
(2000) 02 GAU CK 0036
In the Gauhati High Court
Case No : F.A.O. No. 80 of 1999

Minu Mai Devi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 124A, 2

Citation : (2002) ACJ 118 : (2000) 1 GLT 523

Hon'ble Judges : Brijesh Kumar, C.J;A.K. Patnaik, J

Bench : Division Bench

Advocate : D.C. Kath Hazarika, for the Appellant; B.K. Sharma and U.K. Nair, for the Respondent

Judgement

Brijesh Kumar, C.J.—This appeal is preferred u/s 23 of the Railway Claims Tribunal Act 1987, against the judgment and order dated 13.8.1999, passed by the Railway Claims Tribunal, Guwa-hati Bench, dismissing the Application No. 1 of 1998 preferred by the appellant for award of compensation on account of death of her husband Bhuben Nath, Constable No. 184 of Hojai G.R.P. Outpost.

2. We have heard Mr. D.C. Kath Haza-rika, learned Counsel for the appellant and Mr. B.K. Sharma, learned Counsel for the respondent.

3. The brief facts which do not seem to be in dispute are that the husband of the appellant, Bhuben Nath was Constable No. 184 in the G.R.P., posted at Outpost Hojai. On the fateful day, he was detailed for duty to check suspicious luggage of passengers at Hojai Railway Station and in connection thereof a Command Certificate was issued to him on 2.1.98. At about 9.15 p.m. when the Inter-City Express arrived at Hojai Railway Station, he fell down from the train due to heavy rush of passengers, in the meantime, the train moved and he was run over by the train. He died at the spot.

4. The appellant had approached the Railway Claims Tribunal for awarding

compensation u/s 124A of the Railways Act, 1989. The defence taken on behalf of the respondent was that the deceased was not a bona fide passenger of the train, nor a railway servant on duty. Therefore, he was not entitled for any compensation even though he may be involved in the untoward incident in which he was run over by the train. There is no dispute on behalf of the claimant-appellant that no pass was issued to the deceased by the railway authorities nor the fact that the deceased was not a railway employee. The Tribunal found that he was not travelling on ticket. He was not a railway servant nor any duty pass was issued by the Railways. He was not covered by the definition of the word "passenger". Therefore, claimant-appellant would not be entitled for any compensation.

5. The term passenger has been defined in Clause (29) of Section 2 of the Railways Act, 1989, which reads as follows:

(29) "passenger" means a person travelling with a valid pass or ticket.

6. Section 124A shall also be relevant for the purpose of meaning of the word "passenger". Section 124A reads as follows:

124A. 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.

7. From a perusal of the Explanation to Section 124A of the Railways Act, it is clear that for the purposes of Section 124A, i.e., for the purposes of compensation "passenger" includes railway servant on duty and a person with a valid ticket for travelling or a valid platform ticket and becomes a victim of an untoward incident.

8. The "Command Certificate" issued by the higher authorities of the establishment of the deceased, viz., G.R.P. is not in dispute and it is on record. According to this Command Certificate the deceased was authorised and detailed to check the suspicious luggage at Hojai Railway Station. The Command Certificate was issued by the in-charge of G.R.P. Hojai Outpost. It is not the case of the respondent that the establishment of G.R.P. was not entitled to get such checking done through its staff/constable or office-in-charge would not be authorised to issue Command Certificate. Perusal of the certificate shows that it is in a prescribed form titled as "Command Certificate". It clearly means that it authorised the person, i.e., constables who were issued this Command Certificate to be present at the Hojai Railway Station to check suspicious articles carried or to be carried by trains.

9. A perusal of the definition of the word "passenger" as given u/s 2(29) of the Railways Act as well as given in Explanation u/s 124A clearly indicates that so as to be entitled for compensation, the requirement is that the person who met with an accident was authorisedly present at the platform or the train when the accident took place. The fact which is not in dispute is that the husband of the appellant was detailed for performance of his official duty in respect whereof he was authorised to be there at the Hojai Railway Station. That being the position, in our view, presence of such a person at the railway station would fall in the same category as passenger.

10. In this connection, Explanation to Section 124A may once again be referred to, which makes it clear that the meaning of the word "passenger" is only for the purposes of Section 124A of the Railways Act. Under Explanation to Section 124A the definition of the word "passenger" has been made "inclusive", whereas u/s 2(29) it is confined to "meaning" of the word passenger. The change is from "means" to "includes". It is thus clear that for the purposes of Section 124A meaning of the word "passenger" becomes inclusive and it may include persons even other than those who are indicated in the provision. The list of persons cannot be treated to be exhaustive. Otherwise, there was no difficulty in providing in the Explanation to Section 124A that for the purposes of the said provision the word "passenger" would also "mean" the persons mentioned under Clauses (i) and (ii) to the Explanation. In that event, it would have exactly applied to those categories of persons to be treated as passenger for the purposes of Section 124A. But, that has not been done, instead the word "means" used in Clause (29) of Section 2, the word "includes" has been used in the Explanation to Section 124A of the Act. This makes it clear that category of persons mentioned in Clauses (i) and (ii) of the Explanation do not make the list

exhaustive of persons other than those mentioned in Clauses (i) and (ii) of the Explanation or those mentioned u/s 2(29) of the Act, may also be included in the definition of passenger for the purpose of Section 124A.

11. Needless to emphasise that such provision as contained in Explanation to Section 124A has to be liberally construed. By Amendment Act 28 of 1994 Chapter XIII (Sic. Section 124A) has been inserted into the Railways Act, 1989. This Chapter relates to liability of railway administration to pay compensation for injury or death of passenger due to accident. It is a self-contained Chapter dealing with the compensation payable to the passengers in case of accident. It is in the nature of social welfare legislation so as to provide relief to the victims or the dependants of the victim of railway accident/untoward incidents. For interpretation of provision of such a legislation, a liberal construction of the provision has to be made. Certain decisions on the point may be referred to- *Helen C. Rebello v. Maharashtra State Road Trans. Corporation* Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, while interpreting the provisions of the Motor Vehicles Act, the legislative intent and beneficial character of the legislation was taken into account in computing the compensation; *Hindustan Steel Works Hindustan Steel Works Construction Ltd. Vs. State of Kerala and others*, the interpretation of Welfare Fund Act was made keeping in view the fact that it was essentially to protect interest and welfare of the labourers; and *Spring Meadows Hospital v. Harjot Ahluwalia* 1998 CCJ 521 (SC), while considering provisions of Consumer Protection Act, 1986, it was held that being a beneficial legislation, the provision should receive a liberal construction. While considering the definition of the word "consumer" and the fact that it was inclusive definition "parent of the child" who suffered by wrong treatment, were also held to be consumer within the purview of the definition of the word "consumer".

12. In the present case, we find that u/s 2(29) passenger means any person travelling with a valid pass or ticket and for the purposes of Section 124A inclusive definition has been provided "including" all those persons as passenger who purchase a valid ticket for travelling or a valid platform ticket besides a railway servant on duty. The main ingredient, to be found in both the definitions is that the presence of the person on the train or at the platform should be validly authorised. For this purpose, inclusive definition of the word "passenger" under Explanation to Section 124A of the Act considers railway servant on duty or a holder of platform ticket or a valid ticket for travelling to be a "passenger". By making the definition inclusive, other persons falling in the similar category may also be included within the meaning of the word "passenger" by giving liberal construction to a beneficial legislation specially legislated to compensate a victim or his dependants in the case of his death in a railway accident. In this background, it may be considered that there is no denial of the fact that the deceased was a constable in the Government Railway Police which is a Government organisation, though may not be a railway organisation. The Officer-in-Charge of the G.R.P. Outpost, Hojai had detailed him for checking the

suspicious luggage of passengers on the Hojai Railway Station. A Command Certificate, as prescribed, was issued for the purposes to the deceased. He was thus duly authorised to be present at the railway station including the railway platform or the compartment of a train to check suspicious luggage of passengers. His presence was in connection with official discharge of his governmental duties as acceptable to the railway administration also. His presence thus also cannot be treated to be different from presence of a person holding a platform ticket or a railway servant on duty.

13. In connection with the above, it may be noted that Part VI of Assam Police Manual provides for Government Railway Police. Its jurisdiction is confined to railway limits including railway station and its buildings. The officers and members of G.R.P. work in liaison and cooperation with railway staff and officers. It is within their duties to prevent and detect cognizable crimes within railway limits and to provide assistance to railway staff. The constables deputed at the railway station, have a duty to keep a watch on railway passengers and so on and so forth. Thus, for the purposes of Section 124A of the Act their presence at the railway station would be like that of holder of a platform ticket, or that of a railway servant on duty. It is nobody's case that a holder of Command Certificate issued to a constable of Government Railway Police, for routine official discharge of his duties as a constable of Government Railway Police was also obliged to purchase a platform ticket for the purposes of going to railway station. Command Certificate seems to be an acceptable authorisation. Such person would be covered by inclusive definition for the purposes of Section 124A of the Act. In our view, the Railway Claims Tribunal has erred in holding that the dependants of the victim would not be entitled for compensation u/s 124A of the Railways Act, 1989. It has assigned a very restricted meaning of the word "passenger" against the "inclusive" definition of the word for the purposes of Section 124A of the Act.

14. In the result, the judgment dated 3.8.1999 passed by the Railway Claims Tribunal is set aside and it is provided that the respondent shall pay to the appellant the amount of compensation in accordance with the Schedule for compensation read with Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 within a period of two months from today.

Cost easy.