
(2010) 11 AHC CK 0237

In the Allahabad High Court

Case No : First Appeal from Order No. 350 of 2009

Union of India

APPELLANT

Vs

Gulam Mohammad

RESPONDENT

Date of Decision : 20-11-2010

Acts Referred:

Railways Act, 1980 — Section 153, 154, 156

Citation : (2010) 11 AHC CK 0237

Hon'ble Judges : Devi Prasad Singh, J and Satish Chandra, J

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Present appeal under Section 23 of the Railway Claims Tribunal Act 1987 (in short hereinafter referred as Act) has been preferred against the impugned award dated 20.1.2009 passed by the Railway Claims Tribunal Lucknow.

2. The brief fact giving rise to the present controversy relates to death of Mohd. Sanan who fell down from the train while standing at the door in the overcrowded compartment. Before the Tribunal an affidavit was filed by the claimant respondents that on 20.4.2006 his son Mohd. Sanan was traveling from Radauli to Dariabad having 2nd class ticket in Sabarmati Express. When the train was passing through Pratapgarh railway station because of sudden and heavy jerk late Mohd. Sanan was fell down from the train. In the said accident, according to claimant respondents, the baggage, ticket and money possessed by the deceased lost. Before the tribunal on behalf of the claimant post mortem report and final report submitted by the police authorities panchnama, death certificate, newspaper cutting etc were filed.

3. In support of the accident affidavit of Mohd. Ali alleged to be eye witness and copassenger was filed. Mohd. Ali deposed that deceased Mohd. Sanan boarded train at railway station Rudauli to reach another railway station Dariabad. The witness stated that he and deceased purchased 2nd Class ticket to board the train. However, because of overcrowded compartment they could not get berth

and remain standing at the door and when the train was crossing the Patranga railway station because of sudden jerk Mohd. Sanan fell down and expired on spot. In spite of cross examination of the witness by the appellant's counsel no material could be gathered to falsify the story narrated by the witness of claimant respondents. It was pleaded by the respondents that Mohd. Sanan was bonafide passenger and was having valid ticket which was lost along with luggage as observed by the Tribunal at internal page 6 and 7 of the award.

4. The tribunal recorded a finding that deceased fell down from the train because of heavy and sudden jerk and accident has been supported by the copassenger Mohd. Ali. The appellant railway had not led any cogent and trustworthy evidence to establish that the deceased was not bonafide passenger. Counsel for the respondents had relied upon the case of Smt. Akhtari Vs. Union of India reported in 2009 (27) LCD 240.

5. The tribunal had awarded compensation to the tune of Rs. 4,00000/ (four lacs) with interest @ 7 per cent per annum. While assailing the impugned award learned counsel for the appellant submitted that deceased was not a bonafide passenger hence he was not having ticket and secondly he fell down because of his own fault being standing on door side. It has been stated by the appellant's counsel that the case in hand fall under the exception provided under the proviso of Section 124 A of the Indian Railway Act 1980.

6. For convenience the proviso contained in Section 124 A of the Act is reproduced as under:

"124A. Compensation on account of untoward incident. 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 dependent 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 purposes 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.

7. The case of Smt. Akhtari (supra) was decided by us after considering statutory provisions as well as several cases of this Court and Hon"ble Supreme Court. We have been informed by parties' counsel that Special Leave Petition preferred in the Hon"ble Supreme Court against the judgement of Smt. Akhtari (supra) has been dismissed hence the case of Smt. Akhtari attains finality. While interpreting Section 124 A of the Act in the case of Smt. Akhtari (supra) we have occasion to observe as under:

"Section 124A categorically provides that "whether or not, there has been any wrongful act, neglect or default on the part of the railway administration", the injured or the dependent of a passenger who has been killed shall be entitled for damages in respect thereof. Accordingly , the passenger travelling on train shall be entitled for damages or compensation. In the event of accident or untoward incident, the presumption shall always be in favour of the passenger with regards to bonafide unless rebutted by the material and cogent evidence. In the present case, driver and guard in ordinary course cannot be the eyewitnesses to establish that the deceased was at fault. Moreover, keeping the provisions contained in Sections 50, 51, 57, 58, 59 of the Act, since the respondent has failed to discharge statutory obligation to regulate the passengers in the compartment of the train and because of necessity the deceased or the people are even in over crowded train generally used to travel in second class, their bonafide may not be doubted.

According to Legal Maxims, "Necessitas Inducit Privilegium Quoad Jura Privata" means, necessity gives a privilege as to private rights. In the Broom's Legal Maxims, it has been observed as under:

" The law chargeth no man with default where the act is compulsory and not voluntary, and where there is not a consent and election; and therefore if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason as in presumption of law man's nature cannot overcome, such necessity carrieth a privilege in itself."

The expression "untoward incident" as defined in Section 123 (c) of the Act enumerates categories of meanings and in a restrictive and exclusionary sense as already notices. Each of the enumerated meanings clearly exclude the volition and participation of the victim in the act which denotes an "untoward incident". From the structure of Clause (c) an "untoward incident" has been defined also to mean the accidental falling of any passenger from a train carrying passengers. Three classes of occurrences viz., commission of a terrorist act, or the indulging

in rioting, shootout or arson, have been included in subclause)1) and exemplified as events consequent on the act by any person in or on any train carrying passengers or in the enumerated premises.

8. Keeping in view the facts and circumstances of the present case it does not transpire that the proviso contained in Section 124A is attracted. Attention has not been invited towards any material on record which may make out a case to attract the proviso of Section 124A of the Act.

9. One of the Argument advanced by the appellants counsel is that the claimant respondents himself endangered his life by wilful act or omission, hence, not entitled for compensation. Appellant's counsel had invited attention towards Section 153,154,156 of the Act. In the case of Smt. Akhtari (supra) we have considered the ambit and scope of these sections, which is for convenience reproduced as under:

"Learned counsel for the respondents submits that a person who endangers safety of persons travelling by railway by wilful act or omission or by rash or negligent act or travels on roof, step, or engine of a train, is prohibited under Sections 153, 154 and 156 of the Act and since the deceased had acted in violation of statutory provisions, the dependents are not entitled to compensation. Learned counsel for the respondent seems to be incorrectly appreciated the provisions contained under Sections 153, 154 and 156 of the Act which for the convenience are reproduced as under:

"153. Endangering safety of persons travelling by railway by wilful act or omission. If any person by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling on or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punishable with imprisonment for a term which may extend to five years.

154. Endangering safety of persons travelling by railway by rash or negligent act or omission. If any person in a rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

156. Travelling on roof, step or engine of a train. If any passenger or any other person, after being warned by a railway servant to desist, persists in travelling on the roof, step or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both and may be removed from the railway by any railway servant."

The plain reading of Section 153 shows that in case any person by any unlawful

act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling in railway, he shall be punishable with imprisonment for a term upto five years. The provision contained under Section 153 does not seem to be attracted to the facts and circumstances of the present case. The deceased had not endangered the safety of any person travelling in the train, because of his rash or negligent act. There appears no iota of evidence on record which may indicate that while travelling, the deceased acted in such manner to endanger the safety of other persons travelling in the train.

Section 156 of the Act also does not seem to come in the picture which provides that in spite of being warned by the railway servant in case the person travels on roof, step or footboard, he may be fined with Rs. 500/ or may be removed by the railway servant. There is no evidence on record which may indicate that railway employee or competent authority had warned the deceased because of his travelling on roof, step or footboard."

10. Attention has not been invited towards any evidence on record which may reveal that the deceased was fell down from the overcrowded compartment while traveling in the train whereby provision contained in Section 153,154 and 156 could have attracted. Hence, submission of appellant's counsel seems to be not sustainable. So far as availability of ticket is concerned, the defence taken by claimant is that the luggage including ticket was lost after the accident. Specific plea was taken by the claimant respondents that 2nd Class ticket were purchased along with copassenger. In case, cash and another articles and the ticket lost during the accident and someone stolen it then dependent of the deceased could not be blamed for it. Specific plea taken by the claimant respondents should have been rebutted by the appellant railway by cogent trustworthy evidence, which seems to have not been done.

11. Relying upon the judgement of Hon"ble Supreme Court in 2008 (9) SCC 527, Union of India Vs. Prabhakaran Vijay Kumar and others in the case of Smt. Akhtari (supra) we have observed that burden shall be shifted on the railway to establish that deceased was not bonafide passenger and he was travelling without ticket. Presumption shall be in favour of passenger that he was travelling with due ticket. The Tribunal had recorded a finding that on behalf of appellant respondents no evidence was produced to rebut the submission made by the claimant respondents. Statement of eye witness that deceased was travelling with a ticket cannot be disbelieved unless assailed by cogent and trustworthy evidence.

12. In view of above, impugned award passed by the Tribunal does not suffer from any impropriety or illegality and call for no interference by this Court.

13. It shall be appropriate to deal with one another aspect of the matter. In the case of Smt. Akhtari we have taken into account various statutory provisions contained in Railways Act 1980 whereby Legislature to their Wisdom had assigned duty on the railways to ensure the safety and security of the

passengers. We have observed that right to life, right to quality of life and right to dignity are all the fundamental rights protected by Article 21 of the Constitution of India. Thus, constitutional as well as statutory provisions cast the duty on the railways to ensure the safety and security of the passengers. For convenience relevant portion from the judgement of Smt. Akhtari (supra) is reproduced as under:

"We also reiterate that not only right to life but also right to quality and dignity of life are fundamental rights protected by Article 21 of the Constitution of India. Right to life does not mean the mere animal existence. The inhibitions contained in Article 21 against its deprivation extends even to those faculties by which life is enjoyed, vide AIR 1990 SC 605" Kubic Darusz Vs. Union of India, A.I.R. 1963 SC 1295; Kharak Singh Vs. State of U.P., A.I.R. 1984 SC 802; Bandhua Mukti Morcha Vs. Union of India, A.I.R. 1978 SC 597; Maneka Gandhi Vs. Union of India, A.I.R. 2000 SC 988; Chairman, Railway Board and others Vs. Mrs. Chandrima Das and others, A.I.R. 1991 SC 1902; Bangalore Medical Trust Vs. B.S. Mudappa, 2001 (6) SCC 496; Hinch Lal Tewari Vs. Kamala Devi and A.I.R. 2007 SC 1046; Milkmen Colony Vikas Samiti Vs. State of Rajasthan and others.

While dealing with the matters relating to the right to life which are fundamental in nature and constitutionally protected, the authorities have got no right to act in arbitrary manner. Corollary to these rights, the rights to safety and security are also fundamental rights and it shall be incumbent upon the railways to provide all necessary safeguards for safety and security to its passenger.

We also reiterate the observations made in the preceding paras that keeping in view the statutory provisions (supra), it is the duty of the railway to make necessary arrangement to regulate the entry of passengers in the compartment. The lives of the people travelling in second class or upper class are equally precious for the respective family and nation. It does not make any difference as to whether the passengers are travelling in the second class or upper class. The burden lies on the railway to make necessary arrangements by mechanical/electronic/manual device so that in the event of departure of the train from platform, the doors are shut and on arrival at the station, it may be open. Further, it is the duty of the railway to make necessary arrangements to regulate the safe entry of the passengers in the compartments. We expect that railway shall look into this aspect of the matter for safety and security of the passengers by taking necessary steps at the earliest."

14. During the course of hearing attention of respondent's counsel invited towards the fact that in majority of cases the compensation is awarded because of the fact that passenger fell down from train while travelling in overcrowded compartment.

15. Under these facts and circumstances of the case, we have directed the Chairman Railway Board to brought on record the compensation paid by the railways because of accident from the period from 1.1.2005 to 30.6.2010. The

Chairman Railway Board Shri Vivek Sahai has filed affidavit dated 4.9.2010 whereby in Para 2 a detail has been given with regard to compensation paid by railways. In para 3 and 4 of the affidavit he attributed the death because of accidental fall. Though it has been stated that railway is taking measures regarding safety and security of the passenger according to its capability and its resources and plan has been chalked out under the head "Indian Railways Vision 2020" for modernization of railways it does not appear that some decision has been taken to provide manual or mechanical means to close the doors of train whenever it leaves the platform.

16. Keeping in view the fact that more than 100 crores are paid as compensation because of accidental fall from the train we have directed the appellant railways to find out the expenditure which may be incurred with regard to closer of doors. In pursuance to order of the Court opinions were obtained from Research Design and Standards Organization (in short referred hereinafter referred as RDSO) which submitted technical report dated 21.10.2010. Copy of the technical report submitted to by Shri Baboolal Raikwar Integral Coach Factory Chennai filed with the affidavit dated 27.10.2010 is reproduced as under:

Kindly connect Board's letter quoted above. Technically, automatic control for opening/closing of doors in various types of new coaches having interface with driver and guard in the train is possible. However, retrofitment of this arrangement is not practically possible due to major alterations/modifications in the existing design of the coaches. Recently, ICF has provided electrically operated controlled mechanism for door opening/closing in Kolkatta Metro coaches. Similar type of sliding doors can be designed for the conventional coaches. The door leaf can be designed for external pocket subject to MMD clearance or internal pocket in the side wall. Synchronised opening and closing of doors in the coaches at nominated stations can be achieved through dedicated control from driver's/guard's cabin. The following issues as regards design, cost, security and operation need to be considered:

1. Design Issues:

- i Provision of Intervehicular coupler throughout the length of train from Driver
- ii Modifications to AC/RMPU ceiling to accommodate sliding door mechanism.
- iii Provision of pocket in the side wall for sliding door (internal/External). This will require the windows adjacent to the doorway to be eliminated or blocked. At least one row of berths/seats adjacent to door way is likely to be reduced completely in all types of coaches.
- iv Strengthening of doorways with an antitelescopic measure
- v Modifications to water tank ceiling to accommodate sliding door pockets
- Vi Rerouting of alarm pull arrangement.
- Vii Modifications to luggage rack fixing arrangement.

Viii Relocation of plumbing arrangement in toilets

ix Modification to windows in the lavatories

X Relocation of electrical cubicle to accommodate sliding door pocket.

Xi Modification of linen room in AC coaches to accommodate sliding door pocket.

Xii Modifications to berths, linen room, gas room and lavatories in case of WCB etc.

2. Cost Issues:

Door opening of Kolkata Metro coaches is 1300mm (Sliding type) the door of conventional coach (782mm Swing type) to be made sliding type. Therefore, the indicative cost assessment for the automatic door control in conventional coach based on Kolkata Metro coaches is given as under:

I) Door control mechanism: Rs. 3 lakh/door

II) Door leaf and accessories: Rs. 2 lakh/door

.....

At an rough assessment, the automatic control for door opening/closing will cost approximately Rs. 20.30 lakh per coach of 4/6 doors. Besides the cost of Centralised control in Driver's and guard's room, cable from end to end and IV couplers, which may not be substantial compared to the cost of mechanism in train.

3. Security issues:

The concept of emergency and normal opening/closing of doors at nominated destinations as well as enroute with rider grant to passengers, if any need to be defined to make genuine use of automatic opening/closing of doors.

4. Operation issues:

(I) Closing of doors at stations obstructed by passengers or hawkers. In such a case attention by driver or guard may result in detention to train.

(ii) The opening and closing requirements of various class of coaches will vary and all information/control mechanism to be made available to the driver/guard.

(iii) In long train ensuring timely start of train may get affected due to obstructions in doorway in any one of the coach.

(iv) Vendors entering coaches at stations will create problem due to closing of all doors before start of train.

17. Thus, it appears that costs with regard to one coach comes to Rs. 20 to 30 lacs per coach. The railway pays compensation to the dependents of deceased to the tune of more than Rs. 100 crores in every calendar year. In case litigation

and other charges are included then according to respondents counsel it shall come to around about Rs. 200/ crore or more. In para 8 of the affidavit assessment has been made that investment will be of around Rs. 5625/crores in odd to achieve basic need. For convenience Para 8 of the affidavit is reproduced as under:

"Keeping in view the foregoing, Deponent would like to submit:

(I)The provision of automatic closing and opening of doors is practically not feasible in existing EMUs or main line coaches as it entails major structural design changes to the coaches, besides leading to high ineffective.

(II)Although the provision of automatic door in new EMIs or main line coaches is technically feasible, it would entail very substantial cost of over Rs. 1100 crores per year on new builds. Moreover, proper functioning of this mechanism in our operating environment would be extremely difficult and would perhaps completely jeopardize train operation as brought earlier.

In addition, costs would also be incurred in upkeep and maintenance of this system. Due to frequently occurring delays in train departure, there will be substantial loss of line capacity requiring additional investment to the tune of over Rs. 35,000 crores to maintain same level of traffic.

(III)Arrangement of manual latching of doors available in existing 45,000 mainline coaches and 7000 locomotives will also require major modifications and investment to the tune of Rs. 5,625 crores to achieve basic functionality. In our operating environment where there is large overcrowding, ensuring that all the doors of the train are properly closed, would not only require a large additional work force for enforcement but may also create problems of law and order besides detentions to trains."

18. There appears to be no doubt that it falls within the administrative demand of the Indian Railways/appellant to take a decision with regard to safety and security of the passengers.

19. However, it is not uncommon when number of cases reported with regard to robbery and dacoity and theft in moving train by unauthorised entry of antisocial element and after committing crime jumped down from the train before arrival to platform. In overcrowded compartment passenger is compelled to stand on the door side since entry is not regulated or has been correlated with the issuance of ticket which seems to prime cause for accident fall from train. Number of trains required in "population ratio" is also much less than the requirement. Keeping in view the fundamental right with regard to life, quality and dignity, railways cannot shirk from its responsibility to provide appropriate security measures in the moving train to check the commission of crime or accidental death. As we have directed by earlier orders dated 6.9.2010 and 28.10.2010, that it could be done in phases. Things may be started from the production level and in selected train in a gradual manner. Question is of will power to take a decision to secure

public good. This is not for this Court to make suggestion but increase of one rupees in ticket price as we have been informed done in the price of diesel for the construction of golden quadrangle (roads) in the country, railway may generate sufficient fund to provide safety and security to its passenger. Moreover otherwise also this may be done in phases to secure public interest.

20. We are of the view that Railway Board or the Cabinet should consider and take appropriate measure keeping in view their statutory and constitutional obligation to check not only the crime but accidental fall of its passengers by providing mechanism for automatic closure of door as observed.

21. In view of above, appeal seems to be lack of merit and is dismissed.

22. However, let a copy of the judgement be sent to Chairman Railway Board as well as Secretary Railways to consider for appropriate measures for automatic closer of door in the light of observation made in the body of the judgement. The Chairman Railway Board shall submit the status report expeditiously say within a period of four months.

Appeal is decided accordingly.