
(2014) 02 DEL CK 0055
In the Delhi High Court
Case No : FAO No. 509 of 2012

Union of India

APPELLANT

Vs

Shri Sohan Lal

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123(c) 124A 124-A

Citation : (2014) 02 DEL CK 0055

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Amitabh Yadav, for the Appellant; Navneet Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This first appeal has been filed by the Railways u/s 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 5.6.2012 by which the claim petition filed by the respondent (applicant before the Tribunal) has been allowed and statutory compensation of Rs. 4 lacs granted. The facts as pleaded in the claim petition were that the deceased Sh. Gopichand, son of the applicant before the Tribunal (respondent herein), while travelling from Palwal to Tughlakabad railway station on 24.3.2011 accidentally fell down from the train near the Tughlakabad railway station on account of the fact that there was a heavy rush in the train and he was pushed from inside by the crowd while the train was approaching the Tughlakabad station. The fact that the deceased was travelling in the train is not disputed in the present case.

2. There are however two issues raised by the appellant herein as to whether the deceased was a bona fide passenger travelling on a valid train ticket and whether the deceased died on account of an untoward incident as per the meaning of the expression u/s 123(c) read with Section 124A of the Railways Act, 1989 or he died on account of his self-inflicted injuries as he was leaning out of the train and was hit by a signal post.

3. The Tribunal has held that the deceased was a bona fide passenger because the train ticket was placed and proved as Ex.AW1/11. I may note that besides the finding of train ticket in the record of the Railway Claims Tribunal, there is a document filed by the appellant itself as R2 and which is a certificate from Palwal Station that the ticket in question was validly issued from the Palwal railway station. Thus, the deceased was travelling from Palwal to Tughlakabad on this valid ticket.

(i) Counsel for the appellant argued that the deceased Sh. Gopichand was not a bona fide passenger travelling on a valid train ticket and train ticket was planted and that this allegedly becomes clear from the report prepared by one Sh. Parmeshwar Dayal, ASI on the date of the accident that one Sh. Shravan Kumar, the co-passenger informed that from the purse of the deceased Sh. Gopichand no ticket was recovered.

(ii) I cannot agree with the argument urged on behalf of the appellant that the deceased was not a bona fide passenger inasmuch as the report which is relied upon, besides not being proved and exhibited before the Tribunal, even if the same is taken as correct, the same is to be rejected because the same is completely against the actual facts inasmuch as Sh. Shravan Kumar was not a co-passenger, but he was the brother of the deceased who had gone to the hospital after the accident. The statement of Sh. Shravan Kumar, brother of the deceased Sh. Gopichand has been filed and proved on record as Ex.AW1/7 and which states that the hospital authorities gave a ticket and visiting card of the deceased Sh. Gopichand to him/Shravan Kumar. This statement of Sh. Shravan Kumar is specifically recorded vide DD No. 18A on the same date of the accident and has been proved as Ex.AW1/7 as already stated above. The co-passenger of the deceased Gopichand was actually the deceased's cousin brother Sh. Ram Kishan and whose statement has been filed and proved on record as Ex.AW1/6. In this statement, Ex.AW1/6 of co-passenger Sh. Ram Kishan, it is specifically stated by Sh. Ram Kishan that both he and the deceased Sh. Gopichand separately purchased tickets of Rs. 6/- each for travelling from Palwal railway station to Tughkalabad railway station for getting jobs of a security guard through their uncle who was employed in the same field. Therefore taking on record the statement of Sh. Ram Kishan as Ex.AW1/6, of Sh. Shravan Kumar Ex.AW1/7, the ticket filed and proved on record as Ex.AW1/11 and finally the document R2 filed by the appellant itself that the ticket was validly issued from Palwal railway station, it is clear that the deceased was a bona fide passenger travelling on a valid train ticket.

4(i) The next issue is as to whether the deceased Sh. Gopichand died on account of self-inflicted injuries on account of his leaning out from the train and being hit by the signal post or he was in fact pushed out from the train by other passengers in the over crowded train.

(ii) In this regard, the Tribunal has rightly held that the deceased in fact fell down from the train and not that he was leaning out from the train. The

conclusion of the Tribunal, in my opinion, can be substantiated from the various documents and facts as stated hereinafter.

5. Firstly the witness of the appellant RW1 Sh. Rakesh Kumar, and who was a guard on the train, specifically admitted that there was a heavy rush in the train and he saw the deceased being hit by the signal post. However, it bears note that whether the deceased was hit by the signal post on account of being pushed by the crowd in the train was not in the personal knowledge of Sh. Rakesh Kumar, RW1. In fact, the case of the applicant before the Tribunal is more believable because the aforesaid guard Sh. Rakesh Kumar in his statement filed as Ex.RW1/1 admits that on his seeing deceased Sh. Gopichand being hit by the signal post he stopped the train, however, by the time the train stopped it had reached platform no. 2 of Tughlakabad railway station, thus meaning thereby that the train which was over crowded with passengers was nearing the station and it is natural at such point of time that there would be considerable movement and pushing in the train, and therefore the deceased Sh. Gopichand no doubt may have been hit by the signal post, but, that would be on account of his being pushed from inside of the train and therefore falling from the train and not because deceased was leaning out from the train.

6. Secondly, the deceased was travelling with one Sh. Ram Kishan, his cousin brother and whose statement has been recorded as Ex.AW1/4 on the same date of the accident in DD No. 18A and as per which it is specifically stated by this witness who is an eye witness that the deceased Sh. Gopichand was pushed from inside of the train on account of the heavy rush in the train. Accordingly, in my opinion, the respondent herein had discharged the onus of proof of the deceased Gopichand having in fact been pushed out of the train by the crowd while the station at Tughlakabad was being reached and therefore deceased cannot be said to have died on account of self-inflicted injuries or his own criminal negligence and only in which cases the Railways/appellant are exempted from liability.

7. In this regard, one is again reminded by the observations made by the Supreme Court in the judgments of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, and Jameela and Others Vs. Union of India (UOI), that liability of the Railways is a strict liability under Sections 123(c) and 124A of the Railways Act, 1989 and accidental falling while standing near the door of a train should not be held to be on account of his own criminal negligence. In Indian circumstances on Indian Railways where admittedly there is over-crowding and falling from such a train, even if that is on account of negligence, the same cannot be a ground to deny statutory compensation in terms of liability on the Railways by Sections 123(c) and 124-A of the Railways Act, 1989.

8. I may finally add that counsel for the appellant had argued that deceased was travelling in the vendor van and not in the normal coach, however, once again this argument will not entitle the Railways to be discharged from their liability when trains are over-crowded, passengers do stand in the vendor van and standing in vendor van for travelling is not such a negligence for the statutory

compensation not to be granted once the bona fide passenger dies in an untoward incident by falling from a train. In view of the above, there is no merit in the appeal and the same is therefore dismissed, leaving the parties to bear their own costs.