
(2012) 08 OHC CK 0008
In the Orissa High Court
Case No : F.A.O. No. 26 of 2012

Jyotsna Thanapati and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Railways Act, 1989 — Section 123(c), 123(c)(2), 124A

Citation : (2013) 1 ACC 633 : (2013) 115 CLT 37

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Advocate : Mohendra Ku. Mohapatra and S. Khan, for the Appellant; A.K. Mishra, H.M. Das, A.K. Sahoo and S. Bhanja, for the Respondent

Final Decision : Allowed

Judgement

B.K. Patel, J.—This appeal is directed against the Judgment dated 31.10.2009 passed by Learned Member (Judicial), Railway Claims Tribunal, Bhubaneswar Branch (for short "the Tribunal") dismissing case No. OA/97/2009 filed by the Appellants who are wife & minor sons of deceased Prafulla Thanapati (hereinafter referred to as "the deceased") alongwith the parents of the deceased claiming compensation for death of the deceased. Case of the claimants in the original application is that on 4.7.2008 the deceased alongwith his father & brother (P.W. 2) boarded general compartment of the Sarnath Express at Allahabad railway station to travel to Raipur after purchasing valid tickets. The compartment was overcrowded. At about 1.30 A.M. when the deceased was attempting to spit through the open emergency window, he was thrown out from the running train due to sudden, heavy & random jerk. Deceased fell on the ground, sustained fatal injuries & died at the spot near Umariya railway station in Madhya Pradesh. In connection with death of the deceased a police case was registered, enquiry was held & final report was submitted, On the basis of such pleadings, it is asserted that death of the deceased having occurred due to untoward incident in terms of Section 123(c) of the Railway Act (for short "the Act"), applicants are

entitled to compensation. Respondent-railway resisted the claim by filing written statement. It is pleaded that the deceased was not a bona fide passenger of the train. It is pleaded that the occurrence leading to death of the deceased does not amount to a untoward incident in terms of provision u/s 123(c) of the Act inasmuch as gross negligence on the part of deceased himself led to the incident for which fatal injuries on the deceased amount to self-inflicted Injuries within the meaning of the " Act.

2. On the basis of the rival pleadings, Tribunal settled the following issues:

- (1) Whether applicants are dependents of the deceased?
- (2) Whether the deceased was a bona fide passenger?
- (3) Whether the incident was an untoward incident?
- (4) Whether the applicants are entitled to any compensation ?
- (5) What relief?

3. In order to substantiate their case claimants examined deceased's wife as P.W. 1 & deceased's brother as P.W. 2. Claimants relied also upon documents prepared in course of enquiry in the police case & death certificate of the deceased. No evidence was adduced on behalf of the Respondent-railway.

However, one Rajendra Kumar Nayak ADME/KUR, described as R.W.1, was summoned & cross examined by the Tribunal.

4. On appraisal at evidence on record, the Tribunal answered issue Nos. (1) & (2) in favour of the claimants holding that the applicants were dependants of the deceased & that the deceased was travelling as a bona fide passenger of the train when the occurrence took place. However, in answering issue No. (3) the Tribunal held that the deceased fell down from the train due to his own rash & negligent action for which fatal injuries sustained by him come within the scope of meaning self-inflicted injuries u/s 124A of the Railways Act. Accordingly, claimants were held to be not entitled to compensation & the impugned Judgment dismissing the original application was passed.

5. In assailing the impugned Judgment it was submitted by the learned Counsel for the Appellants that claimants adduced oral as well as documentary evidence in support of their claim for compensation u/s 124A of the Act. No rebuttal evidence was adduced from the side of the Respondent. Instead, an employee of the railway was summoned & cross-examined by the Tribunal as R.W.1. On appraisal of evidence on record it was held by the Tribunal that documentary evidence including DRM's report supports version of the eye witness P.W. 2 that the deceased fell out of the emergency escape window of crowded compartment of the moving train while trying to spit out of the emergency escape window.

In absence of any rebuttal evidence, finding of the Tribunal that the act of the deceased in spitting through the escape window & consequences thereof come

within the meaning of self-inflicted injury as provided under the proviso to Section 124A of the Act is without any basis & not sustainable. It was further argued that claimants substantiated their assertion that the deceased was thrown out of the compartment through the escape window due to sudden jerk & jolt of the train through the evidence of occurrence witness P.W. 2.

6. Learned Counsel for the Respondent supported & defended the impugned Judgment.

7. Accidental falling of any passenger from a train carrying passengers has been provided to be an "untoward incident" u/s 123(c) (2) of the Act. Section 124A of the Act provides for compensation on account of untoward incident. However, compensation is not payable by the railway administration for injury or death arising out of all cases of untoward incidents. Proviso to Section 124A enumerates certain exceptions. Section 124A of the Act reads:

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 dependent of a passenger who has been killed to maintain an action & 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 & 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 purpose of this Section, "passenger" includes-

- (i) a railway servant on duty; &
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket & becomes a victim of an untoward incident.

8. In the present case, it is not disputed that death of the deceased occurred due to accidental falling from a running passenger train while travelling with valid ticket. Therefore, undoubtedly, death of the deceased occurred due to an

untoward incident. However, the Tribunal held the Appellant to be not entitled to compensation in view of finding that careless & negligent conduct of the deceased led to accidental falling of the deceased &, therefore death occurred due to "self-inflicted injury" as provided under Clause (b) of the proviso to Section 124-A of the Act.

9. Admittedly, no oral or documentary evidence was adduced from the side of the railway. Deceased's brother P.W. 2 as an eye witness to the occurrence. Having referred to the evidence on record Tribunal held:

The applicants have produced Shri Sushil Kumar Thanapati, brother & co-passenger of the deceased who has stated in his sworn affidavit that the compartment was crowded & due to such rush his brother tried to spit out of the emergency escape window, & that time there, was sudden jerk & jolt due to which the deceased was thrown out of the train. All the reports including the police reports & the DRM's report have stated identical reasons for cause of death, i.e. the deceased fell out of the emergency escape window of a moving train while trying to spit out of the emergency window. The applicants & their witness, Shri Sushil Kumar Thanapati have also stressed on the absence of a grill on the emergency window, & attributed the fall to this deficiency.

10. It is not disputed that absence of grill in emergency window does not amount to negligence on the part of the railway. Grill-less emergency escape windows are intended to facilitate exist of the passengers in case of emergency. Appellants in the present case do not at all attribute accidental fall of the deceased to negligence on the part of the railway. Rather, as is evident from the evidence of P.W. 2, it is alleged that as the compartment was crowded the deceased tried to spit out of the emergency escape window but due to sudden jerk & jolt of the train he was thrown out of the running train. Evidence of P.W. 2 on this score has not been discredited in any manner, No material whatsoever has been brought on record by the railway to indicate that the deceased was in any manner careless or negligent in his conduct while attempting to spit through the open emergency window.

On the other hand, it appears that the untoward incident occurred true to sudden jerk & jolt of the train. It is in the evidence that deceased tried to spit through the emergency window as the compartment was crowded. Thus, evidence on record does not support the inference of the Tribunal that the deceased fell down from the train due to own rash & negligent action. Therefore, finding of the Tribunal that death of the deceased occurred due to self-inflicted injury as provided u/s 124A of the Act is not sustainable in law. Claimants are entitled to compensation for the death of the deceased.

Accordingly, the appeal is allowed. The impugned Judgment is set aside. Respondent-railway is directed to pay to the claimants compensation amount of Rs. 4,00,000/- alongwith interest at the rate of 6% per annum from the date of filing of original application before the Tribunal till the amount is deposited in the

Tribunal within a period of two months. On deposit of compensation with interest, the Tribunal shall disburse the amount to the amount to the claimants & keep such amount in fixed deposits in their names in such proportions as deemed fit. Parties shall bear their own costs.