
(2011) 09 DEL CK 0465
In the Delhi High Court
Case No : FAO No.72 of 2011

Santosh and Others (Smt.) APPELLANT
Vs
Union of India RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123, 124A

Citation : (2013) ACJ 381 : (2011) 8 AD 562 : (2012) 2 TAC 289

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sangita Rai, for Mr. R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This case has been passed over 3 times before. This is the 4th time the matter has been called out and it is 2:40 P.M. On the first call, passover was sought on behalf of the appellant. On the next two Passovers, no one appeared on behalf of the appellant. Counsel for the respondent was represented on the first call. Since no one has appeared for the appellants, I have perused the impugned order, the record before the Railway Claims Tribunal and having heard counsel for the respondent, am proceeding to dispose of the appeal.

2. The challenge by means of this First Appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned order of the Railway Claims Tribunal dated 13.10.2010 which dismissed the Claim Petition of the appellants, and which Claim Petition was filed on the ground that there was death of the deceased, Sh. Mohinder Singh in an untoward incident on 1.7.2009.

3. The facts as alleged by the appellants/ claimants were that Sh.Mohinder Singh boarded the train 2MNR from Vivekanandpuri Railway Station to Gurgaon on 1.7.2009, however, due to heavy rush of passengers he fell down from the train

at Viveknandpuri station itself and died on the spot. It was claimed that the death was on account of an untoward incident as stated in the Section 123(c) of the Railways Act, 1989 read with Section 124A of the said Act. The respondent contested the petition and claimed that the deceased died on account of his own negligence because the deceased tried to get on a running train which had gathered speed, and therefore the deceased was unable to board the train and he fell down and was crushed under the wheels of the train.

4. The Railway Claims Tribunal has referred to the DRM's report which contains the statement of the guard of the train in question and who was the eye witness to the incident. In the statement, the guard, Sh. Shamsuddin mentioned that after the train 2MNR had stopped at Vivekanandpuri Railway Station for two minutes and therefore restarted, after 8/9 coaches have passed, the deceased tried to board the train although the train had gathered some speed and consequently the deceased was unable to board the train. It was stated that the deceased therefore fell down while trying to get on to a fast moving train and was crushed under the wheels of the train. This statement of the guard was recorded immediately after the incident.

5. No doubt mere negligence of a bonafide passenger is not sufficient to deny a claim under the Railway Claims Tribunal Act, 1987 as per the decision of the Supreme Court in the case of Jameela and Others Vs. Union of India (UOI), , however, the judgment in the case of Jameeia (supra) also states that such cases which are covered under the proviso to Section 124A, i.e. where the negligence is not an ordinary negligence but there is criminal negligence, then, the deceased is responsible for his own death and compensation cannot be allowed.

6. Whether the negligence in boarding of a running train is normal negligence or criminal negligence depends on the facts of each case. If suppose the train had just started, and because of an untoward incident, death takes place of a person, then, in accordance with the ratio of the decision in the case of Jameeia (supra) may be on the facts of a case, it can be said that there is an untoward incident and compensation can be awarded. However, if a train has gathered speed, like in the facts of the present case, it cannot be said that the negligence is ordinary negligence. The guard who was an eye-witness had specifically deposed that 8/9 coaches of the train had already passed before the deceased tried to board the train. The very fact that 8/9 coaches had passed, that too in a local train which normally gathers great speed immediately after it starts, the negligence in trying to board such a train amounts to criminal negligence so as to hold that the railways/respondent ought not to be held liable for the incident in question and that it should be held that the deceased died on account of self-inflicted injury which is the subject matter of the proviso to Section 124A of the Railways Act. I hold therefore that the death took place not because of an untoward incident as envisaged in Section 123(c) read with Section 124A of the Railways Act, 1989, and that the death in fact took place on account of criminal negligence of the deceased in trying to board a fast moving train and which is therefore a self-

inflicted injury, consequently, the respondent/railways is not liable.

7. In view of the above there is no merit in the appeal. The appeal is dismissed leaving the parties to bear their own costs.

8. Trial Court record be sent back.