

(2011) 03 DEL CK 0298
In the Delhi High Court
Case No : FAO No. 312 of 2010

Harvinder Kaur and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 16
Railways Act, 1989 — Section 123, 124A

Citation : (2012) ACJ 854 : AIR 2011 Delhi 115

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Anshuman Bal, for the Appellant; Sandip Kumar, for the Respondent

Final Decision : Allowed

Judgement

Mool Chand Garg, J.—This is an appeal arising out of an order passed by the Railway Claims Tribunal, Principal Bench, Delhi (hereinafter referred to as "the Tribunal") dated 15.04.2010 in O.A. No. 97/2009 whereby the Tribunal has dismissed the claim application filed u/s 16 of the Railway Claims Tribunal Act by the dependants of the deceased only on the ground that the deceased fell down when he tried to get down from a moving train. The findings returned by the Tribunal have been assailed by the Appellants. According to the Appellant, liability of the Railways when an accident occurs and leads to infliction of injury or causing of death is absolute, the reasons given by the Tribunal in having dismissed the claim petition are not sustainable. The Appellants have denied that the deceased was not a bona fide passenger.

2. The Tribunal, on the pleadings of the parties, framed the following issues:

1. Whether the applicants prove that they are the dependents of the deceased within the meaning of Section 123(b) of the Railways Act.

2. Whether the applicant further prove that the deceased was a bona fide passenger on the train in question on the relevant day?

3. Whether the applicants also prove that the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application?

4. To what order/relief?

3. To appreciate the controversy, it would be appropriate to take note of the findings returned by the Tribunal on issue Nos. 2 and 3 which are as under:

These two issues are taken up for consideration simultaneously for the sake of convenience, and also as they are inter-related. The applicants have placed on record a copy of the e-ticket issued in favour of Shri Amarjeet Singh from Gorakhpur to New Delhi by Gorakhdham Express. The Respondent Railway Administration has in no way challenged the authenticity of this ticket. It is thus apparent that the deceased was a bona fide passenger at the relevant time of the incident. Regarding the nature of incident, the applicants have stated that due to heavy rush of passengers and sudden jerk in the train, the deceased fell down from the running train. However, this version of events has been contested by the Respondent, who has stated that Shri Amarjeet Singh met his death on account of his foolhardy attempt to get down from a moving train. In confirmation of this contention, the Respondent Railway Administration has drawn attention to the fact that Gorakhdham Express does not have a scheduled stoppage at Sahibabad railway station, and yet the father of Shri Amarjeet Singh had gone to the station to receive the deceased on the fateful day. In the police report, there is a clear mention of this fact that soon after the accident, the father of the deceased was at the site and informed the police regarding his relationship with the deceased. The suitcase of the deceased was also found at the site of the accident. The widow of the deceased has also stated in her cross-examination before the Tribunal that her father-in-law had gone to Sahibabad railway station without halting on 07.03.2009. All the evidence on record clearly points to the fact that Shri Amarjeet Singh, who was travelling in AC-2 T Coach attempted to get down from a fast moving train at an unscheduled stoppage, and resultantly met his end. The presence of his suitcase at the site as also that of his father at the station clearly point to the fact that he attempted to get down at Sahibabad railway station. In the circumstances of the case, it is clear that this incident falls under one of the exceptions mentioned in the proviso to Section 124-A of the Railways Act i.e. it was a self-inflicted act that led to the death of the deceased, for which the Respondent Railway Administration cannot be held responsible. These issues are decided accordingly in favour of the Respondent and against the applicants.

4. From the aforesaid, it is apparent that the deceased was a bona fide passenger. According to the Appellants, the deceased fell down from the train on account of heavy rush of passenger and sudden jerk of the train whereas on behalf of the Respondent it was stated that the deceased fell down because he attempted to get down from a moving train. However, in this regard no evidence has been led by the Respondents.

5. The law with respect to grant of claim when a person dies or suffers injuries from a moving train, may be negligently, is well settled. This Court in its judgment delivered on 17.02.2011 in FAO 143/1997 titled as Wing Comm. S. Sawhney v. U.O.I has taken note of this point and as such the same is no more res integra. In the said case, on the strength of the judgment of the Supreme Court in Jameela and Others Vs. Union of India (UOI), , it has been observed by this Court as follows:

3. The case of a person who might have been standing on the footboard, may be negligently, has been dealt with by the Hon"ble Supreme Court in the ease of Jameela and Others Vs. Union of India (UOI), In that case talking note of a similar fact with respect to a passenger who was travelling on a valid ticket, the Apex Court has interpreted provisions of Section 124A along with the explanation attached thereto and have observed as follows:

5. 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 eye-witness 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.

6. 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-

(I) (i) xxxx

(ii) xxxx

(iii) xxxx

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

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)

xxx xxx xxx

7. 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)

8. 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.

9. 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.

6. In the present case, the evidence which has been led on behalf of the Appellant consists of the statement made by the Appellant, Smt. Harvinder Kaur, who of course is not an eye-witness but the second witness is Sh. Surender Pal who has deposed in his affidavit as under:

STATEMENT of EYE WITNESS BY

WAY of AFFIDAVIT

I, Surender Pal S/o Late Baldhari Singh aged 43 years R/o. A-51, Nathu Pura, Burari, Delhi-110084; do hereby solemnly affirm and declare as under:

That on 07.03.2009 at about 5:40 a.m. I was waiting for train GND 1 at platform No. 3 Sahibabad Railway Station for going to Delhi. In the meantime Gorakhdham was passing from platform No. 3. When a person standing at the gate of Gorakhdham Express train suddenly fell down from the gate due to sudden jerk of the train. He died at the spot. In the meantime the father of the deceased who came after some time started crying on seeing his son fall down from the train. I tried to console him and gave him my address and phone number. After some time police also arrived at the spot. My train arrived at the platform and I boarded the train and left the spot.

7. The witness has been cross-examined. In the cross-examination nothing has been brought out by the Respondent which may discredit the said witness. The cross-examination as recorded is reproduced hereunder:

I was coming from Sahibabad to Delhi by GND 1. It was about 5:30 am and I was in a proceeding initiated u/s 16 of the Railway Claims Tribunal Act, the provisions of CPC or of the Evidence Act are not applicable, and the Tribunal could lay down its own procedures. To meet a client of mine. My rail ticket was handed over at the destination. GND 1 leaves Sahibabad at 6:10. It was 5 minutes late. Gorakhdham was passing thru Platform No. 3 (Witness earlier mentioned Platform No. 2). I was standing about 30 meters away from the side of the accident. I informed the S.M about the incident. Name of the deceased was Harbhajan, who was living near Saharanpur. I met his father after about 15 minutes of accident, and he had arrived at the station from outside. I had given my telephone No. to the police. Police had reached the site about 15 minutes after the accident. I reached 10 minutes before the departure of the train. It is wrong to suggest that I am deposing falsely.

8. Insofar as Respondent is concerned, no evidence is available which may establish that the deceased tried to get down from a running train as has been alleged by the Respondent in their written statement.

9. In view of the aforesaid, taking note of the judgment of the Supreme Court in the case of Jameela and Others Vs. Union of India (UOI), as quoted above, I have no hesitation in holding that the order passed by the Tribunal cannot be sustained. Accordingly, it is held that the Appellants are entitled to receive a sum of Rs. . 4,00,000/- (Rs. four lacs) along with interest @ 9% from the date the compensation becomes due and payable. It is also made clear that if the amount is not deposited within 3 months from today, the Respondent would be further liable to pay interest @ 12% p.a. on the whole amount till the amount is deposited with the Railway Claims Tribunal.

9A. With the aforesaid directions, the appeal is allowed and disposed of with no orders as to costs.

10. TCR be sent back along with a copy of this order.