
(1997) 09 MP CK 0012

In the Madhya Pradesh High Court

Case No : M.A. No. 175 of 1996 & Miscellaneous Appeal No. 175 of 1996

Janki Bai and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 13, 23
Railways Act, 1989 — Section 123, 124, 124A, 125, 126
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (1999) ACJ 282

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : N.S. Ruprah, for the Appellant; Ashok Lalwani, for the Respondent

Judgement

S.K. Dubey, J.—This appeal u/s 23 of Railway Claims Tribunal Act, 1987 (for short the "RCT Act") is against the order dated 13.10.1995 passed in case No. OA/O1/1994 by the Railway Claims Tribunal, Bhopal Bench, Bhopal ("Tribunal").

2. The facts giving rise to this appeal are thus:

The appellants filed an application u/s 125 of the Railways Act, 1989 (for short the "Railways Act") on 13.6.1995 against the respondent to claim compensation of Rs. 2,00,000 for the death of Rajaram, husband of appellant No. 1 and father of appellant Nos. 2 to 5, on the averments that on 16.5.1993, the deceased alighted from the Malwa Express 4068 UP at Laxmi Bai Nagar Railway Station. While he was crossing over the railway track, a meter-gauge train, Ujjain-Mhow Passenger, came and dashed the deceased Rajaram, as a result of the said accident, he died on the spot. The accident occurred due to negligence of the railway administration as there is no over-bridge at the platform nor any level crossing for passengers to move out of the station. This was the wrongful act, negligence on the part of the railway administration, hence respondent is liable to pay compensation. The claim was contested by the respondent on the ground that the Tribunal had no jurisdiction, as the application for compensation does

not fall within the ambit of Section 124 of the Railways Act or u/s 13 of RCT Act. The Tribunal dismissed the application holding that the deceased was not travelling in the train. It was not a case of "accident to a train", as envisaged in Section 124, nor a case falling u/s 124A of the said Act. The accident was due to negligence of the deceased when he was crossing the railway track. Even if there was negligence of railway administration, the application u/s 125 of the Railways Act would not be maintainable as the jurisdiction of the Tribunal u/s 13 of the RCT Act is limited. The remedy for the appellants is to claim compensation under the common law of Torts in civil court.

3. Sections 123 to 129, contained in Chapter XIII of the Railways Act, deal with liability of railway administration for death and injury to passengers due to accidents. Relevant provisions for the purpose of this appeal we quote:

123. Definitions.--In this Chapter, unless the context otherwise requires,-

(a) "accident" means an accident of the nature described in Section 124;

(b) "dependant"....

(c) "untoward incident" means-

(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; 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, cloak room 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.

124. Extent of liability.--When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.--For the purposes of this section "passenger" includes a railway servant on duty.

24-A. 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.

4. It would also be appropriate to quote Section 13 of the RCT Act which reads thus:

13. Jurisdiction, powers and authority of Claims Tribunal.-(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act,-

(a) relating to the responsibility of the railway administration as carriers under Chapter VII of the Railways Act in respect of claims for-

- (i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;
- (ii) compensation payable u/s 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124A of the Railways Act, 1989, all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration u/s 124A of the said Act or the rules made thereunder;

(2) The provisions of Railways Act, 1989 and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining any claims by the Claims Tribunal under this Act.

The expression "accident" in Clause (a) of Section 123 is confined only to accident of the nature described in Section 124, corresponding to Section 82-A of the old Act, i.e., Railways Act (9 of 1890) which we quote:

82-A. Liability of railway administration in respect of accidents to trains carrying passengers.-(1) When in the course of working a railway an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in Sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompanying the passenger in his compartment or on the train, sustained as a result of such accident.

(2) This liability of a railway administration under this section shall in no case exceed fifty thousand rupees in respect of any one person.

5. Section 124, if read in juxtaposition with Section 82-A, the legislative change is that Section 124 makes the railway administration liable for the passenger killed or injured as a result of train accident while by Section 82-A of the old Act, a person who had been injured, was entitled to get damages of which a maximum limit of the liability was fixed under Sub-section (2) of Section 82-A. In Section 124 of the Railways Act, maximum limit of liability has been omitted and the railway administration has been made liable to pay compensation to such extent as may be prescribed. Thus, Section 124 increases the liability of railway administration, in respect of a train carrying passengers, for the benefit of victims.

6. To get compensation in an application u/s 125, the legal position is that the "accident" envisaged in Section 124, corresponding to Section 82-A (1) is an "accident to the train" or "a part of the train" carrying passengers by reason of either collision of two trains one of which is a passenger train; or derailment of such train; or other accident to such train. [See: Union of India v. Sunil Kumar

Ghosh 1984 ACJ 719 (SC)]. Therefore, from the above legal position, the accident resulting in death of Rajaram is not an accident as envisaged by Section 124 of the Railways Act.

7. Now, whether the deceased's accident will fall within the definition of "untoward incident" about which provision has been made for compensation u/s 124A of the Act. The definition in Clause (c) of Section 123 "untoward incident" and Section 124A was inserted by Railways (Amendment) Act, 28 of 1994 w.e.f. 1.8.1994. From a bare look at the Section 124A, it is clear that it makes provision for compensation to a passenger on account of untoward incident, whether or not the railway administration was at fault. Under this provision, they are liable to pay the compensation, as prescribed, except in cases where the passenger dies or suffers injuries (a) due to suicide or attempt to commit 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 such "untoward incident".

8. In the present case, from the averments in the application, it is clear that the death was not caused due to "untoward incident", as defined in Section 123(c) of the Railways Act. Therefore, the Tribunal was right in dismissing the application u/s 125 of the Railways Act, as no compensation could have been awarded u/s 124A of the Railways Act, being not a case of "untoward incident".

9. In view of the above, the contention of the appellants placing reliance on the Division Bench decision of Kerala High Court in Vijayasankar Vs. Union of India (UOI), , that the incorporation of the definition "untoward incident" by Clause (c) in Section 123, Section 124A in the Railways Act and Section 13(1-A) in RCT Act is with retrospective effect need not be gone into.

10. As a result of the aforesaid discussion, the appeal has to be dismissed. Appellants shall be at liberty to approach a civil court to claim compensation in accordance with law, if so advised.

11. In the result, the appeal fails and is dismissed with no order as to costs.