
(2014) 01 MP CK 0068

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No's. 128 and 549 of 2013

Jahangir Khan and Another

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123 123(C)(2) 124A 154

Citation : (2014) 1 ACC 562 : (2015) ACJ 2060

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : M. Shafiqullah, for the Appellant; Govind Patel, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—As common questions of law and fact are involved in both these appeals and as they arise of the same cause of action, they are being decided by this common judgment. For the sake of convenience, the pleadings and documents available in the record of M.A. No. 128/2013 are being referred to in this order. Challenging a common order-dated 12.12.2012 passed by Member Technical, Railway Claims Tribunal. Bhopal in O.A. Nos. IIU/133/08 and IIU/134/2008, both these appeals have been filed u/s 23 of the Railway Claims Tribunals Act, 1987. By the order impugned, claim made by the appellants have been dismissed.

2. Appellant Jahangir Khan, in both the cases, and his son Amir Khan boarded Train No. 2174 Udyog Nagri Express on 5.10.2007, for going from Sagar to Bhusaval, and they were to go up to Khandwa. They had purchased a general ticket for going from Sagar to Bhusaval. It is said that from Sagar to Bhopal they came by some other train. At Bhopal, they boarded the Udyog Nagri Express. It is said that they was heavy crowd in the train and they were standing near the door of the coach. It is stated that due to jerk and push by other persons, Amir Khan fell down from the running train, sustained injuries and died on the spot.

That apart appellant Jahangir Khan also fell down and he is said to have sustained injuries. Claiming compensation in accordance to the statutory provisions, two claim petitions were filed--one by Jahangir Khan and Smt. Julekha Bee - parents of Amir Khan; and the other by Jahangir Khan himself. In the first claim, compensation was claimed by the parents for death of their son Amir Khan; and, in the second claim Jahangir Khan claimed compensation for the injuries suffered by him. The Railway Administration came out with a case that the claimants were unauthorized passengers. They boarded the train and tried to get down from the running train in Bhusaval and fell down, as a result the accident took place. It was held by the Tribunal that the accident took place because of the negligence of the claimants or the person concerned and, therefore, the Railway Administration is not liable to pay any compensation. Finding that claimant Jahangir Khan and his son had tried to get down from the running train, which was an act of negligence on their part, and as they had tried to get down from the running train in a negligent manner, the accident occurred, the claims have been rejected on the ground that the Railway cannot be held liable to pay the compensation. Challenging the aforesaid rejection of the claims, both these applications have been filed.

3. Learned Counsel for the appellants invited my attention to the provisions of Sections 123, 124A and 154 of the Railways Act, 1989, and argued that if the definition of "untoward incident" as is defined in Section 123(C)(2) is taken note of, it would be seen that an accidental falling of a passenger from a running train carrying passengers is an "untoward incident" and if a person dies because of an "untoward incident" while travelling in a train, compensation is liable to be paid. Learned Counsel further invites my attention to Section 124A of the Railways Act, to say that the bona fide passenger is only denied payment of compensation if the "untoward incident" or the accident occurs because of the five exemptions contemplated in the proviso to Section 124A; namely (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. It is stated that as the case in hand does not fail in any of these exempted provisos, compensation is liable to be granted and in rejecting the claims, a grave error has been committed by the Tribunal.

4. In support of his contention, learned Counsel invites my attention to the law laid down by the Supreme Court in the case of Jameela and Others Vs. Union of India (UOI), ; a judgment of this Court in the case of Smt. Sushilabai and Others Vs. Union of India, ; a judgment of the Punjab and Haryana High Court in the case of Mohan Lal and Others Vs. Union of India (UOI), , in support of his contentions.

5. However, learned Counsel for the respondent Railway Administration refuted the aforesaid contentions and argued that as the persons concerned, namely

appellant Jahangir Khan and his son late Amir Khan, were trying to get down from the running train in a negligent manner and as the entire incident took place because of the negligent act of these persons, the Railway Administration cannot be saddled with the responsibility of paying compensation and in rejecting the applications, the learned Claims Tribunal has not committed any error warranting interference. Accordingly, learned Counsel prays for dismissal of the applications.

6. Having heard learned Counsel for the parties and on a perusal of the records, it is found that in both the cases after considering the rival contentions, the learned Tribunal framed five issues. One of the issues frame was as to whether the appellant and his son were bona fide passengers of the train in question, this issue has been answered by holding that both the appellant and his son were having a ticket and the finding recorded is that they were bona fide passengers. This finding is not challenged by the Railway Administration and, therefore, the issue with regard to the appellants Jahangir Khan and his son being bona fide passengers is no more in dispute. That being so, the only question would be as to whether the accident in question would come within the purview of an "untoward incident" as defined in Section 123(C)(2) of the Railways Act, 1989 and whether the claimants/appellants were entitled for compensation for the same?

7. The aforesaid question has been considered by the Supreme Court in the case of Jameela (supra). In the case of Jameela (supra), the person concerned was travelling on a train with a valid ticket and while travelling on the footboard he fell down from the running train and died. The question involved in the aforesaid case was as to whether the falling down of the passenger from the footboard or while standing, near the door could be termed as an "untoward incident". After taking note of the proviso to Sections 123, 124A and 154 of the Railways Act, 1989, one of the questions framed by the Supreme Court in the aforesaid case was as to whether the death of the passenger can be termed to be because of his own negligence and, therefore, not entitled for compensation.

8. From paragraph 6 onwards, the provision of law is taken note of and it is held that even in a case where the passenger who is standing near the open door of a tram compartment falls down, the claim cannot be rejected on the ground of negligence. In paragraph 9 of the judgment, the following principle is laid down:

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 of 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.

9. This judgment has been followed by the Madhya Pradesh High Court in the case of Smt. Sushila Bai and Others (*supra*), and in that case compensation has been granted to the passenger who was trying to get down from a running train and died on sustaining injury. In that case also, similar arguments advanced with regard to the fact that the case would not fall within the proviso to Section 124A was rejected and after taking note of the exempted clause as contained in Section 124A, it is found that none of the five exempted clauses as contemplated u/s 124A is made out and the person concerned is entitled for compensation, similar plea of negligence on the part of the passengers was rejected.

10. Even the Punjab and Haryana High Court in the case of Mohan Lal (*supra*) has reiterated this position and has placed reliance on various judgments of the Supreme Court. A combined reading of all the three "Judgments goes to show that it has been the consistent view of all the Court that if the exemption clauses contemplated under Clauses (a), (b), (c), (d) and (e) of the proviso to Section 124A are not attracted, even falling of a passenger from the footboard of a train or while alighting from a running train would come within the purview of "untoward incident" as defined u/s 123(C)(2) and compensation can be paid. That apart, u/s 123, the meaning of "untoward incident" as contemplated under Sub-clause (C)(2) does say that accidental falling of a passenger from the train carrying the passenger is an "untoward incident", and if the accident falls in the category of "untoward incident", the law is well settled that on the ground of negligence of the passenger concerned, the claim cannot be rejected.

11. That being so, in the facts and circumstances of the case, the learned Tribunal has committed an error in rejecting the application mainly on the ground of negligence. Until and unless the exemptions as contemplated under law, particularly under the proviso to Section 124A, are not made out, the claim could not have been rejected. In the present case, admittedly none of the exemptions as contemplated in the proviso to Section 124A are attracted and, therefore, in rejecting the claim of the appellants, an error has been committed which warrants interference.

12. Accordingly, both the appeals are allowed. The claim petitions are allowed and the respondent - Railway Administration is directed to pay compensation to the appellants/claimants with regard to death of their son and personal injury to appellant Jahangir Khan, in accordance to the statutory provision along with interest, within a period of two months from the date of receipt of certified copy of this order. Accordingly the appeals stand allowed and disposed of. No order as to costs.