

**(2011) 08 DEL CK 0233**  
**In the Delhi High Court**  
**Case No : F.A.O. No. 374 of 2009**

Sukhdev Kamlani and Others

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 08-08-2011

**Acts Referred:**

Railway Claims Tribunal Act, 1987 — Section 23

**Citation :** (2012) ACJ 1014 : (2012) 1 TAC 793

**Hon'ble Judges :** Valmiki J Mehta, J; M.L. Mehta, J

**Bench :** Division Bench

**Advocate :** N.K. Gupta, for the Appellant; Abhishek Yadav, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Valmiki J. Mehta, J.—Counsel for the appellant states that only the mother and the father of the deceased would be the dependents as the deceased was a bachelor. Accordingly, there is no need to implead the other applicants who were before the Railway Claims Tribunal. The challenge by means of this First Appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned order dated 29th September, 2009 which has dismissed the Claim Petition by holding that the deceased while leaning out from the door of the train was hit by the pole, and thus the death being caused due to his own criminal negligence, no compensation can be granted. The relevant observations of the Trial Court in this regard are contained in the following portion of the impugned order and which reads as under :

Issue No. 3 :

This is the issue that will determine the fate of the case. Section 124-A of the Railways Act which deals with compensation on account of an untoward incident has the following proviso : "no compensation shall be payable under the Section by the Railway Administration if a passenger dies or suffers injury due to.....(b) self inflicted injury."

The respondent has alleged that the applicants are not entitled to any compensation as the deceased died due to his own negligence and had brought on himself the terrible consequences of his own reckless act. As proof of the averment, ironically, the respondent has used a document, Ext. AW1/12 that was brought on record by the applicants. This (Ext. AW1/12) is a statement given to the police by Shri Kailash Kumar Goshwami who had accompanied the deceased. This statement was recorded immediately after the mishap and there is no reason to suspect the contents of the statement being tampered or manipulated by the police in any way. In this statement Shri Goshwami has stated that the deceased was leaning outside the coach and did not notice the pole against which he struck his head resulting in his instant death. This clearly shows that the deceased had imperiled his life by leaning outside the coach door. As a matter of fact, according to Section 156 of the Railways Act any passenger travelling on the step or footboard of any carriage is punishable with imprisonment or with fine. It would appear from the evidence on record that Shri Om Parkash was a victim of his own negligence. We do not give any credence to the subsequent statement made by the eyewitness, Shri Kailash Kumar Goshwami that at the time of the accident, he was in a disturbed state of mind and that he was not aware of what he had signed in the police report. We are of the view that his statement in the Court was clearly an afterthought and designed to Counsel the fact that the deceased had brought upon himself the accident which led to his death. The evidence point to the fact that the deceased died due to a self-inflicted injury and therefore the applicants are not entitled to any compensation.

2. A reading of the aforesaid paragraph shows that the deceased died because of his own criminal negligence. Once a person is guilty of his own criminal negligence it would not fall under the expression "untoward incident" as found under Sections 123(c) and 124-A of the Railways Act, 1989. No fault can be found with the conclusions of the Railway Claims Tribunal because the co-passenger who was travelling with the deceased himself made a statement at the relevant time that the death was on account of leaning out of the train.

3. Learned Counsel for the appellants has sought to place reliance upon the decision of the Supreme Court in the case of Jameela and Others Vs. Union of India (UOI), and the decision of a learned Single Judge of this Court in the case of Smt. Vidyawati v. Union of India, in FAO No. 418/2008 decided on 12th January, 2011, in support of his proposition that even if the deceased was guilty of negligence, yet, there is an untoward incident and, therefore, the Claim Petition ought to have been allowed. I am afraid, I cannot agree with the argument as raised by the Counsel for the appellants. There is a difference between negligence and criminal negligence. If there is a routine negligence, and there is a death, the Supreme Court has held that that the same would be an untoward incident entitling compensation to the dependents. The Supreme Court however in the case of Jameela (supra) has further clarified that where the death takes place on account of a criminal negligence of the passenger, the Railways

are not liable. Paras 5, 7, 8 and 9 of the judgment in the case of Jameela (supra) are relevant and are reproduced as under :

5. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation u/s 124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eye-witness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable u/s 124-A of the Act.

7. It is not denied by the Railways that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a "passenger" for the purpose of Section 124-A as clarified by the Explanation. It is now to be seen that u/s 124-A the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. But, the proviso to the Section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).

8. Coming back to the case in hand, it is not the case of the Railways that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due, to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

9. The manner in which the accident is sought to be reconstructed by the Railways, the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon of Indian trains is not the same thing as a criminal act mentioned in Clause (c) to the proviso to Section 124-A. A criminal act envisaged under Clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.

A reference to para 5 of Jameela's case shows that in the said case there was no eye-witness of the fall of the deceased from the train and therefore there was no evidence to support the case of the Railways that the accident took place on account of negligence of the deceased. Further, in para 8, the Supreme Court has clarified that in that case, it was not the case of the Railways that the death of the deceased was as a result of self-inflicted injury. It was further noted that it

was not the case of the Railways that the deceased died due to his own criminal act. Whatever doubt is there is clarified in para 9 which lays down that once there is a criminal negligence as differentiated from a rash act, the Railways will not be responsible.

4. It is trite that there is a quite clearer differentiation between negligence and criminal negligence. A simple act of negligence or a rash act would not take the case out of the expression "untoward incident". However, it is not the law, and cannot be the law, that a person deliberately out of criminal negligence leans out of a train and when he is hit by a pole, then, the Railways can be held to be responsible.

5. The reliance on the case of Smt. Vidyawati (supra) is misplaced because in Para 9 of the said judgment it is clearly recorded that no evidence was led by the Railways in the case that anybody had seen the passenger travelling in the train negligently so as to bring his conduct in the exceptions provided for u/s 124-A of the Act. Since, the stand of the Railways in Smt. Vidyawati's case that the deceased was travelling by hanging to the door of the train and was struck or hit by the pole and then fell down from the train was not believed, therefore, the ratio of Jameela's (supra) case was applied in Smt. Vidyawati's (supra) case to hold that a mere act of negligence cannot deny compensation.

6. Accordingly, the Railway Claims Tribunal has rightly denied compensation because the death took place on account of criminal negligence of the deceased. The provisions of law cannot be stretched to such an extent that even for a deliberate criminal negligence, and which has been found to exist as a matter of fact in this case, can result in entitlement of compensation on the ground that the incident can be said to be an untoward accident.

7. In view of the above, there is no merit in the appeal. Dismissed. Trial Court record be sent back.

Appeal dismissed.