

(2013) 10 KL CK 0057
In the High Court Of Kerala
Case No : M.F.A. No. 88 of 2009

Sivakala and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) 1 KLJ 245 : (2014) 1 KLT 720

Hon'ble Judges : K.M. Joseph, J;A. Hariprasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—Appellants are applicants 2 to 4 in O.A. No. 123/97 before the Railway Claims Tribunal, Ernakulam Bench. They claimed compensation. It is their case that their predecessor in interest, Kunjukrishna Panicker, was involved in an untoward incident on 04.8.1996 near the southern end of the Kadakkavur Railway Station. It was their case that the deceased came to the Kadakkavur Railway Station and purchased a ticket to go to Trivandrum and that he was waiting for the Trivandrum bound Bangalore Express and while the deceased was standing on the west side edge of south end of the platform, train No. 6320 Madras Mail passed through at a high speed from the southern direction without blowing whistle and unexpectedly the deceased Kunjukrishna Panicker fell down to the track on account of the heavy blow of wind and he was run over and killed on the spot. The respondent contested the matter. It was contended that the deceased did not fall from any train. It is alleged that he was not a bona fide passenger and that he was run over by the train while crossing the railway track at KM 188/10-11, near Kadakkavur railway station.

2. The tribunal raised seven Issues. As far as Issue No. 1 is concerned, which was whether the applicants 1 to 5 were dependants, it was found that applicants 1 to 5 were the dependants. In regard to issue No. 2, it is not relevant for our purpose as it related to whether the applicant No. 6 was the only dependant. The Issue was answered against by holding that the 6th applicant was not a

dependant. The 6th applicant had not filed any appeal. No doubt, she is the second respondent in this Appeal. The tribunal further found that the deceased was not a bona fide passenger. More importantly, answering Issues 4 and 5 which were as to whether the applicants had proved that Kunjukrishna Panicker died in an untoward incident and whether the respondent had proved that the deceased was run over by the train as alleged by them, the tribunal found in favour of the respondent. It is found that it is a clear case where the deceased was run over by the train for which the applicants are not entitled to any compensation. It is feeling aggrieved by the same that the appellants are before us.

3. We heard the learned counsel for the appellants and the learned counsel appearing for the first respondent.

4. Learned counsel for the appellants would submit that in this case there was indeed an untoward incident. He drew our attention to the definition of the word "passenger" in Section 124A of the Act which reads as follows:

124 A. 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.

He would therefore say that having purchased a valid ticket and as Kunjukrishna Panicker died as alleged by the applicants, the appellants were entitled to get compensation on the basis that there was an untoward incident. Learned counsel also drew our attention to the Judgment of a Division Bench of this Court in Krishnakumar. G. Vs. Union of India, .

5. Per contra, learned counsel for the first respondent would support the order of the tribunal. He would also, in fact, point out that Ext. All final report would show that actually the deceased was found about fifteen metres away from the southern end of the platform towards the south-west and it is clearly improbabilised the case of the appellants.

6. The evidence consisted of Exts. A1 to A16 besides the documentary evidence. The first appellant was examined as P.W. 1. There were other witnesses also examined. On the side of the respondent, R.W. 1 who was the Station Master at the time of the accident and who subsequently retired, was examined.

7. The case of the appellants as pleaded itself was that the deceased had come to Kadakkavur railway station and he purchased the ticket to go to Trivandrum. According to them, the deceased was waiting for the Trivandrum bound Bangalore Express. It was scheduled to arrive at 2/10 PM. It is the further case of the appellants that the deceased was standing on the west side edge of the southern end of the platform. It is their further case that while so, Madras Mail passed through at a high speed from the southern direction without blowing whistle. More important is the next development as alleged by the appellants which is that Kunjukrishna Panicker fell down to the track on account of the heavy blow of wind and he was run over and killed.

8. We will take the pleadings as they stand. The witnesses examined on the side of the appellants also have almost spoken on the same lines. We will proceed on the basis that the appellants have established what they have alleged. The question which arises for our consideration would be that taking the fact as alleged as established, would it constitute an untoward incident as contemplated in the Act. The word "untoward incident" has been defined in Section 123 of the Act which reads as follows:

123. Definitions.- In this Chapter, unless the context otherwise requires,-

(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.

9. Section 124A provides for compensation being granted when an untoward incident occurs. It is irrespective of whether there was any wrongful act, neglect or default on the part of the railway administration. As far as the definition of the word "untoward incident" is concerned, it is significant to immediately notice that it is defined as "meaning" what is provided thereunder. To emphasise, the words "untoward incident" is not defined to say that it includes the various contingencies which are mentioned thereunder. This means that the definition of the word "untoward incident" in Section 123(c) is exhaustive. It can only be construed having regard to the further consideration that the scheme of the Act appears to be that the Legislature has mulcted the railway with the liability to pay compensation without reference to there being any need to prove wrongful act, neglect or default on the part of the railway administration. The liability imposed on the railways can, therefore, be held to be not a tortious liability as understood in law. It is true that the provision should receive a liberal construction, but we cannot carry the matter to the point where if the facts as established would show that the incident cannot be brought under "untoward incident", still, we must somehow strain ourselves to bring the matter within the scope of "untoward incident". As far as the facts of this case is concerned, the only portion of the word "untoward incident" which may be relevant if at all, is clause (ii) which provides that if there is accidental falling of any passenger from a train carrying passengers, it would be an "untoward incident".

10. We find that the reliance placed by the learned counsel for the appellants on the Explanation to Section 124A by which the word "passenger" is stated to include a person who has purchased a valid ticket for travelling by train carrying passengers on any date or a valid platform ticket and becomes the victim of an untoward incident. If we read sub-section (2) of Section 123(c) by incorporating the concept of passenger in the Explanation to Section 124A, it would read as follows:

the accidental falling of any person who has purchased a valid ticket for travelling by a train carrying passengers.

This is the portion which is relevant for our purpose. We need not be detained by the other limb of clause (ii) of the Explanation to Section 124A which does not arise for our consideration. On reading the definition as aforesaid, still the word "untoward incident" would mean only that there must be an accidental falling of the passenger as aforementioned from a train carrying passengers. In this case, even the admitted case of the appellants themselves was that the deceased passenger was standing on the platform. He wanted to alight the train going towards Trivandrum. It is the case of the appellants themselves that the ill-fated passenger was completely caught off guard by the sudden arrival of Madras Mail coming from the south and because of the wind it generated he fell to the track

and was run over. There are two factual issues which must immediately catch our attention. The Madras Mail was not scheduled to stop at the station. Secondly, the ill-fated passenger was not scheduled to board the Madras Mail. This is not a case where a passenger was trying to board a train and he falls by way of an accidental fall from the train. The law requires the accidental felling of the passenger from a train carrying passengers. We find, in the facts of this case, even accepting all that has been said by the appellants, that we cannot bring the case of the ill-fated passenger as one where he fell from the train. He fell, according to the appellants, on account of the wind, when he was standing on the platform and when the train which was not scheduled to stop at the platform, passed by.

11. We have our reservations about accepting the very case of the appellants that the accident took place as alleged by them. But, we are merely assuming that the death occurred as alleged by them. We have no reluctance in pronouncing that even if it be so, it will not fall within the four corners of the word "untoward incident" as defined in Section 123 of the Act. We are, however, not resting our decision merely on the aforesaid reasoning. We find ourselves in complete agreement with the further reasoning of the tribunal that this is a case where actually the deceased passenger had been run over by the train. He was trying to cross the track. The respondents have examined the then Station Master. He has categorically stated that one minute before the time when the Madras Mail was to pass through the station as was required of him, he went to give the signal for the train to pass through by going over to the southern side of the platform. He speaks about seeing an old man climbing down from the hill towards the track. No doubt, he does not say that the man was run over. He would say that he came back to attend his duties and then he was told later that a man was involved in an accident. R.W. 1 has spoken as follows:

When I was standing on the platform I saw a person a saffron dressed old man and he was getting down from the hill towards the track. The incident took place at a time when I was standing on the platform and immediately after he got down from the hill and the train passed through immediately. I had gone to my office for my duty as I have to attend other trains. Some passers by immediately came to and told that a aged person was hit by train and had fallen down by trespassing. At the time the train was not having a halt at Kadakkavur railway station there were no passengers including the deceased on the platform.

12. We are inclined, therefore, in this case, to think that the appellants have failed to establish on their own showing that the deceased passenger died as a result of an untoward incident as contemplated in Section 123. More over, as pointed out, there is evidence in this case to probabalise that the deceased died as a result of his being run over when he was trying to trespass into the track. As we see no merit in the Appeal, the Appeal is dismissed.