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**(2013) 02 MP CK 0116**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Appeal No. 3732 of 2012

Smt. Sushilabai and Others — APPELLANT

Vs

Union of India — RESPONDENT

**Date of Decision :** 07-02-2013

**Acts Referred:**
Railways Act, 1989 — Section 123, 123(c)(2), 124A
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

**Citation :** (2013) ILR (MP) 1394 : (2013) 2 MPHT 499 : (2013) 2 MPJR 15 : (2013) 2 MPLJ 702

**Hon'ble Judges :** N.K. Mody, J

**Bench :** Single Bench

**Advocate :** M. Shafiqullah, for the Appellant; Govind Patel, for the Respondent

## Judgement

N.K. Mody, J.—Being aggrieved by the judgment dated 18-10-12 passed by Railway Claims Tribunal, Bhopal in Case No. OA/IIu/118/08 whereby claim petition filed by appellants for compensation was dismissed, present appeal has been filed. Short facts of the case are that the appellants filed a claim petition for compensation alleging that on 6-1-08 Raj Prakash Vyas was travelling with his friend Dhan Singh Lodhi after purchasing a second class super fast train ticket bearing No. 53975334 on 6-1-08 in Train No. 2621 (Tamil Nadu Express) from Bhopal to Bina. It was alleged that because of heavy rush Raj Prakash Vyas and co-passenger were standing near to the door of general compartment. It was alleged that near Bina Railway Station, deceased Raj Prakash fell down from running train and died on spot. It was prayed that the claim petition be allowed and compensation be awarded. The claim petition was contested by respondent on various grounds including on the ground that the deceased was not a victim of an untoward incident as defined in Section 123(c)(2) of the Railways Act, 1989. It was alleged that the train passed through Bina Station without stopping there because the train has no schedule halt at Bina Station. It was alleged that after passing of the station, deceased and co-passenger Dhan Singh pulled the alarm chain and the train stopped near gate No. 308. It was alleged that Dhan

Singh co-passenger got down, but since the train staff set right the alarm chain apparatus and the train started again, therefore, deceased got down from the running train, as a result he sustained injuries and died. On the basis of pleadings of parties, learned Court below framed the issues and recording the evidence and dismissed the claim petition, against which present appeal has been filed.

2. Learned Counsel for the appellants argued at length and submits that the impugned judgment passed by the learned Tribunal is illegal, incorrect and deserves to be set aside. It is submitted that the death occurred because of untoward incident, therefore, there was no justification on the part of learned Tribunal in dismissing the claim petition. Learned Counsel placed reliance on a decision in the matter of K.V. Thomas Vs. Union of India (UOI), , wherein the passenger was attempting to get off the train as he had boarded a wrong train when he fell down and his legs were crushed under the wheels and the defence was that the accident occurred due to his own negligence, and the question for consideration before Hon''ble Kerala High Court was whether negligence of injured can disentitle him from claiming compensation u/s 124-A of Railways Act, Divisional Bench of Kerala High Court held that negligence of either the railways administration or that of the injured is not relevant. It was further held that since the passenger has not suffered injuries due to any of the reasons stated in exceptions (a) to (e) of proviso to Section 124-A, therefore, he is entitled for compensation. Further reliance is placed on a decision in the matter of Jameela and Others Vs. Union of India (UOI), wherein deceased was standing at open door of compartment of running train and falling to his death, Hon''ble Apex Court held that since the death of said passenger was neither a case of suicide nor as a result of self-inflicted injury and also due to his own criminal act nor was he in a state of intoxication or insanity, nor any natural cause or disease, therefore, the claimants are entitled for compensation. Further reliance is placed on a decision in the matter of Mohan Lal and Others Vs. Union of India (UOI), wherein passenger boarded a wrong train and as soon as she realised that it is a wrong train she tried to de-board the said train and in that process she fell and died on spot, Punjab and Haryana High Court held that the deceased was a bonafide passenger and she died in an untoward incident, hence, entitled for compensation.

3. Chapter XIII of the Railways Act deals with liability of Railway Administration for death and injuries to passengers due to accident. Section 123 of the Act deals with the definitions. Sub-section (c) of Section 123 lays down the definition of untoward incidents, which reads as under:--

123. Definitions.-- In this Chapter....

(iv) the paternal grandparent wholly dependent on the deceased passenger.

(c) "untoward incident" means--

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of

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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.

4. Section 124-A deals with compensation on account of untoward incident, according to which 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. This section further lays down that the Railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed as a result of such unwarranted incident. Proviso of this section lays down the circumstances in which no compensation shall be payable if the passenger dies or suffers injury, which are as under:--

(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.

5. In the present case, learned Tribunal has found that the deceased was a bonafide passenger travelling in Tamil Nadu Express but dismissed the claim on the ground that Train No. 2621, Tamil Nadu Express was not having a schedule stoppage at Bina and the place of occurrence was immediately after Bina Railway Station, therefore, learned Tribunal presumed that the incident must have taken place as described in the statement recorded by Dhan Singh. The statement was controverted by Dhan Singh, who has stated that the police did not read out the statement to him and obtained his signature. Since Dhan Singh controverted the statement recorded by the police, therefore, learned Tribunal was not justified in believing on the statement recorded by the police without getting it to be proved by the respondent by calling the person, who recorded the statement. Even if it is assumed that deceased was travelling in a train, which was not having a schedule halt, then too since it was not a suicide or attempted suicide by him, self inflicted injury, his own criminal act, act committed by him in a state of intoxication, insanity or any natural cause or disease, therefore, learned Tribunal

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was not justified in dismissing the claim petition filed by the appellants. In view of this appeal filed by the appellants stands allowed, the impugned judgment passed by the learned Tribunal stands set aside with a direction to the respondent to pay the amount of compensation as prescribed in the death case alongwith interest from the date of application as prescribed under the law. With the aforesaid observations appeal stands disposed of.

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