

(2020) 09 JH CK 0178
In the Jharkhand High Court
Case No : M.A. No. 472 Of 2016

Kondoli Soren And Ors

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-09-2020

Acts Referred:

Railways Act, 1989 — Section 2(29), 123(c), 123(c)(2), 124A

Citation : (2020) 09 JH CK 0178

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Ashok Kumar Singh, Vijay Kumar Sinha

Final Decision : Allowed

Judgement

Heard, learned counsel for the appellants, Mr. Ashok Kumar Singh and learned counsel for the respondent, Mr. Vijay Kumar Sinha.

The appellants have preferred this appeal against the judgment dated 01.04.2016 passed by learned Member (Judicial), Railway Claims Tribunal, Ranchi Bench in Case No. OA (IIU)/RNC/2014/0051, whereby the claim application of the appellants has been dismissed.

Learned counsel for the appellants has submitted that learned Tribunal has wrongly considered the evidence and gave a wrong finding with regard to deceased Chand Soren as not died in an untoward incident.

Learned counsel for the appellants has submitted that there is delay of 68 days in filing the instant miscellaneous appeal and for condonation of the same, I.A. No.5960/2016 has been preferred, as it is a benevolent legislation and deceased died leaving behind wife, two sons and one daughter on 25.07.2013 in a train accident while he was travelling in Train No.53328 (D.S) passenger Dhanbad to Pradhankhanta and fell down due to push of the passengers and died and F.I.R. has been lodged and learned Tribunal has dismissed the application, but has not considered the evidence of A.W.-2,

Smt. Sundri Murmu, particularly paragraph-3 of examination-in-chief i.e. That, he had purchased ticket from Dhanbad to Pradhankhanta and boarded in the aforesaid train in my presence. I see him of at station and paragraph-15 of the cross-examination i.e. धनबाद से प्रधानखन्टा तक का टिकट था।

The learned Tribunal has wrongly considered the negligence of the deceased, rather in view of the judgment passed by the Hon'ble Apex Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar reported in (2008) 9 SCC 527, it was an untoward incident as defined under Section 123 (c) 2 of the Railway Act, as such, the impugned judgment may be set aside and appeal may be allowed directing the railway to pay the compensation. Paragraph-14 to 17 & 22 to 24 of the Prabhakaran Vijaya Kumar (Supra) judgment are re-produced below:-

"14. In our opinion, if we adopt a restrictive meaning to the expression "accidental falling of a passenger from a train carrying passengers" in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression "accidental falling of a passenger from a train carrying passengers" includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

15. Section 2(29) of the Railways Act defines "passenger" to mean a person travelling with a valid pass or ticket. Section 123(c) of the Railways Act defines "untoward incident" to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act with which we are concerned states:

"124-A. Compensation on account of untoward incidents.--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 supplied)

16. The accident in which Smt Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault.

22. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide 'Torts by Michael Jones, 4th Edn. p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads".

23. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is two fold (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products.

Learned counsel for the Railway, Mr. Vijay Kumar Sinha has opposed the prayer and has submitted that judgment passed by the learned Tribunal is a reasoned order and as the ticket of the deceased has not been brought on record. The Tribunal has rightly considered that the deceased, Chand Soren not died in an untoward incident, since the deceased died because of his own negligence the decision cannot be covered under untoward incident as defined under Section 123(c) 2 of the Railway Act.

Learned counsel for the Railway has further submitted that he has filed counter affidavit in I.A. No.5960/2016, which has been filed for condonation of delay and as such, considering the reason assigned by the railway, the delay may not be condoned and the appeal may be dismissed as it do not requires any interference by this Court.

After hearing learned counsel for the parties and on the basis of material brought on record including the evidence of A.W.-2, Smt. Sundri Murmu particularly paragraph-3 of examination-in-chief and paragraph- 15 of the cross-examination, copy of the same has been sent through e- mail in course of the day, which has also been served upon Mr. Vijay Kumar Sinha, it appears that the deceased has purchased ticket as it has been stated by A.W.-2, Smt. Sundri Murmu in paragraph-3 of examination-in-chief and in paragraph-15 of the cross-examination, as such, in view of the judgment passed by Hon'ble Apex Court in the case of Union of India Vs. Rina Devi reported in (2019) 3 SCC 572 (paragraph-29), the deceased was bonafide passenger.

Paragraph-29 of the Rina Devi (Supra) judgment is profitably quoted hereunder:

"29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

(emphasis supplied)

It appears that the deceased was travelling in Train No.53328 (D.S) passenger from Dhanbad to Pradhankhanta and fell down due to push of passengers, which has been wrongly considered by the railway Tribunal as negligence on the part of the deceased, as such, in view of the judgment passed by the Hon'ble Apex Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar (Supra), it was an untoward incident as defined under Section 123 (c) (2) of the Railway Act.

Considering the same, this Court is of the opinion that the impugned judgment dated 01.04.2016 passed by the learned Member (Judicial), Railway Claims

Tribunal, Ranchi Bench cannot be sustained in the eyes of law, which is accordingly set aside.

The Railway is directed to pay compensation to the appellants as per the prevalent rate as per the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 i.e. Rs.4 lacs with interest @ 7.5 % per annum or Rs.8 lacs as per the revised Rule of 2016, whichever is higher from the date of filing of claim application.

Accordingly, the instant miscellaneous appeal is hereby allowed. Consequently, I.A. No. 5960/2016 is also allowed.

However, appellants are not entitled for any interest for the period of from the date of filing of the instant miscellaneous appeal i.e. 06.09.2016 till today i.e. 23.09.2020, as the appeal is kept pending and several adjournments have been taken by the appellants.