
(2008) 01 KL CK 0007
In the High Court Of Kerala
Case No : MFA No. 1131 of 2002

K.V. Thomas

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A
Railways Accidents and Untoward Incident (Compensation) Amendment Rules, 1997 — Rule 3, 4
Railways Act, 1989 — Section 123, 124A
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3(1)

Citation : (2008) ACJ 1921 : AIR 2008 Ker 153 : (2008) 1 ILR (Ker) 615 : (2008) 1 KLJ 623 : (2008) 2 RCR(Civil) 603

Hon'ble Judges : K. Hema, J;J.B. Koshy, J

Bench : Division Bench

Advocate : George Cherian and Alexy Augustine, for the Appellant; Varghese P. Thomas and James Kurian, SCs, for the Respondent

Judgement

J.B. Koshy, J.—Appellant claimant filed an application for compensation for the injuries sustained by him when he accidentally fell down from Vanchinad Express at Chengannoor Railways Station on 21 -5-1998. As a result of the accident, his left leg was amputated below knee and right leg was amputated on the upper portion of femur. He claimed a compensation of Rs. 11 lakhs with 18% interest. According to him, he purchased a ticket from Changannoor Station to go to Trichur by Venad train. Usually Venad Express and Vanchinad Express had a crossing at Chengannoor Railway Station and Venad train usually comes on platform No. 1 and Vanchinad Express usually comes on platform No. 2. Thinking that Venad express is waiting in platform No. 1, he along with his neighbour boarded the train in platform No. 1. But it was later found that it was not the train which was going to Trichur and while trying to get down, he fell down and train left and both legs crushed under the wheels. According to the respondents, accident occurred due to his own negligence and he is not entitled to compensation. The fact that he purchased the ticket and entered the platform is

not disputed. He fell down accidentally from the train is also not disputed. The question is whether there is any negligence on his part and even if there is any negligence on his part, compensation can be denied u/s 124-A of the Railway Act.

2. Section 124-A read as follows:

[124-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 dependent 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 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]

To claim compensation u/s 124-A, it is not necessary to show that there is any negligence on the part of the railway administration. It is also not necessary to establish that the injured was not negligent. The negligence of either the Railway administration or that of the injured is not relevant u/s 124-A. The negligence of the claimant cannot disentitle him from claiming compensation u/s 124-A. Admittedly, the accident occurred not as a part of an attempt of suicide. It is not a self inflicted injury or he has not done any criminal act. Mere negligence on the part of the bonafide passenger is not a ground to deny the compensation for untoward incident. Like Section 163A of the Motor Vehicles Act, strict liability is cast on the railway administration for payment of compensation. In the explanation to the Section, it is stated that even if a person has a platform ticket and became a victim of untoward incident, he will come within the Section. If

there is an untoward incident in the course of working in a railway and if a passenger is injured or killed in such incident, the injured or the dependents of the passenger will be entitled to get compensation from Railway administration unless the passenger dies or suffers injury due to any of the reasons stated in (a) to (e) of the proviso to Section 124-A. Since the claim of the passenger in this case does not come under (a) to (e) of proviso to Section 124-A the claim cannot be rejected.

3. The "untoward incident" is defined u/s 123(c) which reads as follows: ["(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".]

Certainly the injury was caused as a result of the untoward incident. It is not an intended injury. In the above circumstances, the railway administration is liable to pay compensation.

Next question is what is the amount of compensation payable. The amount of compensation payable is fixed under the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. As per the medical certificate produced, his left leg is amputated below knee. Under Schedule Part III Item No. 20 of the Rules framed under Rule 3, for amputation below knee with stump exceeding 3-1/2" but not exceeding 5", compensation payable is Rs. 2 lakhs. Apart from the above, his right leg was fully amputated. Right leg was amputated on the upper portion of femur. Part III Item No. 18 of Schedule of Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997. It is Rs. 2,80,000/-. But under Rule 4, maximum compensation that can be granted is Rs. 4 lakhs.

4. Therefore, appellant is entitled to Rs. 4 lakhs as compensation with 7% interest from the date of application till its deposit, and on deposit of the amount, appellant is allowed to withdraw the same. With the above observations this appeal is partly allowed.