
(2014) 01 DEL CK 0249
In the Delhi High Court
Case No : FAO No. 227 of 2008

Smt. Sunita and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

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

Citation : (2014) 2 ACC 66 : (2015) ACJ 2126

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Anshuman Bal, for the Appellant; Jitendra Kr. Singh and Mr. Anirudh Kumar, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of this first appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment of the Railway Claims Tribunal dated 10.3.2008 by which the claim petition of the appellants-applicants was dismissed. Appellants-applicants are the widow and children of the deceased Sh. Surender Kumar, an employee of Supreme Court, who died in an untoward incident of a fall from the train at about 9.05 A.M. on 1.8.2006 in Delhi near Red Fort. Whereas the case of the appellants/applicants was that the deceased Sh. Surender Kumar died on account of untoward incident because he was pushed out by passengers in a crowded train who were trying to get down from a slow moving train near Shani Mandir at Red Fort, the case of the respondent-Railways was that the deceased was trying to get down from a moving train and in this process he died, and therefore, the deceased died on account of his own criminal negligence or self-inflicted injuries thereby taking the case out of an "untoward incident" under Sections 123(c) and 124A of the Railways Act, 1989.

2. The relevant observations/findings/conclusions of the Railway Claims Tribunal while dealing with issue nos. 2 and 3 are as under:-

In considering the question as to whether the evidence given by the witness should be accepted or not, the Tribunal has to examine whether the witnesses are interested and whether the story deposed to by them is probable & whether the same has been shaken in the cross-examination. Out of the two witnesses, AW-1 and RW-1, examined before the Tribunal, AW-1, can be considered to be an interested person but not RW-1. That apart, the story narrated by RW-1 appears to be more probable and credible than the one narrated by AW-1. Moreover, the evidence of RW-1 stands corroborated from the other material placed on record. Even though the witness, RW-1, has been cross-examined at length, no material inconsistency has been elicited to discard his evidence. Some exaggeration, improvement and discrepancies in the testimony of RW-1 will not damage the substratum of the evidence of RW-1 with regard to the incident in question. Merely because the witness RW-1 was standing on the northern side and the deceased alighted from the moving train on the south, that by itself will not make his testimony doubtful. The fact that he was an eyewitness to the incident stands corroborated from the investigation papers. The probative value of the evidence is the weight to be given to it, which has to be judged on the facts and circumstances of each case. On careful perusal, I find that the evidence of RW-1 read as a whole in its entirety is credible and natural. It is cogent, natural and probable regarding the manner of incident and hence it can be accepted. There is no reason for RW-1 to depose falsely against the applicants. Moreover, as I have already noticed, the evidence of RW-1 appears to be more natural and probable than that of AW-1 with regard to the incident in question. Prima facie public servants like RW-1 must be presumed to act honestly and their evidence has to be assessed on its intrinsic worth. The evidence given by RW-1 supported by the other material on record stand on a higher pedestal than that of AW-1. It needs to be stated that the cross-examination is not the only method of discarding a witness. If the oral testimony of a particular witness is contrary to the proved facts, his evidence might well be discarded on that ground. If his testimony is on the face of it unacceptable, the Tribunal is not bound to accept his testimony merely because there was no effective cross-examination to a particular witness. In assessing the value to be attached to oral evidence, the Members of the Tribunal are bound to call into aid their experience of life. As a fact finding authority, it is open to the Tribunal to test the evidence placed before it on the basis of probabilities. Having done this exercise, I find that the evidence of AW-1 is not acceptable and he appears to be an obliging witness. On the other hand, I am persuaded to believe the evidence of RW-1 which stands corroborated from the other material placed on record. From the evidence of RW-1 supported by the other material on record it is quite clear that when the train in question had slowed down its speed at a particular place, number of passengers got down from the slow moving train and one among them was the deceased. Admittedly, the deceased was fairly educated and having been employed in the Supreme Court, he was presumed to know the consequence of getting down from the moving train at a place other than the platform. The deceased knew full well or at any rate expected to know the risk

involved in getting down from the moving train, that too, before reaching the platform. Therefore, the deceased did not take that much care and caution which a passenger, while travelling in the train, ought to take. It would, therefore, appear to me that the deceased has died as a consequence of his own imprudent conduct, lack of reasonable care warranted in the circumstances of the train travel, foolhardiness, carelessness or such other conduct. The expression "accidental falling" in Sub Clause 2 of Clause "C" of Section 123 of the Railways Act excludes fall of the passenger as a consequence of his own fault, carelessness, lack of circumspection or absence of such kind and degree of care warranted in the exigencies and circumstances of travel by train or on account of absence of prudence on his part. It is no doubt true that apart from the deceased, many other passengers got down from the train at that point, but then the accident may happen to any person and unfortunately it happened to the deceased on account of his own carelessness and negligent conduct in trying to get down from the moving train before reaching the platform. The death of the deceased was occasioned by his own negligence, carelessness, wrongful act disregard of the requisite standard of care obligated by a person travelling on a train or any such conduct of a passenger which might reasonably be expected to result in his injury or death would, in such circumstances, be the consequence of a self-inflicted injury. In this connection a reference may be made to a decision of Andhra Pradesh High Court in the case of Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others, wherein it is clearly held that the expression "self inflicted injury" in Clause (b) of the proviso to Section 124A of the Railways Act denotes and includes an injury suffered as a direct proximate and reasonably expected consequence of a victim's wrongful act, default, negligence or the absence of requisite degree of care and prudence on his part. In the instant case, I find that the respondent railway administration has been able to establish by preponderance of probabilities that the death of the deceased had occurred as a direct consequence of the wrongful act on the part of the deceased in trying to get down from the moving train at a place, which was neither safe nor meant for the passengers to get down from the train. Therefore, the deceased has died as a consequence of a self-inflicted injury within the meaning of Clause (6) of the proviso to Section 124A of the fact.

Therefore, in the light of the above decision and for the reasons stated above, I am of the view that the applicants have failed to establish that the death of the deceased had occurred as a result of an untoward incident, as alleged in the claim application. On the other hand I find that the respondent railway administration has been able to establish by preponderance of probability that the death of the deceased had occurred on account of his imprudent and negligent act. Hence, I record my findings on Issue No. 2 in the negative and against the applicants and on Issue no. 3 in the affirmative and in favour of the respondent railway administration.

(underlining added)

3. A reading of the aforesaid findings and conclusions of the Railway Claims Tribunal shows that the Railway Claims Tribunal has relied upon the statement of the track guard who was examined as RW-1 and who deposed to the fact that the deceased died on account of trying to get down from a moving train. Tribunal has disbelieved the deposition of the witness AW-1 Sh. Satish Chander Gupta who was with the deceased in the train and who knew the deceased since 9-10 years, and as per whose deposition, the deceased actually fell down from the over-crowded train as he was pushed out on account of passengers who were trying to get down from the overcrowded moving train.

4. In my opinion, the findings and conclusions of the Railway Claims Tribunal are clearly illegal and erroneous for the following reasons:-

(i) It is not understood as to how statement of a track guard who was standing on the south side of the track be believed for an incident of falling down of a passenger or getting down of a passenger from the north side of the train. Firstly, it is unbelievable that even if the train was not overcrowded, as to how in a moving train a track guard who is standing not in the train but besides the track on a different side/direction can confidently depose and was believed by the Tribunal that the deceased was not pushed out but was in fact getting down. It cannot be the law that a statement of a railway guard as a government servant must be on that count only be treated as believable in spite of lack of credibility of his deposition. A private witness cannot be held to be an interested witness unless it is proved as to why his testimony should be considered to be of an interested witness, and which is not so shown before the Tribunal. In fact, in such a situation actually the deposition of AW-1 Sh. Satish Chander Gupta who was in the train alongwith the deceased Sh. Surender Kumar ought to have been believed and it is not the case of the respondent/Railways that there is any reason why AW-1 will give a false/dishonest deposition. Also, it must be noted that even a guard who is standing on the northern side of the track and allegedly sees someone getting down from the bogie of the train from the southern side of the train in his deposition will lack believability in the facts of the present case when admittedly the train was overcrowded and therefore there cannot be definite and credible deposition of the guard RW-1 for holding by the Tribunal that the deceased was not pushed by those passengers who were trying to get down from the slow running train. In fact, to the aspect of holding that the deceased was in fact pushed out by those passengers who were trying to get down from the overcrowded train, the same becomes clear from the fact that the deceased was an employee in the Supreme Court and the place where he was alleged to have been getting down, i.e. Shani Mandir at Red Fort is nowhere near his residence or his place of work. Supreme Court is about 31/2 km away from the spot in question and it is not even the case of the Railways that why there is any reason whatsoever for the deceased to have got down from that spot where he is said to have died. There cannot be assumptions and presumptions in this regard for assuming of a person getting down once it is found that the train was overcrowded and lot of passengers in this overcrowded train were trying to get

down from the slow moving train. On the balance of probabilities therefore it is clear that actually the deceased was pushed down from the slow moving train by those passengers who were wanting to get down on account of slowing down of the train near Shani Mandir at Red Fort. No doubt, the Railway track guard is a disinterested witness, however, in the facts of the present case it cannot be ruled out that the guard was not deposing as to the actual facts which had occasioned at the relevant time and the possibility of the guard making a mistake and giving incorrect facts cannot be ruled out on account of his positioning/place of standing and taken with the fact that the train was chock-a-block with passengers, some of whom were getting down from the moving train. In the facts of this case we have the statement of AW-1 who was very much in the bogie of the train where the deceased was travelling, and from where he was pushed out by the passengers who were trying to get down from the slow moving train and this deposition is to be believed rather than of the track-guard.

5. It needs to be noted that the Supreme Court has now held consistently that the liability of the Railways is a strict liability for an untoward incident under Sections 123(c) and 124A of the Railways Act. Falling down from a train, even if there is negligence, does not take the case out of the definition of an "untoward incident" as has been consistently held by the Supreme Court. A strict liability of the Railways arises even if there is negligence of the deceased, and unless the negligence is criminal negligence or it is a case of self-inflicted injuries of the deceased such as attempt of suicide and so on, the Railways are liable on the principle of strict liability. The ratios in this regard are in the judgments of the Supreme Court in the cases of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, and Jameela and Others Vs. Union of India (UOI), , and which judgments emphasize the facts of over-crowded trains in Indian conditions and hence the consequent application on Railways of strict liability.

6. A civil case is decided on preponderance of probabilities. Not only in a claim before the Railway Claims Tribunal the issue is of preponderance of probabilities, but the fact of the matter is that even negligence of the deceased cannot prevent grant of compensation. Where there are overcrowded trains in this country, and admittedly the train in question from which the deceased Sh. Surender Kumar fell down and died was an overcrowded train as per the stand of the Railways, I think on the balance of probabilities, it is clearly proved that from the evidence on record that the deceased Sh. Surender Kumar was in fact pushed out of the overcrowded train by those passengers who were trying to get down from the slow moving train near Shani Mandir at Red Fort and it is not that the deceased was trying to get down from the train. In view of the above, I hold that the deceased Sh. Surender Kumar died on account of an untoward incident as per the meaning of the expression as found in Sections 123(c) and 124A of the Railways Act, 1989. I am unable to agree with the conclusions of the Tribunal, and therefore, I set aside the findings that the deceased died on account of getting down from the slow moving train and hold that deceased was a bonafide passenger and that his death occurred on account of an untoward incident. The

appellants are hence entitled to the statutory compensation of Rs. 4 lacs in equal proportion so far as each of the appellants are concerned. I am informed that none of the appellants is a minor as of date. Appellants will also be entitled to interest at 7 1/2 % per annum simple from the date of filing of the petition on 10.11.2006 till the amount is paid as per today's judgment to the appellants. Let the compensation amount in terms of today's judgment be paid to the appellants in equal proportion, alongwith interest within a period of six weeks from today. Parties are left to bear their own costs.