

(2011) 08 DEL CK 0153
In the Delhi High Court
Case No : FAO No. 106 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Babita Devi and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123(2), 124A

Citation : (2011) 08 DEL CK 0153

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : J.K. Singh, for the Appellant; R.K. Jangu, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

CM No. 17669/10 & 17671/10 (condonation of delay in filing and re-filing)

Delay in filing the restoration application and delay in re-filing u/s 151 of CPC are condoned. CMs stand disposed of.

CM No. 17668/2010 (for restoration)

Appeal is restored to its original number. CM stands disposed of.

FAO No. 106/2007

1. The challenge by means of this First Appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned order dated 20.11.2006 of the Railway Claims Tribunal whereby the Tribunal allowed the claim petition of the dependents of the deceased and granted the statutorily fixed compensation.

2. The facts of the case are that one Sh. Ranjit Singh was travelling on train No. 56232 down from New Delhi to Khagaria Junction and who died on 31.5.2002 at

the time of getting down from the train at the railway station. The Appellant, and who was the Respondent before the Tribunal, disputed the claim by stating that the deceased had tried to get down from a running train. The Tribunal has held that there cannot be an issue of the deceased being a bonafide passenger because the railway ticket was indeed recovered from the deceased on the search of his body after death. So far as the issue that there was an untoward incident, the Railway Claims Tribunal has held that AW-3 who was travelling in the same train compartment with the deceased stated that the deceased did not fall down from the train on account of his own negligence. The Tribunal also held that it was upon the Appellant to lead positive evidence to show that the deceased was trying to get down from the running train and in which it failed, and therefore it was held that the dependents of the deceased were entitled to compensation on account of the untoward incident of death u/s 124-A of the Railways Act, 1989.

3. The legal position is now well settled by two recent decisions of the Supreme Court in the cases of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, and Jameela and Others Vs. Union of India (UOI), . In the case of Prabhakaran (supra), the Supreme Court has held that if a person is trying to get inside the train and such person falls down, it is an accidental falling of a passenger from a train carrying passengers and hence an untoward incident. The Supreme Court held that a restrictive meaning should not be given to the expression "the accidental falling of a passenger from a train carrying passengers" in Section 123(c)(2) of the Railways Act, 1989. The Supreme Court in Prabhakaran's case (supra) made it clear that Section 124-A lays down strict liability or no fault liability in case of railway accidents and if a case is filed u/s 124-A, it is wholly irrelevant as to who was at fault. In the subsequent case of Jameela (supra), the Supreme Court has gone to the extent of saying that even if the death takes place on account of negligence, yet, the same will be an untoward incident and the dependents of the deceased will be entitled to compensation. The Supreme Court held that unless and until there is a mens rea or criminal negligence, it cannot be said that the death is not an untoward incident. Para 7, 10 to 12 of the decision in the case of Jameela (supra) are relevant and they read as under:

7. 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 eyewitness to 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.

10. 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).

11. 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.

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 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.

(Emphasis added)

4. In view of the settled position of law and the facts which have emerged on record, it is established that not only the deceased was a bonafide passenger, but also there was an untoward incident entitling the Respondent to compensation. There is no merit in the appeal. Dismissed.