
(2003) 07 DEL CK 0010
In the Delhi High Court
Case No : FAO No. 105 of 1999

Sugan Chand

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2004) ACJ 1715 : (2003) 5 AD 614 : AIR 2003 Delhi 455 : (2003) 106 DLT 411 : (2003) 70 DRJ 309 : (2004) 1 RCR(Civil) 69

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Sunil Aggarwal, for the Appellant; Jagjit Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—This order will dispose of the appeal filed u/s 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment of the Railway Claims Tribunal passed on 12. 11. 1998. The facts in short relevant for deciding this appeal are: -

One Mr. Sandeep Garg son of the appellant was a bonafide passenger in Lucknow Mail and while traveling from Hapur to New Delhi on October 8, 1996, he fell down at the Tilak Bridge Railway station and died because of the injuries suffered by him in the said accident. The appellant filed an application claiming compensation before the Railway Claims Tribunal for the death of his son in the said untoward accident. In the written statement filed by the respondent-Railway Administration the only ground on which the appellant was stated to be not entitled to compensation was that the deceased was not a bonafide passenger as he was not holding a valid railway ticket in original. On these pleas being taken, the tribunal framed the following issues for consideration: -

"1. Whether the applicant proves the facts, as stated in para 6 of the Claim application?

2. Whether the deceased was holding a valid ticket as averred in the Claim application?
3. Whether the applicant proves that the death occurred instantly, as claimed?
4. To what relief and costs?"

While the appellant produced four witnesses before the Tribunal, the respondent did not lead any evidence. The Tribunal after discussing the evidence on record held that the deceased was a bonafide passenger in the train and was traveling on 8. 10. 1996 in Lucknow Mail and had a valid season ticket from Hapur to New Delhi. The Tribunal, however, held that the appellant was not entitled to compensation as the deceased must have been trying to get down from the running train at Tilak Bridge Station, which resulted in his falling down and dying on the spot and the passengers are not supposed to get down at unscheduled halts of the train and if they do so they do it at their own risk and the same becomes the cause of self-inflicted injuries due to which the appellant would not be entitled to compensation. It was held by the Tribunal that the post-mortem of the deceased having been waived off, the cause of the death could not be known and consequently the appellant could not be held entitled to compensation. As already mentioned above, being aggrieved by this order, the appellant has filed the present appeal.

2. Sections 123, 124 and 124A lay down the liability of the Railway Administration for death and injury to passengers due to "accident" and "untoward incident". While "accident" has been defined in Section 123(a) of the Act to mean an accident of the nature described in Section 124 of the Act, "untoward incident" has been defined in Section 123(c) to mean the "accidental falling" of any passenger from a train carrying passengers. In the present case, we are concerned only with "untoward incident" as defined in Section 123(c) of the Act and not "accident" as defined in Section 123(a) of the Act. In terms of Section 124A of the Act, the Railway Administration is liable to pay compensation to a person who has been injured or dependant of a passenger who has been killed because of an "untoward incident" while he was traveling in a train as a bonafide passenger. Sections 123 (c) and 124A of the Act read as under:-

"123 (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; 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. "

124-A"Compensation on account of untoward incidents. -- 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 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 traveling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

3. A bare reading of Section 124A of the Act shows that when in the course of working a Railway an untoward incident occurs, which results in the death of a passenger, the Railway Administration will be liable to pay compensation to the dependants of such a passenger to such extent, as may be prescribed in the Act. As per the proviso to Section 124A of the Act, no compensation shall be payable under that Section by the Railway Administration if the passenger dies or suffers injuries due to -

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act, etc. etc.

4. The Tribunal in the present case, while denying compensation to the dependant of the deceased has held that since the deceased must have been getting down from the train at the Tilak Bridge Railway Station, which was not a scheduled halt of Lucknow Mail, injuries suffered by him were self-inflicted and the dependants of the deceased were, Therefore, not entitled to compensation.

The other reason as to why the appellant was held not entitled to compensation was that since the post-mortem of the body of the deceased had not been effected, the cause of death could not be known and consequently the Railway Administration would not be liable to pay compensation. In my opinion, the judgment of the Tribunal cannot be sustained on any of the two grounds. Firstly, it was not the case set up in the written statement that the injuries suffered by the deceased were self inflicted injuries or that he was injured while alighting from the train and secondly there was no dispute about the cause of death and the post-mortem, Therefore, would have served no purpose. Even otherwise, there was no evidence before the Tribunal to hold that the deceased was alighting from the running train or that he received injuries in that process. No witness has stated before the Tribunal that the deceased at the relevant time was trying to get down from the running train at Tilak Bridge Railway Station. The Tribunal has relied upon the statement of one Mr. M. A. Khan, Assistant Sub-Inspector from P. S. Tilak Marg, who has stated that one Raja Ram who was a Gangman of the Railway had made the statement before him that the deceased was trying to alight from the train and in that process he fell down and was killed. Statement of Raja Ram before the Police has been placed on record by this witness as Exhibit AW-4/6. According to Mr. M. A. Khan except Raja Ram, there was no eye-witness to the accident. He admits that Raja Ram in his statement, given in writing to the police, had not stated that the deceased was trying to alight from the running train or that he fell down in that process. He also could not say whether the deceased had died while trying to alight from the running train or had fallen from the train in that process. He, however, states that he was told by Gangman Raja Ram that about 11. 50 A. M. the deceased was trying to alight from Lucknow Mail and during this process he fell down and came under the wheels of train. He, however, admits that Raja Ram had not given anything in writing about the deceased alighting from the train but during the process of investigation this was allegedly told to him orally by Raja Ram. In his statement recorded by the police, admittedly it was not stated by Raja Ram that the deceased was alighting from the train and he fell from the train in that process. Since Raja Ram was the only eye-witness to the accident and he did not say that the deceased at the time of the accident was alighting from the train and he fell down in that process, it is not understood as to how the Tribunal has held that the deceased "must have been trying to get down from the running train, which resulted in his falling down and dying at the spot". The Tribunal has relied upon the statement of Mr. M. A. Khan to come to a finding that the deceased was getting down from the train at Tilak Bridge Railway Station, however, Mr. M. A. Khan has only mentioned about the alleged oral statement of Raja Ram that the deceased was getting down from the running train at Tilak Bridge Railway Station. The statement made by Mr. M. A. Khan is only hearsay and could not be relied upon by the Tribunal for denying compensation to the appellant. Railway administration did not produce Raja Ram before the Tribunal for reasons best known to it and an adverse inference has, Therefore, to be drawn against it. It having not been proved that the deceased was getting down from the running

train, the Tribunal could not hold that the injuries sustained by the deceased were self-inflicted injuries. In my opinion, the findings of the Tribunal are totally based on assumptions and presumptions and cannot be sustained. I have, Therefore, no hesitation in holding that the deceased had accidentally fallen from the running train at Tilak Bridge railway station.

5. Coming now to the second ground about post-mortem, it is not the case of any of the parties that the deceased did not die because of his having sustained injuries by falling from the running train. It is even the respondent's case that the deceased had fallen from the running train and had thus sustained injuries and had died on the spot. That being the position, the Tribunal has clearly erred in observing that the cause of death could not be proved by the appellant. I am, Therefore, of the opinion that the findings of the Tribunal being totally perverse cannot be sustained.

6. On the basis of the material on record, I am of the view that the deceased had died because of the injuries sustained by him because of his having accidentally fallen from the running train at Tilak Bridge Railway Station and in terms of Section 124A of the Indian Railways Act his dependant, namely, the appellant is entitled to recover compensation for such death of his son. I, accordingly, allow this appeal, set aside the impugned order of the Railway Claims Tribunal and award the prescribed compensation of Rs. 2 lakhs to the appellant. The appellant will also be entitled to interest @ 9% per annum from the date of his filing application before the Tribunal till the date of realisation. In the facts of this case, however, I leave the parties to bear their own costs.