(2017) 03 DEL CK 0235

In the Delhi High Court

Case No : 134 of 2016

RACHNA & ORS. APPELLANT

Vs

UNION OF INDIA RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Railways Act, 1989, Section 124A, Section 123(c), Section 2 (29) - Compensation on account of untoward incidents - Definitions - Definitions

Citation : (2017) 03 DEL CK 0235

Hon'ble Judges : J.R. Midha

Bench : SINGLE BENCH

Advocate : S.K. Vashistha, Ms.Nidhi Vashistha, Amitava Poddar

Judgement

1. The appellant has challenged the impugned judgment dated 3rd February, 2016 whereby the Railway Claims Tribunal has dismissed the claim application of the appellants.

2. The appellants are the widow, son and two daughters of late Dhan Prakash who died on 28th November, 2014. The deceased, Dhan Prakash fell down from Delhi Saharnpur passenger train at Old Delhi Railway Station. Late Dhan Prakash was holding a valid MST pass No.87931204 at the time of the accident. The respondent contested the claim on the ground that the deceased was negligent in boarding the train and therefore, not entitled to the compensation.

3. The Railway Claims Tribunal dismissed the claim on the ground that the accident does not fall within the definition of untoward incident within the meaning of Section 123(c) read with Section 124-

A of the Railways Act as the deceased fell down between the platform and the moving train while boarding a moving train.

4. Section 124A of the Railways Act lays down strict liability or no fault liability in case of untoward incidents. Section 123(c) of the Railways Act defines "untoward

incident'' to include the accidental falling of any passenger from a train carrying passengers. The word ''passenger'' has been defined under section Section 2 (29) of the Railways Act as a person travelling with a valid pass or ticket. The Explanation to Section 124A clarifies that the word ''passenger'' includes a railway servant on duty; and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket and becomes a victim of an untoward incident.

5. The aforesaid provision for compensation in the Railways Act is a beneficial piece of legislation which should receive a liberal and wider interpretation as it would advance the object of the statute and serve its purpose. The untoward incident shall cover the accidents suffered by a bona fide passenger i.e. a passenger with a valid ticket, pass or a platform ticket in the railway premises.

6. In Santosh v. Union of India, Through General Manager, Western Railway, Mumbai, Claim No.OA(IIu)621/2012 decided on 9th December, 2016, the Railway Claims Tribunal, Mumbai Bench has interpreted the untoward incident in Section 123(c) of the Railways Act as under:

"The fundamental requirement before a victim or his family could claim compensation for injuries or death as the case may be is that the victim shall have been a passenger. The expression is technically used to limit it only to a person who has a valid ticket or a pass, in terms of s 2 (29) of the Railways Act. As regards the applicability of provision for untoward incident, the Act creates a notional extension of the definition through explanation to s 124A of the Railways Act also to a person who holds a platform ticket who may not have authority to travel by train but whose presence in the railway premises cannot be construed as unauthorised and injury or death to such a person shall also be taken as an actionable as a specie of untoward incident.

There are some confusions about the test of a person being a ''passenger'' (i) expressed in contra-distinction to an unauthorized person/ trespasser and (ii) raising presumptions as regards the character of a person as ''passenger'' in the train. Every person who transits in a train does not get to be a ''passenger'' under the Railways Act. There are three categories:

(i) a person with a valid ticket to travel;

(ii) a person who holds a railway pass to travel and

(iii) a person who holds a platform ticket. In every one of the categories, so long as he is in railway premises or a train, he shall be taken as a passenger.

His or her presence in the railway premises or a train shall be taken as authorized. It is for this reason that there are decisions which make an extended meaning to the definition passenger to a person who comes into the plat form and gets into a wrong train (Gaurav Kapoor and others v Union of India III(2014) ACC 639 (Del) or a person who purchases a passenger train ticket and gets into an express train (Santoshi v Union of India, FAO 267/2014 (Del)); person travelling atop a train and not inside a passenger compartment (Raj Pal Goel and another v Union of India 2014 ACJ 2315) or a person breaking journey without an endorsement and getting into another in continuation of the journey to the destination station (Dwarika Mahto and others v Union of India 2013 ACJ 768). In all these situations, it is possible to feed meaning and logic to the decisions, only if we recognise that primacy always is the lawful authority to enter the railway premises when the incident of travel itself becomes secondary. The judicial tool of liberal construction for a welfare legislation could alone justify these decisions in order that the categories of persons to whom the benefit is intended to apply, being generally poor where only a modest compensation is provided under the Act, ought not to be denied even such a small benefit."

7. The record of the Railway Claims Tribunal has been received and perused.

8. This Court is of the view that the deceased was a bona fide passenger and the accident in question falls within the definition of untoward incident and therefore, the appellants are entitled to the compensation under Section 124A of the Railways Act and it does not fall in any of the clauses (a) to (e) of the Proviso to Section 124A.

9. The appeal is allowed and the respondent is directed to deposit Rs.4 lakhs along with interest @ 9% per annum from the date of filing of the application i.e. 31st December, 2014 till realization.

10. The aforesaid amount be deposited by the respondent with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Rachana within a period of four weeks from today.

11. Appellants no.1 and 2 are present in Court along with the passbooks of appellants no.1 to 3. The particulars of the savings bank accounts of appellants no.1 to 3 are as under:

(i) Appellant No.1 (Rachna) A/c No.0512000100434105 Punjab National Bank Aminagar Sarai, Distt. Baghpat MICR Code: 250024052 IFSC Code: PUNB0051200

(ii) Appellant No.2 (Deepak Sharma) A/c No.0512000100402638 Punjab National Bank Aminagar Sarai, Distt. Baghpat MICR Code: 250024052 IFSC Code: PUNB0051200

(iii) Appellant No.3 (Anju Sharma) A/c No. 05120001004029892 Punjab National Bank

Aminagar Sarai, Distt. Baghpat MICR Code: 250024052 IFSC Code: PUNB0051200

12. Upon the aforesaid amount being deposited, UCO Bank, Delhi High Court Branch is directed to keep Rs.3 lakh in 60 FDRs of Rs.5,000/- each for the period 1 month to 60 respectively months with cumulative interest in the name of appellant no.1.

13. The balance amount be released to appellants no.1 to 4 by transferring the same to their savings bank accounts in the following ratio:

Appellant no.1 40%

Appellant no.2 20%

Appellant no.3 20%

Appellant no.4 20%

14. The appellants shall furnish the particulars of passbook of appellant no.4 as well as the PAN cards of the appellants to UCO Bank, Delhi High Court Branch.

15. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to appellants.

16. The maturity amount of the FDRs shall be transferred to the aforesaid savings bank account of appellant No.1 with Punjab National Bank, Aminagar Sarai, Distt. Baghpat, U.P.

17. No cheque book or debit card be issued to the appellant No.1 to Punjab National Bank, Aminagar Sarai, Distt. Baghpat, U.P. without permission of this Court. However, in case, the debit card/cheque book have already been issued, the concerned bank shall cancel the debit card and/or cheque book.

18. No loan or advance or pre-mature discharge of the FDRs shall be permitted without the permission of this Court.

19. Learned counsel for the appellant submits that pre-mature discharge of FDR be permitted at the time of the marriage of respondent no.4. The appellant No.1 is granted liberty to approach UCO Bank, Delhi High Court Branch whenever the marriage of respondent no.4 is fixed. The appellant shall file an affidavit along with the marriage card before UCO Bank, Delhi High Court Branch whereupon UCO Bank, Delhi High Court Branch shall pre-maturely discharge the last 20 FDRs of Rs.5,000/- each (totalling Rs.1 lakh) along with interest to appellant no.1. UCO Bank, Delhi High Court Branch shall, however, get the factum of marriage verified through Punjab National Bank, Baghpat Branch

20. List for reporting compliance on 26th May, 2017.

21. Copy of this judgment be given dasti to counsel for the parties under the signature of the Court.