
(2008) 04 DEL CK 0124
In the Delhi High Court
Case No : FAO No. 35 of 2007

Haran Haldar and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Railways Act, 1989 — Section 124A

Citation : (2009) ACJ 1601 : (2008) 118 FLR 350

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : J.P. Sikka, for the Appellant; S.R. Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Appellants, parents and minor unmarried sister of late Kishan Haldar have filed the appeal challenging the order dated 27.11.2006 passed by the Railway Claims Tribunal dismissing the claim petition filed by them.

2. Appellants had filed a claim petition seeking compensation on account of the untimely death of Kishan Haldar who as a passenger in train No. 9263 was undertaking the journey on 22.9.2004 from Jaipur to Delhi Sarai Rohilla. According to the appellants as the train passed Patel Nagar station Kishan Haldar fell off the train due to a sudden jerk/jolt.

3. It is not in dispute that the deceased was a bonafide passenger in the train and suffered multiple grievous injuries which proved fatal. He died on 26.9.2004 at 2.15 AM at DDU Hospital.

4. Pertaining to the death of the deceased the Tribunal has returned a finding as under:

The fact that the deceased died while traveling on the train is established from the record. However, one pertinent fact that has been placed on record is the inquest report, issued by Deen Dayal Upadhyay Hospital, which states that

"smell of alcohol present in the breath". Apparently the deceased had consumed alcohol before boarding the train or during the train journey, D.D. No. 5-A which is Ex.AW-1/7 has been placed on record from which the relevant para states that apparently he was holding the handle of the door and leaning out of the train as a result of which his head struck against a pole near the railway track, leading to his injury and falling down from the train. Final inquest report Ex.AW-1/5 also has brought out that he was holding the handle of the door and leaning out as a result of which his head struck against the pole, which was near the railway track. Section 124-A deals with above subject. This appears to be a case of Section 124(A)(b) self-inflicted injury coupled with Section 124-A(d) which states any act committed by him in a state of intoxication or insanity.

5. It is not in dispute that an accidental falling of from a train carrying passengers is an untoward incident and that u/s 124-A of the Railways Act,1989 compensation has to be paid as per the applicable rules. In case of death of the passenger, the dependents are entitled to compensation.

6. Section 124-A of the Railways Act,1989 reads as under:

124A. Compensation on account of untoward incident.- When in the course of working in 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 dependent 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 traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

7. It is apparent to a reader that u/s 124A, when in the course of working a railway an untoward incident occurs, irrespective of default, negligence and wrongful act on the part of the railway administration such a passenger would be entitled to compensation. In case of death, the dependents of the deceased would be entitled to compensation. Thus, the liability is "no fault liability". Whatever be the cause of the accidental falling of a passenger from a train, compensation has to be paid. But, the proviso carves out an exception. If the passenger suffers injury or dies due to an act falling under any of the Sub-clauses (a) to (e) of the proviso, liability of the railways to pay is excluded. Self inflicted injury, own criminal act or an act committed in the state of intoxication would entitle, upon proof of the fact, the railway authorities to deny compensation.

8. The Tribunal has noted that the breath of Kishan Haldar revealed smell of alcohol when he was brought to the hospital in an injured condition.

9. The fact that a person has consumed alcohol would not necessarily mean that the person is intoxicated. Unfortunately, there is no evidence on record to show the level of alcohol in the blood of Kishan Haldar. Thus, I do not treat it to be a case of a person committing an act in a state of intoxication.

10. The Tribunal has noted that the evidence probabilises a case of self-inflicted injury coupled with an act committed in the state of intoxication. By removing the act of being committed in the state of intoxication from the finding returned by the Tribunal, appellants cannot succeed on that fact alone, for the reason, each act contemplated under Clauses (a) to (e) of the proviso to Section 124A are independent of each other.

11. Thus, it has to be considered whether the deceased did an act which amounts to a self-inflicted injury.

12. AW-2, a stated co-passenger, has deposed in his evidence that the deceased fell of the train when the train suddenly jolted. If his testimony is to be believed, appellants must succeed.

13. But unfortunately for the appellants the nature of injuries on the person of the deceased belies the ocular evidence of AW-2.

14. The MLC of the deceased, Ex.AW-1/10, shows injuries over the occipital region and hardly any on the rest of the body.

15. Let me visualize a man being thrown out of a train in motion due to a sudden jolt. The fall would make a person drop vertically down with the first injuries occurring on the lower part of the body. Thereafter, due to momentum the body may tumble over and a person may receive injuries in the occipital region. But where no injuries are there on the body except on the occipital region, the cause of injury which gets probabilised is the head striking on stationary blunt object when train is in motion.

16. The death summary AW-1/11 notes that the patient had received grievous head injuries. All injuries noted in the death summary are relatable to the skull. There is just no injury on any other part of the body. The inquest report Ex.AW-1/5 also suggests that the head of the deceased when in motion struck a blunt object, suggestive of the fact that the head of the deceased was extending outside the train when in motion.

17. AW-2, a stated co-passenger appears to be a planted witness for the reason the MLC of the injured records his name as unknown. Even the death summary records the name as unknown. As noted above, the accident took place on 22.9.2004 The deceased was removed to the hospital in an injured condition. He died 4 days thereafter on 26.9.2004 No relation had reached the hospital. The death summary reveals that the patient was declared dead at 2.15 AM on 22.9.2004 and the body was handed over to mortuary.

18. In his testimony, AW-2, deposed that he had purchased 4 tickets for travel from Jaipur to Delhi. One ticket was for the journey of the deceased, 1 ticket was for self and 2 tickets were for other friends who were traveling by the train. I may quote from the testimony of AW-2. He stated as under :-

2. That on 22.9.2004 at Jaipur railway station the deponent purchased four tickets for Delhi i.e. one for the deceased Shri Kishan Haldar, one for self and two tickets for other two friends who were traveling by train No. 9263 (Porbandar - Delhi-Sarai Rohilla Express) from Jaipur to Delhi-Sarai Rohilla railway station. All the four were traveling in the same compartment including the deceased.

19. AW-2 stated in his testimony that after his friend fell off the train he tried to stop the train by pulling the alarm chain but the train did not stop and when the train stopped at Sarai Rohilla station, he along with his friends went by the side of tracks to find out the deceased but could not locate him. That he gave a telephonic message to the parents of the deceased. That when they were searching for the deceased they met a PCR van, an official whereof informed that a person involved in the accident had been admitted to DDU Hospital. That he waited at Delhi Sarai Rohilla station till the family members of the deceased met him.

20. This is simply unbelievable. If this was true, the family members would have got information that the deceased was admitted at DDU Hospital. They would have reached the hospital. The fact that the deceased lay in an injured condition at DDU Hospital for 4 days without anyone reaching the hospital probalises that since no information was available with the family members none reached the hospital. Which, in turn means that AW-2 did not inform the parents of the deceased about the incident. In turn it probalises the fact that AW-2 was a planted witness.

21. It is settled law that if the court of original jurisdiction has probalised the fact with rationale and logic and has neither missed out a circumstance nor ignored a relevant finding, the finding of fact recorded by the court of first

instance would not be interfered with in appeal.

22. I find no merits in the appeal.

23. The appeal is dismissed.

24. No costs.

25. TCR be returned.