 33 : (2005) 1 CivCC 663 : (2004) 3 ILR (Ker) 601 : (2004) 3 KLT 499 : (2005) 1 RCR(Civil) 149

Hon'ble Judges : J.M. James, J;J.B. Koshy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

J.B. Koshy, J.—On 7.7.1991, the husband of the appellant Lance Naik Raju, who was escorting the military consignment in a railway wagon, fell down while taking meals. As a result of the incident, he sustained serious injuries and succumbed to the injuries. Occurrence of the accident, death due to the injuries sustained in the incident, etc. were not disputed. However, her claim for compensation was rejected by the Railway Claims Tribunal only on the ground that the deceased was not a bona fide passenger in the passenger train. Hence this appeal.

2. Section 124-A of the Railways Act, 1989 deals with compensation on account of untoward incident. Section 124-A is quoted as follows:

"124-A. 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".

To claim compensation u/s 124-A, it is not necessary that negligence on the part of the Railway should be proved. In the proviso certain specific exemptions are given. But Railway has no case that the accident occurred due to the incidents specified in the proviso.

3. The definition given to the "passenger" is an inclusive definition. It will even include a person with a valid platform ticket. Merely because it also includes a person who has purchased a valid ticket for travelling in a train carrying passengers, it cannot be stated that the deceased was not a passenger. The word "include" is used to enlarge the meaning of the word comprehending not only such things as they signify according to their natural import, but also those things which the definition clause declares that they shall include as held in *Dilwori v. Commissioner of Stamps* 1899 AC 99. In that decision Lord Watson observed as follows;

" "include" is very generally used (in) interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the definition clause declares that they shall include".

The above observation was quoted with approval by the Apex Court in *Lucknow Development Authority Vs. M.K. Gupta*, . Definition of the term "passenger" is not given in the explanation and expression "means and includes" is not used but only stated that the word "passenger" includes over and above persons who are coming under the normal meaning of the term, some others like persons who have purchased tickets but not boarded the train and persons who are in possession of platform ticket etc. The deceased was travelling in the wagon with duly authorised documents. He was validly authorised to travel in the wagon with

the military consignments. Railway has no case that he was unauthorisedly travelling in the wagon. Since he was travelling authorisedly with valid documents, he is to be treated as a passenger. This is a beneficial piece of legislation and it is to be interpreted in favour of the beneficiaries, if such a view is possible, taking a liberal view to suppress the mischief and advance the remedy as held in the well known Heydon's case, (1584) 3 Rep.7a, referred to in Maxwell 1 on Interpretation of Statutes, 12th Edition at page 96. Apex Court also held so in Madan Singh Shekhawat Vs. Union of India and Others, .

4. Then the question is what is the compensation to be granted for the death of the husband of the appellant The Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 provides that for death, compensation payable is Rs. 4,00,000/-, It is true that at the time of incident on 7.7.1991, compensation payable was only Rs. 2 lakhs as per the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The Supreme Court in Rathi Menon Vs. Union of India, , as well as in N. Parameswaran Pillai and Another Vs. Union of India (UOI) and Another, , clearly held that compensation payable will be at the rate as existing on the date of the final decision, considering the erosion of value of money etc. In view of the above Apex Court decisions, the appellant will be entitled to Rs. 4 lakhs as her entitlement is decided only now. However, since we are granting Rs. 4 lakhs on the basis of the amended provisions, interest at the rate of 6% will be payable only from today, the date of final decision, till the date of payment.

The appeal is allowed to the above extent.