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**(2010) 08 SC CK 0009**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 1184 of 2003**

Jameela and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 27-08-2010

**Acts Referred:**

Railways Act, 1989 — Section 123, 124A, 154

**Citation :** (2010) ACJ 2453 : AIR 2010 SC 3705 : (2010) AIRSCW 5625 : (2011) 4 ALD 3 : (2010) 6 AWC 5944 : (2011) 1 CG.L.R.W. 133 : (2010) 9 JT 138 : (2010) 3 KLT 882 : (2011) 4 MLJ 724 : (2010) 12 SCC 443 : (2010) 10 SCR 523 : (2011) 1 TAC 10

**Hon'ble Judges :** R. M. Lodha, J;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** Shakil Ahmed Syed, for the Appellant; S. Wasim A. Qadri, Ashok Bhan, A.K. Sharma, Anil Katiyar and Subhash Kaushik, for the Respondent

**Final Decision :** Disposed Of

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## Judgement

Aftab Alam, J.—On June 23, 1997, the GRP found the dead body of a male person at Magarwara Railway Station. From the pockets of the deceased, the police recovered a telephone number, a railway ticket bearing No. 35810970, dated June 21, 1997 and a receipt showing payment of excess fare for travelling in a sleeper coach. Information about the discovery of the dead body was given on the phone number and then it came to light that he was a certain M. Hafeez, the husband of appellant No. 1 and the father of appellant Nos. 2-5.

2. The appellants filed a claim case (OA 9700059) before the Railway Claims Tribunal, Lucknow Bench, claiming a compensation of Rs. 11,11,000.00 (rupees eleven lakhs and eleven thousand only) under the Railways Act, 1989 (hereafter "the Act") for the death of M. Hafeez. In the claim application, it was stated that the deceased was travelling from Ahmedabad to Lucknow by Awadh Express (Train No. 5064) on a valid ticket and he fell down from the train at or near Magarwara Railway Station in an untoward incident resulting in his death. The

applicants' claim was contested by the General Manager, Northern Railway. The reply filed on his behalf is not on record, but from the Tribunal's order it appears that in the reply the death of M. Hafeez and the validity of the ticket found in his pocket were admitted. It was, however, stated that according to the railway records, no accident of any kind took place between Kanpur and Lucknow on June 23, 1997 and it appeared that the deceased fell down from the running train due to his own negligence. There was no negligence on the part of the railway. Further, that the applicants had not filed any proof of the accident.

3. In view of the respective stands of the parties, the Tribunal framed the issue, whether the applicants were able to prove that the death of M. Hafeez was due to an "untoward incident" as defined u/s 123 of the Railways Act. On a consideration of the materials brought before it, the Tribunal found and held that the claimant had proved that the death of M. Hafeez was due to an "untoward incident" as defined u/s 123 of the Act. The Tribunal, then, proceeded to consider the amount of compensation to which the applicants were entitled and found and held that under the Railway Accident (Compensation) Rules, 1990 (as it stood at the time of the accident), the maximum compensation in case of death was Rs. 2,00,000.00 (rupees two lakhs only). The applicants were, therefore, entitled to the aforesaid amount only and not anything in excess of it, as claimed by them. It, accordingly, passed its order.

4. Against the judgment and order passed by the Tribunal, the Railways preferred an appeal (FAFO No. 277 of 1999) before the Lucknow Bench of the Allahabad High Court. A division bench of the High Court by judgment and order dated November 6, 2001 allowed the appeal and set aside the Tribunal's order. Before the High Court, reliance was placed on behalf of the Railway on the proviso to Section 124A of the Act which provides that no compensation will be payable under that section by the railway administration if the passenger died or suffered injury due to (a) suicide or attempted suicide by him, (b) self-inflicted injury or (c) his own criminal act. A reference was also made to Section 154 of the Act which provides that if any person does any act in a rash and negligent manner, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. It was further contended on behalf of the Railway that the deceased M. Hafeez who was travelling in a negligent manner was standing at the door from where he fell down near the Magarwara Railway Station, where the train does not stop. (It needs to be pointed out that this contention could only be based on speculation, as admittedly there was no eyewitness to the accident). The High Court accepted the contentions raised on behalf of the Railway and allowed the appeal observing as follows:

On the basis of the law & facts indicated by the learned Counsel for the parties, we find that in the present case the victim is to be blamed for the incident being negligent and therefore this case is not covered by the definition of the untoward

incident. However, so far as the compensation is concerned the case of the claimant is covered by the provision of Section 124A as because of his own negligence the deceased had fallen down from the train which caused his death. Further in the light of the fact that the deceased acted in a negligent manner without any precaution of safety by station going at the open door of the running train which resulted into his death.

(Emphasis added)

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 eyewitness 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-

(1) (i) xxxxxxxx

(ii) xxxxxxxx

(iii) xxxxxxxx (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)

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.

10. We are, therefore, constrained to interfere in the matter. The judgment and order of the High Court coming under appeal is set aside and the judgment and order of the Tribunal is restored. Since a period of more than 10 years has already elapsed from the date of the judgment of the Tribunal, the compensation

money along with interest need not be kept in fixed deposits, but should be paid to the appellants in the ratio fixed by the Tribunal. The payment must be made within 2 months from today.

11. In the result, the appeal is allowed, with costs quantified at Rs. 30,000.00 (rupees thirty thousand only) payable to the applicants along with the compensation money.