

(2008) 03 DEL CK 0072
In the Delhi High Court
Case No : FAO No. 357 of 2007

Smt. Dharambiri Devi and Others		APPELLANT
	Vs	
The Ministry of Railway and Another		RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Citation : (2008) 149 DLT 434

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : U.S. Chaudhary, for the Appellant; V.S.R. Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM. No. 12714/2007

Allowed subject to all just exception.

FAO. No. 357/2007

1. Learned Counsel for the parties state that the appeal can be disposed of without summoning the record but with reference to the annexures filed along with the instant appeal because the annexures are true copies of the relevant record of the Railway Claim Tribunal.
2. Vide impugned order dated 4.6.2007 the Railway Claim Tribunal has dismissed a claim petition filed by the appellants holding that the evidence on record establishes that the deceased Yogender Kumar, son of appellant No. 1 and brother of appellants 2 and 3 did not die in an untoward incident.
3. In reaching the view afore-noted, the Tribunal has disbelieved the testimony of one Balkishan examined as AW-2 and has referred to the record of investigation conducted by RW-1, Officer In-charge of the Police Post Railway GRP Shahdara, proved as Ex.RW-1/1. Needless to state the appellant examined

as AW-1 was admittedly not an eye witness to the death of her son.

4. The Tribunal has observed that the procedure prescribed under the Railway Act is a summary procedure and strict Rules of Evidence are not applicable.

5. AW-2, Balkishan, who claimed to be an eye witness stated that the deceased a co-passenger was standing near the exit of the bogey which was over crowded and fell down from the train due to a sudden and violent jerk. He stated that immediately after the accident which took place near B- cabin, railway police reached and he i.e. Balkishan gave his name and address to the police official.

6. The Tribunal has noted that the names of eye witnesses were noted by the investigating officer and were a part of Ex.RW-1/1. That Balkishan's name was not in the list of persons listed by the investigating officer as the ones who volunteered as the eye witness immediately after the accident.

7. The second reason given by the Tribunal to disbelieve the testimony of AW-2 is the postmortem report of the deceased; the place at which the body was recovered; and the nature of injuries on the body.

8. To quote from the impugned order, the Tribunal has recorded as under:

The entire investigation file proved though RW-1 and exhibited without any objection from the applicants as per Ex.RW-1/1 does not disclose or indicate that AW-2 was an eyewitness to the incident. If really, AW-2, was an eyewitness to the incident, can it not be expected that he would have disclosed the incident to the Investigating Officer and his statement in this regard would have been recorded by the Investigating Officer. It was not even suggested to the Investigating Officer, RW-1, that AW-2 was an eyewitness to the incident. The entire investigation file, Ex.RW-1/1, as well as the relevant records produced by the applicants themselves would show that the body of the deceased was cut into two halves and one half of the body was lying inside the railway track whereas the other half of the body was lying outside the track. This would clearly indicate that the deceased must have been run over by the train as otherwise the body of the deceased could not have been cut into two halves, one of which lying inside the railway track and the other lying outside the track. The nature of injuries sustained by the deceased and the manner in which the two pieces of the dead body of the deceased were lying will not be suggestive of the fact that he would have fallen down from the running train. On the other hand, they will be clearly suggestive fact that the deceased must have been run over by the train. This is exactly what has been elicited in the cross-examination of RW-1 by the applicants.

9. The Tribunal has further observed as under:

The said manner of incident disclosed from the investigation file Ex.RW-1/1 and proved through the Investigating Officer, RW-1 stands probablised from the fact that the body of the deceased was cut into two halves and "of the body was lying inside the railway track whereas the other" of the body was lying outside the

railway track. Such injuries are possible only when the entire body of the victim comes under the wheels of the train. In other words, he was actually run over by the train and not otherwise. The facts and the surrounding circumstances of this case would clearly indicate that the incident in question did not occur in the manner, as stated by AW-2 and he could not be eyewitness to the incident. The material placed on record would clearly indicate that the deceased while traveling on the joint of the train tried to get down from the train when it slowed down and in the process, he fell down from the train and was run over by the train. The proviso to Section 124A of the Railways Act is entitled to make explicit that the expression "accident falling" excludes the fall of a passenger as a consequence of his own fault, carelessness etc. The liability of the respondent railway administration to pay compensation u/s 124A of the Railways Act is not so wide as to constitute an absolute liability to pay compensation to the passenger, who had been injured or died as a consequence of his own imprudent conduct and negligent act. The expression "self-inflicted injury" in Clause (b) of the proviso to Section 124A of the Act denotes and includes an injury suffered as a direct result or consequence of the wrongful and negligent act on the part of the victim. In the instant case, the material placed on record would clearly indicate that the causative factor for the death of the deceased was the negligent and wrongful act on the part of the deceased, who besides found traveling on the joint of the train had tried or attempted to alight from the moving train. This was the causative factor for the happening of the incident in question. It is, thus, clear from the conduct of the victim that he had endangered his own safety due to his negligence. It is on account of such wrongful and negligent act on the part of the deceased, he sustained injuries and died. Hence injuries sustained by the deceased were self-inflicted injuries, in the sense they were caused due to his own wrongful and negligent act.

10. Indeed, the learned Counsel for the appellants very fairly concedes that on the evidence on record the view taken by the Tribunal is a possible view but urges that the contra view projected by the appellants is more plausible.

11. But, the submission made by learned Counsel for the appellants loses significance if AW-2 is to be disbelieved.

12. The manner in which deceased is stated to have suffered the fall injury as per testimony of AW-2 would be acceptable only if this Court is satisfied that AW-2 was an eye witness.

13. If AW-2 was an eye witness and was a socially conscious person as would logically flow from his volunteering to give evidence in favor of the appellants, I would have expected his participative presence being recorded by the investigating officer who reached the spot immediately after the accident. His not being available at the spot casts a doubt on his presence when the unfortunate incident took place.

14. I may further note that the body of the deceased being cut into two halves is

not possible if the deceased fell out of the boggie through the exit if the train received a sudden jerk. A person falling of a boggie from the exit would have a trajectory which would drop him, if not a feet or two away from the train, at least 6 to 8 inches from the train and the forward motion would throw the person forward and not laterally. Meaning thereby the body could not be cut into two by the train running over.

15. There is no evidence on record that the railway line had a curvature at the place where body of the deceased was found. I could have appreciated if the railway line had a curvature. In such a situation, it could have been plausible to consider the body being cut into two as a result of the fall and the momentum of the body viz-a-viz the motion of the train.

16. I clarify; the situation could have been akin to a person falling from a moving bus towards left and coming under the rear wheel of a bus. When a bus cuts towards the left, a person jerked out from the front gate may come under the rear wheel of the bus for the reason it is well known that the rear wheel of the bus passes over the spot towards the left of the spot where the front wheel passed over.

17. Be that as it may, the settled law is that where on the given evidence view taken by the court or tribunal of plenary jurisdiction is plausible, the Appellate Court would not take a contrary view, merely because another view is possible.

18. The appeal is dismissed.

19. No costs.