

(2017) 02 JH CK 0181
In the Jharkhand High Court
Case No : 370 of 2013

Manoj Kumar Chandra

APPELLANT

Vs

State of Jharkhand and another.

RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

[Railways Act, 1989](#), [Section 123\(c\)\(2\)](#),
[Section 124\(a\)](#) - Definitions - Extent of liability

Citation : (2017) 02 JH CK 0181

Hon'ble Judges : Amitav K. Gupta

Bench : SINGLE BENCH

Advocate : K.M. Murari, Vijoy Kumar Sinha, Sujit Kumar Lala

Judgement

1. This appeal has been preferred against the order dated 20.08.2013 passed in Case no. OA/IIU/RNC/2011/0051, by the Railway Claims Tribunal, Ranchi Bench, whereby the appellants/claimants' application for compensation was dismissed.

2. The claimants/appellants filed the claim application stating that Sunil Paswan, the husband and father of the claimants was travelling on Mumbai- Howrah Mail from Kalyan Junction to Dehri-On-Sone. That in the intervening night of 13/14.01.2011, he fell down from the train and died on spot due to the injuries sustained on account of the fall. The copies of the station memo, FIR, post mortem report, final report and the journey ticket were filed with the application.

3. Learned counsel, for the appellants/claimants, submitted that the Tribunal has arrived at a conclusive finding that the deceased was a bona-fide passenger travelling on a valid ticket, but, dismissed the claim application on the ground that in the inquiry report, Ext. R2, submitted by the DRM, it has been stated that the deceased must have fallen down as he was travelling while standing at the open door of the compartment and he fell due to his own negligence which comes within the purview of exceptions (a) to (e) of Section 124(A) of the Railways Act, 1989, therefore, the Railways were not liable to pay the compensation. It is argued that no oral or documentary evidence has been

brought on record by the respondent/Railways, to establish that the untoward incident took place on account of negligence of the deceased or he was in a state of intoxication or insane or it was a suicidal act for exonerating the Railways from the liability to pay the statutory compensation. It is contended by the learned counsel that the Supreme Court in the case of Jameela and Others Vs. Union of India reported in (2010), Acci. C.R. 1069 SC in similar facts had held that the Railways/respondents cannot be exonerated from paying the statutory compensation. It is argued that the claimants are entitled to compensation in terms of Railways Accident and Untoward Incident (Compensation) Amendment Rules, 2016 whereby, the statutory amount of compensation has been enhanced from Rs. 4,00,000/- (Four Lakhs) to Rs. 8,00,000/- (Eight Lakhs).

4. Learned counsel for the respondent/Railways has contended that the impugned judgment does not suffer from any infirmity or illegality because as per the DRM's report, i.e., Ext.R2, it has been categorically mentioned that the deceased was standing at the door of the compartment and he fell down due to his own negligence. It is urged that such negligent act on the part of the deceased comes within the purview of Exceptions (a) to (e) of the proviso of Section 124(A) of the Railways Act. It is argued that the accident took place in 2011 and the prayer for grant of enhanced compensation amount of Rs. 8,00,000/- (Eight Lakhs) in terms of Railways Accident and Untoward Incident (Compensation) Amendment Rules, 2016, is not tenable as it is well settled that the amendment in the Act or Rules cannot have retrospective operation.

5. Heard. It is not disputed that the deceased was a bona-fide passenger travelling on a valid ticket in Mumbai-Howrah Mail. The Tribunal has denied the compensation by placing reliance on the report of DRM (Ext.R2). It is apparent that in the said report, it is mentioned that the deceased must have fallen down from the train as he was travelling while standing at the open door. In this context it will be fruitful to refer to the provisions of Section 124(A) of the Railways Act, wherein, it is stipulated that the Railways can be exonerated from the liability to pay the statutory compensation, only if, the "untoward incident" comes within the purview of Exception (a) to (e) of proviso of Section 124(A), which are as follows:-

- (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.

In the case at hand, it is evident that the report (Ext.R2) of DRM, is hypothetical and speculative. The provisions of Section 124(A) are based on the principle of strict liability and the Railways are exonerated to pay the statutory liability, only

when, they can establish the fact that the "untoward incident" was covered by the Exceptions (a) to (e) of Section 124(A). It logically follows that the burden and onus lies on the Railways to prove the fact that the deceased died on account of the acts attributable to him as enunciated in Exceptions (a) to (e) of Section 124(A).

It is noticed that the respondent/Railways have not brought on record any clinching evidence or examined any eye-witness to substantiate and support the DRM's report, Ext.R2, that the untoward incident was occasioned by any criminal negligence on the part of the deceased or the deceased was insane or the injury was self-inflicted or was a case of suicide.

In the Explanation to Section 124(A), it is stated that passenger includes any person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes victim of an untoward incident. "Untoward incident" has been defined in Section 123 (c) (2) as the accidental falling of any passenger from a train carrying passengers.

It is abundantly clear that the Railways have not adduced any evidence to establish the plea that the death of the deceased was covered by the Exceptions to exonerate the Railways from the liability to pay the compensation. Even if, the deceased fell down on account of negligence as he was standing near the open gate of the compartment, then, also, such negligence cannot be attributed as a criminal act or self-inflicted injury on the part of the deceased. Since, the respondents/Railways have failed to examine any eye-witness, it is held that the accidental fall of the deceased is an untoward incident and the claimants are entitled to compensation to be paid by the Railways in terms of Section 124(A).

6. On the question whether the claimants are entitled to the enhanced compensation in terms of Railways Accident and Untoward Incident (Compensation) Amendment Rules, 2016, or not, the same can be answered by referring to the decisions of the Supreme Court in the case of *Rathi Menon Vs. Union of India* reported in (2001), 3, SCC 714. In the said case the Supreme Court has elaborately discussed as to why the claimants are entitled to enhanced compensation in terms of amended rules. The Supreme Court held that the compensation amount be paid to the claimants / appellants should be in terms of amended provision as denial of compensation amount at the relevant time of accident should be computed as per the purchasing power of the money at the relevant time. That due to inflation and rise in price index, the legislature in its wisdom, has enhanced the compensation amount taking into account the factors of escalation and rise in the price index and inflation. The ratio of the decision has been reiterated and has been followed by the Apex Court in the case of *N. Parameswaran Pillai and Another Vs. Union of India and Another* reported in (2002), 4, SCC 306, and paras 28 and 29 of the case of *Rathi Menon (Supra)* has been referred to, which reads as under:-

"28. The Central Government while changing the figures in compensation

amount after an interval of a decade was only influenced by the desire to update the money value of the compensation. In other words, what you were to pay ten years ago to one person cannot be the same if it is paid today in the same figure of currency notes. It is for the purpose for meeting the reality that the Central Government changed the figures.

29. The unjust consequence resulting from the interpretation which the Division Bench placed can be demonstrated in another plane also. If a person who sustained injury in a railway accident or in an untoward incident was disabled from making an application immediately and he makes the application a few years hence, is he to get the compensation in terms of the money value which prevailed on the date of the accident? Suppose a Tribunal wrongly dismissed a claim after a few years of filing the application and the claimant approaches the High Court in appeal. As it happens quite often now, some High Courts could take up such an appeal only after the lapse of many years and if the appeal is decided in favour of the claimant after so many years, what a pity if the amount awarded is only in terms of the figure indicated on the date of the accident."

7. Thus, in the light of the settled principle and the discussions made hereinabove, it will be just and proper to order and direct the Railways to pay the enhanced compensation amount of Rs.8,00,000/- (Eight Lakhs) in terms of the amended provision of the Railways Accident and Untoward Incident (Compensation) Amendment Rules, 2016, from the date of claim application with interest @ 9% per annum within three months from the date of receipt of copy of this order.

8. With the said observation and direction the appeal stands allowed.

9. Let a copy of this order be handed over to the learned counsel for the respondent/The Union of India for needful.