

(2010) 04 GAU CK 0055
In the Gauhati High Court
Case No : MFA No. 16 of 2010

Haree Narayan Gupta and Harilal Shah	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railway Protection Force Act, 1957 — Section 2(1)
Railways Act, 1989 — Section 123, 124A, 2(29), 34
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (2010) 6 GLR 91 : (2011) 1 TAC 324

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : I.A. Talukdar, for the Appellant; S. Sarma, for the Respondent

Final Decision : Allowed

Judgement

H.N. Sarma, J.—This is a statutory appeal u/s 23 of the Railway Claims Tribunal Act, 1987 filed by the claimant who was a victim of train accident that took place on 8.10.2007.

2. The relevant facts which are not in dispute for the purpose of disposal of this appeal, are as follows.

3. The Appellant was a Mazdoor under M/s. Nagaland Mazdoor Cooperative Society Ltd. and while he was discharging his duty of carrying out Trolley (Thela) and unloading the parcels from Okha Express train and proceeded towards parcel office godown from the platform No. 7 at about 8.00 p.m. on 8.10.2007 at Guwahati Railway Station. At that point of time, a shunting engine proceeding towards Pit Line hit the Appellant as a result of which he sustained injury on his right leg and the same was needed to be imputed. M/s. Nagaland Mazdoor Cooperative Society Ltd., Dimapur was engaged as a contractor for handling the parcel in the Gauhati Railway station by the railway authorities. Accordingly, the Appellant, being a Mazdoor under the said Co-operative Society, was duly

authorized and allowed by the authority to enter into the railway station and to handle the railway parcels, as required by the railway authorities.

4. Claiming compensation for the injury caused by the accident resulting amputation of his right leg, the Appellant approached the Railway Claims Tribunal, Guwahati by filing necessary application which was registered as OA No. 1185/07. The learned Tribunal dismissed the claim of the Appellant holding that his case would not be covered within the definition of Section 123(c) which defines "untoward incident". The learned Tribunal also held that the Appellant could not be covered u/s 124A of the Railways Act as the incident in which he sustained injury does not fall within the category u/s 123 and 123(2) of the Act.

5. Heard Mr. I.A. Talukdar, learned advocate for the Appellant and Mr. S. Sarma, learned Standing counsel Railways.

6. Now it is to be examined whether reading the relevant provisions of the Act as a whole and interpreting the provision of Sections 123, 124A and Sections 2(29) and 34, the claim of the Appellant is inadmissible and deserves rejection. Section 2(29) of the Railways Act, 1989 defines passenger which means a person travelling with a valid pass or ticket. Section 2(34) which defines "railway servant" as any person employed by the Central Government or by a railway administration in connection with the service of a railway [including members of the Railway Protection Force appointed under Clause (c) of Sub-section (1) of Section 2 of the Railway Protection Force Act, 1957]. Section 123(c) defines "untoward incident" as follows:

(1)(i) the commission of a terrorist act within the meaning of Sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson by any person in or on any train carrying passengers, or in a waiting hall, cloakroom or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

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

7. On account of an untoward incident, a passenger is entitled to get compensation u/s 124A of the Act. Explanation to Section 124A provides that for the purpose of this section, "Passenger" includes 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.

8. Analysis of the term "passenger" as defined u/s 2(29), railway servant as defined u/s 2(34) and explanation to Section 124A clearly indicates that a person who is present in the railway station or platform or tram in an authorized manner and becomes a victim of accident would be entitled to get compensation.

9. Right to get compensation u/s 124A is provided to a railway servant on duty and the "railway servant" for the purpose of the Act includes a person employed by the Railway Administration in connection with the service of railway.

10. The Appellant in the instant case being engaged as Mazdoor under the Nagaland Mazdoor Co-operative Society Ltd. by the railway administration who was engaged as holding contractor for handling the parcel at the Gauhati Railway Station, was duly authorized by the society as an agent of the railway to render such services and earned in the railway station and in the course of discharging his duty he sustained injury on his leg resulting imputation.

11. A deeper introspective scrutiny of the relevant provisions of the Act vis-a-vis the entitlement of the compensation on account of "untoward incident" in its proper prospective and the legislation being a beneficial one, it should receive liberal interpretation.

12. A Division Bench of this Court in the case of Minu Mai Devi v. Union of India 2000 (1) GLT 523 , while examining such a claim made by a GRP Constable held that the GRP constable deputed for duty in the railway station to be a passenger under the provision of Section 124A of the Act. The Division Bench in the aforesaid case, at paragraphs 9, 10, 11 and 12 held as follows:

9. A perusal of the definition of the word "passenger" as given u/s 2(29) of the Railways Act as well as given in the explanation u/s 124A clearly indicates that so as to be entitled for compensation, the requirement is that the person who met with an accident was authorisedly present at the platform or the train when the accident took place. The fact which is not in dispute is that the husband of the Appellant was detailed for performance of his official duty in respect whereof he was authorized to be there at the Hojai Railway Station. That being the position, in our view, presence of such a person at the Railway Station would fall in the same category as passenger

10. In this connection, explanation to, Section 124A may once again be referred to, which makes it clear that the meaning of the word "passenger" is only for the purposes of Section 124A of the Railways Act. Under explanation to Section 124A the definition of the word "passenger" has been made "inclusive", whereas u/s 2(29) it is confined to "meaning" of word passenger. The change is from "means" to "includes". It is, thus, clear that for the purposes of Section 124A meaning of the word "passenger" becomes inclusive and it may include persons even other than those who are indicated in the provision. The list of persons cannot be treated to be exhaustive. Otherwise, there was no difficulty in providing in the explanation to Section 124A that for the purposes of the said provision the word "passenger" would also "mean" the persons mentioned under Clause (i) and (ii) to the explanation. In that event, it would have strictly applied to those categories of persons to be treated as passenger for the purposes of Section 124A. But, that has not been done, instead the word "means" used in Sub-section (29) to Section 2, the word "includes" has been used in the

explanation to Section 124A of the Act. This makes it clear that category of persons mentioned in Clause (i) and (ii) of the Explanation do not make the list exhaustive, viz., persons other than those mentioned in Clauses (i) and (ii) of the explanation or those mentioned u/s 2(29) of the Act, may also be included in the definition of passenger from the purpose of Section 124A.

11. Needless to emphasize that such provision as contained in explanation to Section 124A has to be liberally construed. By Amendment Act 28 of 1994 Chapter XIII has been inserted into the Railways Act, 1989. This Chapter relates to liability of Railway administration to pay compensation for injury or death of passenger due to accident. It is a self-contained Chapter dealing with the compensation payable to the passengers in case of accident. It is in the nature of social welfare legislation so as to provide relief to the victims or the dependants of the victim of railway accident/untoward incidents. For interpretation of provision of such a legislation, a liberal construction of the provision has to be made. Certain decisions on the point may be referred to as reported in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, While interpreting the provisions of the Motor Vehicles Act, the legislative intent and beneficial character of the legislation was taken into account in computing the compensation; *Hindustan Steel Works Construction Ltd. Vs. State of Kerala and others*, The interpretation of Welfare Fund Act was made keeping in view the fact that it was essentially to protect interest and welfare of the Spring Meadows Hospital and *Another Vs. Harjol Ahluwalia through K.S. Ahluwalia and Another*, While considering provisions of Consumers Protection Act, 1986 it was held that being a beneficial legislation the provision should receive a liberal construction. While considering the definition of the word "consumer" and the fact that it was inclusive definition "parent of the child" who suffered by wrong treatment, were also held to be consumer within the purview of the definition of the word "consumer".

12. In the present case we find that u/s 2(29) passenger means any person travelling with a valid pass or ticket and for the purposes of Section 124A inclusive definition has been provided "including" all those persons as passenger who purchase a valid ticket for travelling or a valid platform ticket besides a railway servant on duty. The main ingredient, to be found in both the definitions is that the presence of the persons on the train or at the platform should be validly authorized. For this purpose, inclusive definition of the word "passenger" under Explanation to Section 124A of the Act considers railway servant on duty or a holder of platform ticket or a valid ticket for travelling to be a "passenger". By making the definition inclusive, other persons falling in the similar category may also be included within the meaning of the word "passenger" by giving liberal construction to a beneficial legislation specially legislated to compensate a victim or his dependants in case of his death in a railway accident. In this background it may be considered that there is no denial of the fact that the deceased was a constable in the Government Railway Police which is a Government organization, though may not be a Railway organization. The Officer-

in-charge of the G.K.P Outpost, Hojai had detailed him for checking the suspicious luggage or passengers on the Hojai Railway Station. A command certificate, as prescribed, was issued for the purposes to the deceased. He was, thus, duly authorized to be present at the Railway Station including the railway platform or the compartment or a train to check suspicious luggage of passengers. His presence was in connection with official discharge of his government duties as acceptable to the railway administration also. His presence, thus, also cannot be treated to be different from presence of a person holding a platform ticket or a railway servant on duty.

13. The said decision was again approved by the another Division Bench of this Court in the case of *Madhumita Sharpa v. Union of India and Ors.* 2002 (1) GLT 154 .

14. In view of the above discussion, I am constrained to hold that the case of the Appellant would fall u/s 124A of the Act and his claim cannot be dismissed as not maintainable. Consequently, the impugned judgment and order under appeal stands set aside and quashed and the matter is remanded back to the Tribunal with direction to decide the claim on merit.

15. In the result, appeal stands allowed.

16. No costs.