
(2011) 03 DEL CK 0047
In the Delhi High Court
Case No : F.A.O. 239 of 2009

Roshan Lal and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (2012) ACJ 2308 : (2011) 179 DLT 47 : (2011) 123 DRJ 46

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; Jayesh Gaurav, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The Railway Claims Tribunal has dismissed the claim petition filed by the Appellants who are the dependents of the deceased found dead on a platform though was a bona fide passenger for the reason that there were no external injuries on the body of the Appellant and the medical report prepared by the concerned authorities have opined that the death of the deceased was on account of administration of poison which is proved by Ex.AW1/13, part of the post-mortem report. There is no other evidence which has been led on behalf of the Appellant to show as to how it is the case of untoward incident which may fasten a liability upon the Respondent railways.

2. The relevant observations made by the Railway Claims Tribunal while deciding issue No. 3 & 4 are reproduced hereunder:

On the other hand, the circumstances arising out of the case would diffuse such suspicion. The contents of the copy of the PM Report, Ex.AW-1/10, would reveal that the deceased was found dead on platform No. 12/15 West Side near foot over bridge on 3.1.2007 at 5 AM vide D.D. No. 5A. It would further disclose that there were no apparent visible external injuries on the dead body of the

deceased. The opinion regarding the cause of the death of the deceased was reserved awaiting the receipt of visceral-chemical report analysis. Admittedly, the dead body of the deceased was identified by the brother of the deceased namely Shri Pradeep Kumar as per Ex.AW-1/5, and that, at that time, he did not suspect any foul play regarding the death of the deceased. That means he did not suspect any foul play in the death of the deceased. On the other hand, he appears to have stated to the Police under Ex.AW-1/5 that there is no suspicion with regard to the cause of death of the deceased, and, he did not suspect any foul play. This was on 3.1.2007. Thus, there was no suspicion of any kind regarding the cause of death of the deceased, nor they suspected any foul play in the death of the deceased, nor they suspected any foul play in the death of the deceased at the relevant time. But only subsequently, it appears that on 2.11.2007 the applicant is stated to have written a letter to the ACP stating that he suspects that the death of the deceased might have been caused by some miscreants by administering poison to the deceased in order to commit theft of his articles vide Ex.AW-1/13. The said statement regarding the suspicion about the cause of death of the deceased is not supported by any tangible material. It has no rational basis. It is only a suspicion on the part of the AW-1, which has no rational basis. Moreover, the said suspicion entertained by AW-1 as late as on 2.11.2007, was not expressed by the brother of the deceased on 3.1.2007 when he had identified the dead body of the deceased, and, stated that they did not suspect any foul play regarding the cause of death of the deceased. The said suspicion of AW-1 did not have the support of his own son, who had identified the dead body. Therefore, the suspicion regarding the cause of death of the deceased, as alleged in the letter, Ex.AW-1/13 on 2.11.2007, and, reproduced in his affidavit, appears to be a clear afterthought with an eye on the claim, with intent to make a claim against the railways. There is absolutely no relevant and cogent material on record to show that the deceased had been administered poison by some third person with intent to cause his death. On the other hand, the contents of Ex.AW-1/5 would clearly demolish, and, falsifies the story sought to be developed subsequently by the applicants. The possibility of the deceased himself consuming poison and having died of self-poisoning cannot be completely ruled out in the facts and circumstances of his case. Be that as it may, at any rate, there is no reliable and cogent material, which is acceptable in the eye of law to show that the deceased has died on account of an untoward incident within the meaning of Section 123(c) read with Section 124-A of the Act.

Not every death of a passenger in the course of his travelling by the train gives a claim to compensation, unless it arises out of an untoward incident within the meaning of Section 123(c) of the Act. The onus is upon the applicants to show that the death of the deceased was on account of untoward incident by adducing reliable evidence which is acceptable in the eye of law and they have failed to discharge that burden. Therefore, the evidence adduced on behalf of the applicants is neither sufficient, nor satisfactory to show that the death of the deceased had occurred as a result of an untoward incident. Therefore, the

necessary result that should follow is that the death of the deceased did not occur on account of any untoward incident u/s 124-A of the Act.

3. The Tribunal in the aforesaid circumstances dismissed the claim petition.

4. The learned Counsel for the Appellant submits that in view of language of Section 124(A) of the Railways Act 1989 even in the circumstances as has been arisen out of the incident which has caused death of the deceased passenger a bona-fide passenger would call for an action against the Respondent and they would be liable to pay compensation to the dependents of the deceased.

5. At this stage, it would also be appropriate to take note of the definition of untoward incident as mentioned u/s 123(c) of the Railways Act, 1989 which reads as under:

123. Definitions.-

(a) & (b) xxx xxx

(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 (28 of 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"

6. None of the aforesaid has been proved to have been caused qua the deceased which may bring the cause of the death of the deceased within the meaning of "untoward incident".

7. Learned Counsel for the Appellant has also relied upon a judgment delivered by the Hon'ble Supreme Court in the case of Jameela and Others Vs. Union of India (UOI), wherein the Supreme Court has been pleased to observed as under:

5. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation u/s 124A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed

that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable u/s 124A of the Act. 6. Chapter XIII of the Railways Act, 1989 deals with the Liability of Railway Administration for Death and Injury to Passengers due to Accidents. Section 123, the first section of the Chapter, has the definition clauses. Clause (c) defines "untoward incident" which insofar as relevant for the present is as under:

123 (c) untoward incident means-

(1) (i) xxxxxxxx

(ii) xxxxxxxx

(iii) xxxxxxxx

(2) the accidental falling of any passenger from a train carrying passengers.

Section 124A of the Act provides 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.(Emphasis added)

9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment

from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in Clause (c) to the proviso to Section 124A. A criminal act envisaged under Clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.

10. We are, therefore, constrained to interfere in the matter. The judgment and order of the High Court coming under appeal is set aside and the judgment and order of the Tribunal is restored. Since a period of more than 10 years has already elapsed from the date of the judgment of the Tribunal, the compensation money along with interest need not be kept in fixed deposits, but should be paid to the Appellants in the ratio fixed by the Tribunal. The payment must be made within 2 months from today.

8. A bare perusal of the aforesaid observation made by the Supreme Court goes to show that the said judgment does not come to the rescue of the Appellant.

9. The Appellant has also relied upon following judgments:

i) Vaishali v. Union of India 4 (2010) ACC 3.

ii) Union of India and Ors. v. Bundiya Devi 4 (2010) ACC 117 (DB).

iii) Union of India (UOI) Vs. Virendra Bharti and Another, .

iv) Union of India v. Prabhakaran Vijaya Kumar and Ors. 2008 (2) TAC 777 (SC).

v) Parisa Anjali and Ors. v. Union of India 4 (2010) ACC 99.

10. In the case of Vaishali v. Union of India (Supra), the dead body of the deceased was found lying near km.545/2426 near Shegaon Railway Station. The claim for compensation filed by the widow in that case was dismissed by the Railway Claims Tribunal. However, the High Court taking note of the postmortem report which indicated that the death may be due to railway accident awarded compensation which is not the case in hand.

11. In the case of Union of India and Ors. v. Bundiya Devi (Supra) where a Division Bench of High Court of Allahabad held that negligence attributed to the deceased was not covered by the exception mentioned in Section 124A of the Railways Act and thus, awarded compensation because the deceased had accidentally fallen from the train while getting down.

12. In the case of Union of India v. Virendra Bharti and Anr. (Supra), denial of compensation was reversed holding that because the passenger standing in the footboard of train with valid ticket having fallen down, the dependents were entitled to compensation.

13. The judgment delivered by the Apex Court in the case of Union of India v.

Prabhakaran Vijaya Kumar and Ors. (Supra) relied upon by the Appellant is also of no help to the Appellant because that case is also a case of the deceased having fallen down from the running train.

14. Learned Counsel for the Appellant in his written notes has also referred to the following cases i.e.; Union of India v. Smt. Kamlesh Goyal 2002 (2) RCR (Civil) 843 P.A. P.A. Narayanan Vs. Union of India (UOI) and Others, ; Union of India v. Satish Kumar 2010 ACJ 515 Smt. Parveen @ Parro Vs. Union of India (UOI), . However, the facts of either of these cases does not help the case of the Appellant inasmuch as in the case of UOI v. Kamlesh Goyal it has been held that every kind of bodily injury would not fasten the liability upon the railways except the case of robbing so as to bring him under the definition of untoward incident. In P.A. Narayanan's case, the compensation was awarded on account of dereliction of duty on behalf of GRP & RPF where criminal act like rape, robbery, murder etc., was committed in the railway precincts. In the case of Satish Kumar, it was a case of injury caused to the deceased when the passenger was thrown out of the train because of over-crowding. Similarly, in the case of Praveen, deceased suffered injuries on account of assault committed upon him, again when the deceased was thrown out of the train.

15. In the present case, the death of the deceased took place because of poisoning. There is nothing on record to prove that the railway authorities has anything to do with the poisoning incident or that they were negligent in avoiding such poisoning. Hence the claim petition filed by the Appellant was rightly rejected by the Tribunal.

16. The judgment cited by the Appellant in the case of Parisa Anjali and Ors. v. Union of India (Supra) is again of no help because in that case also, the deceased had fallen from a running train.

17. In view of the aforesaid, in the absence of any evidence led by the Appellant for the death of the deceased being caused by poisoning, the negligence on the part of the Respondents cannot be presumed as is being contended by the Appellant. Thus, there is no infirmity in the order passed by the Tribunal. Accordingly, the appeal is dismissed.