

(2012) 08 MAD CK 0111
In the Madras High Court
Case No : CMA. No. 2441 of 2009

Union of India

APPELLANT

Vs

Alagu and Irulayee

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Railways Act, 1989 — Section 123, 123(c), 123(c)(2), 124(A), 124(A)(b)

Citation : (2012) 08 MAD CK 0111

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : T.S. Rajamohan, for the Appellant; T. Rajamohan, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mrs. Justice Aruna Jagadeesan

1. This Civil Miscellaneous Appeal is filed against the order dated 3.6.2009 made in OA. No. 17/2008 by the Railway Claims Tribunal, Chennai Bench, whereby the Tribunal awarded a sum of Rs. 4,00,000/- as compensation to the claimants. The claimants, who are the parents of the deceased Karuppusamy, filed the above said claim petition before the Tribunal claiming compensation for the death of their son. It was pleaded that on 10.5.2006 night while the deceased was returning to Chennai to carry out his business (sundal business) at Marina Beach, Chennai through the train which runs from Madurai to Chennai by availing II Class Passenger Ticket valid from Madurai to Chennai on 11.05.2006 fell down from the train due to jerk of the train at KM-125/200-300 near Dindivanam Railway Station and died on the spot.

2. The Appellant in the reply statement opposed the claim made by the claimant. It was denied that the deceased accidentally fell down from the train. He was travelling in the door way of a running train and fell down due to his own negligence and carelessness. Therefore, the said deliberate action of the

deceased would tantamount to "self-inflicted injury" u/s 124(A) (b) of the Act and hence, the Appellant is not liable to pay compensation u/s 124(A)(b) of the Act.

3. The Tribunal, after analysing the entire evidence on record and after hearing the contention of both the parties, awarded a sum of Rs. 4,00,000/- as compensation to the claimants by the impugned order, which is challenged in the Civil Miscellaneous Appeal u/s 23 of the Railway Claims Tribunal Act 54 of 1987.

4. Mr.T.S.Rajamohan, the learned counsel for the Appellant submitted that the claimant had no personal knowledge about the facts and the statements made in the claim application appear to be hearsay and that the accident occurred only on account of the negligence and carelessness of the deceased, as he deliberately travelled in the door way and fell down from the train. Therefore, the deceased was travelling in rash, negligent and deliberate in manner, which would tantamount to "self-inflicted injury". He would submit that it is common knowledge that it is not permissible to stand at the doorway of the running train and the said act is an act of negligence and on his own volition and the same would come within the terminology of "self-inflicted injury" and the Tribunal committed an error in not considering above said aspects and in awarding compensation to the claimant.

5. Mr. T.S.Rajamohan, the learned counsel for the Respondents strenuously contended that the deceased died in the course of travelling falling from the train and it is a clear cut case of death in an "untoward incident". The learned counsel also pointed out that it is admitted that the deceased fell down from the train and therefore, this would come within the ambit and meaning of "untoward incident" and the same would not tantamount to "self-inflicted injury". In support of his contentions, the learned counsel relied on the decision of the Honourable Supreme Court reported in 2008 4 MLJ 323 SC (Union of India Vs. Prabhakaran Vijayakumar).

6. This court heard the learned counsel on either side and perused the records.

7. Section 124A of the Act provides as follows:-

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 injury 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 purpose of this Section, "passenger" includes:-

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

8. By the Amendment Act 28 of 1994, clause (c)(2) was inserted in Section 123 of the Act, bringing the "accidental falling of any passenger from a train carrying passengers" into the definition of "untoward incident."

9. From the above provision of the Railways Act, the points which are to be determined are that the person, who is claiming compensation for any loss, damage, injury or death, was a bona fide passenger having a valid ticket and sustained injury or death, as the case may be, in an "untoward incident". "Untoward incident" should not fall within the exceptions (a) to (e) of proviso to Section 124A of the Act and the "accidental fall" would include a passenger trying to alight a train, board a train, or any other like action, and he would be covered by "untoward incident" as specified in Section 123(c) of the Act. Therefore, while boarding the train, due to jerk of the train if a person falls from the train and sustains injury or dies, it cannot be held that due to his own negligence or carelessness he sustained injury or died and the burden lies on the Railways to prove that the person met with an accident or death due to his own negligence thereby not entitled to compensation from the Railways.

10. In the case of Union of India Vs. Kurukundu Balkrishnaiah (2004 ACJ 529 AP), a Full Bench of the Andhra Pradesh High Court answered to the following reference whether a passenger trying to board or alight from a running train or standing near the door, jumped from the compartment, crossing the railway track or leaning out of the carriage; and during the course of such circumstance had fallen down and was either injured or had died, was entitled to compensation from the Railways u/s 124A of the Railways Act, 1989. The court while answering the reference has held that (1) where a bona fide passenger dies in an untoward incident or sustain injuries, as the case may be, Railways to pay compensation without dispute, unless the death of the deceased or the injuries sustained by the injured, would fall within the exceptions (a) to (e) of the proviso to Section 124A of the Act; (2) accidental falling would include a passenger trying to alight a train, board a train, or any other like action, and hence they would be covered

by untoward incident as specified in Section 123(c)(2) of the Act. To attract any of the exceptions u/s 124A proviso, may have to be decided in each and every case and general propositions cannot be laid down in this regard in view of the complexity and diversity of the illustrations and the provisions or the Rules.

11. Falling from train to death due to one's own negligence does not come within any exception enumerated u/s 124(A) of the Act. In the absence of malicious intent or mens rea, such negligence can neither be held as criminal act u/s 124(A)(c). In *Jameela and others Vs. Union of India* (2010-12-SCC-443), the Honourable Supreme Court has held thus:

12. The manner in which the accident is sought to be reconstructed by the Railways, that 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 on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124A. 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.

12. In the present case, it has been proved from the investigation of the Railway Police itself that the victim died of the accident due to fall from the train. In view of existence of First Information Report, inquest report, postmortem report, death certificate and the final report submitted by the Railway Police all in one voice concluded the case as an accidental fall from the train and without any material to indicate or infer any foul play or any collusive act, the Railways cannot contend that it is not an accidental fall from the train. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A of the Act. Therefore, the case of the claimant would fall under the category of "untoward incident" as defined u/s 123 of the Act.

13. The findings of the Tribunal regarding the factum of incident to death of the deceased and the claimants are the dependents of the deceased are not under challenge. The only contention is as to whether the death of the deceased would come within the ambit and purview of the expression "untoward incident" or it would come within the meaning of terminology "self-inflicted injury".

14. On a perusal of the relevant provisions referred supra, it is manifest that the said provisions are a part of the beneficial and welfare statute, these provisions are intended for the benefit of the person who has died in such contingency. The Railways Act has defined the term "untoward incident". By perusal of the said definition of "untoward incident", it is eloquent that the said definition is an inclusive definition and it also includes an accidental fall of any passenger from a train carrying passengers. If a person is standing on the doorway and falls from the said doorway, that would certainly come within the purview of the accidental

fall from a train. When we say that the provisions are part of a welfare statute, then the rules of interpretation mandate that the interpretation of the said provision shall be made in consonance with the object of the Act and for the benefit of the person for whom the Act was made. The beneficial or a welfare statute should be given a liberal and not literal or strict interpretation.

15. The Honourable Supreme Court in 2008 4 MLJ 323 SC (Union of India Vs. Prabhakaran Vijayakumar), cited supra involving similar question of interpretation of Section 123(c) of the Railways Act, 1989 has observed thus:-

No doubt, it is possible that two interpretations can be given to the expression "accidental falling of a passenger from a train carrying passengers", the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the above mentioned two interpretations, i.e. the one which advances the object of the statute and serves its purpose, should be preferred.

16. The conspectus of the above discussions would lead to the conclusion that if a section in a welfare statute is reasonably capable of two constructions then that construction should be preferred which furthers the policy of the Act and is more beneficial to those in whose interest the Act may have been passed and the doubt if any should be resolved in their favour. So in a case of an exception which curtails the operation of beneficent legislation, the court in case of doubt would construe it narrowly so as not to readily expand the area of scope of exception.

17. The proviso to Section 124A of the Act carves out an exception for payment of compensation and the expression "self-inflicted injury" is a part of proviso carving out exception, the same shall be construed narrowly.

18. Keeping in view the aforesaid principle of interpretation, the contentions that a passenger deliberately travelled in the door way of a moving train and he did so at his own risk and carelessness, the Appellant would not be responsible as it would amount to "self-inflicted injury" would be stretching too far the expression "self-inflicted injury". "Self-inflicted injury" would mean injuries which are self inflicted by the person when he is capable of rational voluntary action. The same would be a wound inflicted by one's self. When a person accidentally falls from the train because of some jerk, etc. in such circumstances it would not amount to a "self-inflicted injury", but an "untoward incident". Once it is held that the fall of the deceased was a result of untoward incident, the claimant would be entitled for compensation.

Aruna Jagadeesan, J.

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19. For the reasons stated herein above, I do not find any merits in this Civil Miscellaneous Appeal and the impugned award is liable to be confirmed. In the result, this Civil Miscellaneous Appeal is dismissed. The impugned award is confirmed. No costs. It is seen from the records that the entire award amount had already been deposited on 23.10.2009 with the Indian Bank, High Court Branch. As per the order dated 21.6.2010 in MP. No. 1/2010, the claimants were permitted to withdraw 50 percent of their respective share with proportionate interest, which they have withdrawn. The remaining amount of Rs. 2,00,000/- is lying with the Indian Bank, High Court Branch. The claimants 1 and 2 are permitted to withdraw balance of Rs. 1,00,000/- each with proportionate interest. No costs.