
(2013) 02 P&H CK 0173
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 386 of 2012 (O and M)

Union of India

APPELLANT

Vs

Smt. Suman and Others

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Railways Act, 1989 — Section 123(c), 124, 124A, 2(29)
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (2014) ACJ 45 : (2014) 1 AnWR 551 : (2013) 170 PLR 28 : (2013) 3 RCR(Civil) 700

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Karamjit Verma, for the Appellant; Surinder Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—The present appeal has been filed by Union of India to challenge the award dated 05.08.2011 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter called the Tribunal) Briefly, the facts of the case are that on 03.01.2010, deceased-Manoj Kumar along with his friend Pappu Kumar was travelling in a local train and was going to visit his relative. He purchased a railway ticket in the presence of his friend Pappu Kumar. There was a great rush in the train and while on the way, deceased Manoj Kumar fell down from moving train between Ballabgarh and New Town Railway Station on account of jerk and sustained multiple injuries on the vital parts of the body and he succumbed to his injuries on the spot. A telephonic message was sent to his family members upon which, brother of the deceased and other persons reached to the spot and identified the dead body. It was mentioned in the claim petition that the ticket purchased by deceased got lost during the incident.

2. Claim petition was filed before the Tribunal by six persons i.e., wife, minor daughter, parents, minor sister and minor brother.

3. Claim petition was allowed except the claimants-minor sister and minor brother of the deceased, who were not found to be dependent upon the deceased and the claimants were granted compensation to the tune of Rs. 4 lacs along with interest @ 9% per annum from the date of filing of claim petition till the payment is made vide award dated 05.08.2011.

4. The present appeal has been filed by Union of India to challenge the impugned award on the ground that the deceased was not bonafide passenger as defined u/s 2(29) of the Railways Act and no ticket was produced to establish his claim as bonafide passenger. Learned counsel for the appellant submits that the deceased was unauthorizedly crossing the railway line whereas he was resident of Azadnagar Jhugi, Sector 24, Faridabad, which is closer to the place of incident.

5. Learned counsel for the appellant further submits that no untoward incident occurred on 03.01.2010 with the alleged train and as such, the respondents are not entitled for any compensation as per provisions of Section 124-A of the Railways Act.

6. Learned counsel for the appellant also submits that the Tribunal has failed to differentiate the fact of accidental falling and falling of the deceased due to his carelessness or negligence. Learned counsel for the appellant also relies upon the judgment of Delhi High Court in Smt. Murti Devi and others v. Union of India, FAO 132 of 2010, decided on 12.08.2011.

7. Learned counsel for the claimants submits that the award has been passed after considering evidence from both the sides and there is no infirmity in the award passed by the Tribunal. Heard arguments of learned counsel for the parties and have also perused the impugned award under challenge and other documents available on the file.

8. Admittedly, the deceased-Manoj Kumar died in a railway accident and claim petition was filed by claimants, who are legal heirs of deceased. As per case of the claimants, the deceased was travelling in a train and purchased ticket in presence of his friend, who was accompanying him at the time of travelling. He fell down from the train and injured and subsequently, died on the spot. The ticket purchased by deceased was lost during that incident. The case of the appellant is that the deceased was resident of nearby place and there was no justification to travel by train and he cannot be considered as bonafide passenger and as such not entitled for any compensation.

9. Adverting to the arguments raised by learned counsel for the appellant as well as counsel for the claimants, it would be relevant to refer to the provisions of Sections 123(c) and 124-A of the Act, which read as under:-

123. Definitions.-In this Chapter, unless the context otherwise requires,-

(a) "accident" means an accident of the nature described in section 124;

(b) "dependant" means any of the following relatives of a deceased passenger,

namely:-

- (i) the wife, husband, son and daughter and in case the deceased passenger is unmarried or is a minor, his parent;
- (ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;
- (iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;
- (iv) The paternal grand parent wholly dependant on the deceased passenger.

"untoward incident" means-

- (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 (28 of 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 accident falling of any passenger from a train carrying passengers.

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 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 or 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.

10. As per finding recorded by the Tribunal, the deceased was bonafide passenger as appellant had failed to bring on record any material that the deceased acted in a manner falling u/s 124-A proviso (a) to (e) of the Railways Act and therefore, cannot be exonerated from his liability to pay compensation to the claimants. It has also been mentioned by the Tribunal that conflicting statements have been made and those statements are contrary to the recorded DRM report as well as part of GRP report and also the sworn testimony of AW 2. The compensation has been granted in view of provisions of Section 124-A of the Railways Act as in case of untoward incident, the compensation is to be paid to the claimants for the loss occasioned by death of a passenger. In case of untoward incident and death, a sum of Rs. 4 lacs has been prescribed irrespective of age, earning capacity or the status of the deceased.

11. In the decision reported in *Joji C. John Vs. Union of India (UOI)*, , a Division Bench of Kerala High Court has held that, when there is an "untoward incident" even when no negligence is proved on the part of Railway Officers, the Railway is liable to pay the compensation. Even if there is no negligence on the part of Railway employees, it cannot be presumed that the injuries caused to the victim of the accident are self-inflicted so as to deny compensation as provided under Railway Accidents and Untowards Incidents (Compensation) Rules, 1990.

12. This view has been further reiterated in a recent decision of the Hon'ble Supreme Court in *Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others*, , Interpreting the term "accidental falling of a passenger from a train carrying passengers", it was held that the term includes a situation wherein a person is trying to board the train and falls down from the train while trying to do so. In the instant case since the accidental fall is admitted by the appellant/respondent and since there is no contention that it is a self inflicted injury or it is caused due to any criminal act or act of intoxication or insanity, the Railway cannot deny compensation.

13. In view of the facts as well as law position and also the fact that provisions of Section 124 of Railways Act are beneficial legislature and strict proof of the matters is not required. In the present case, the deceased was travelling in a local train and due to fall, succumbed to his injuries. Nothing has come on record to show that the accident has occurred due to the negligence on the part of the deceased. Learned counsel for the appellant has not been able to show anything that the deceased was not a bonafide passenger and simply by stating that he

was resident of place close by is not sufficient as in case of death of passenger in railway accident, presumption is that the deceased was a bonafide passenger and burden is upon the railway to prove that he was travelling without ticket as has been held in *Maniben Paljibhai Parmar v. Union of India*, 2005 (1) R.C.R. (Civil) 255. In view of the aforesaid discussion, I do not find any merit in the appeal as well as in the application for condonation of delay and the appeal being devoid of any merit is dismissed.