

(2017) 01 DEL CK 0218

In the Delhi High Court

Case No : 216 of 2009

SARASWATI DEVI & ORS

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

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

Citation : (2017) 01 DEL CK 0218

Hon'ble Judges : J.R. Midha

Bench : SINGLE BENCH

Advocate : Rohit Aggarwal, Joydeep Mazumdar, Rohit Dutta

Judgement

1. The appellants have challenged the award of the Railway Claims Tribunal whereby their application for compensation has been dismissed.
2. The appellants are the widow, son and daughters of late Amar Singh who had gone to New Delhi Railway Station on 31st August, 2007 to see off his friend. The deceased had a valid platform ticket with him and due to heavy rush at the platform, he fell down near the Central Bridge of platforms 8 and 9 at about 12 pm and came under the wheels of Dehradun Shatabdi Express which was shunting at the relevant time.
3. The learned Tribunal held that the incident does not fall within the definition of untoward incident defined in Section 123(c) of the Railways Act, 1989.
4. Learned counsel for the appellant urged at the time of the hearing of the appeal that the incident in question falls within the meaning of "untoward incident" in Section 123(c) of the Railways Act. It is submitted that the Section 123(c) of the Railways Act is a beneficial piece of legislation and has to be given a wider meaning.
5. Mr. Joydeep Mazumdar, learned counsel for the Railways has produced the

record of DRM, Railways which confirms the genuineness of the incident dated 31st August, 2007. As per the record of the DRM Railways, the deceased fell down near the Central Bridge of platforms 8 and 9 at New Delhi Railway Station on 31st August, 2007 at about 12.00 pm and was run over by Dehradun Shatabdi Express and the deceased had a valid platform ticket at the time of the accident.

6. 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.

7. 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.

8. 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."

9. The accident in question is an 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.

10. The appeal is allowed and the compensation of Rs.4 lakh is awarded to the appellant along with interest @ 9% per annum from the date of filing of the application before the Claims Tribunal i.e. 2nd January, 2008.

11. List for disbursement on 22nd February, 2017.

12. The respondent is directed to deposit the compensation along with interest with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Saraswati Devi within 30 days. UCO Bank shall keep the said amount in fixed deposit till further orders.

13. The appellants shall remain present in Court on the next date of hearing along with particulars of their savings bank accounts near their place of residence.

14. This Court appreciates the assistance rendered by Mr. Joydeep Mazumdar, learned counsel for the Railways in this matter.

15. Copy of this judgment be given dasti to counsels for the parties under the signature of the Court Master.