

(2008) 09 MAD CK 0156
In the Madras High Court
Case No : C.M.A.NPD. No. 115 of 2003

Union of India (UOI)

APPELLANT

Vs

P. Gomri and 4 others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Railways Act, 1989 — Section 123, 123(c), 123(C)(2), 124(a), 124A
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (2008) 09 MAD CK 0156

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : M. Vellaisamy, for the Appellant; T. Raja Mohan, for the Respondent

Judgement

S. Palanivelu, J.—This appeal is filed against the judgment dated 4.7.2002 in O.A. No.2001/0062 on the file of the Railway Claims Tribunal, Chennai Bench, Chennai. The short facts necessary for the disposal of the appeal are as follows:-

(i) On 30.6.2001, the deceased A. Palani boarded train No.8690 Alapuzhai Bokora Express at Katpadi in order to proceed to Arakkonam by purchasing a second class ticket. It is learnt that when the train, which was running late, reached Arakkonam Railway Station at 01.25 hours on 1.7.2001 at platform No.2, the deceased accidentally slipped, fell down and was crushed between the platform and railings and thereafter, died in the Hospital.

(ii) A complaint was lodged by the Station Master, Arakkonam Railway Station and the case was registered by the Arakkonam Railway Police Station u/s 174 Cr.P.C. The inquest was conducted by the Sub Inspector of Police, Arakkonam Railway Police, Arakkonam in the presence of the Panchayatars and it was concluded that the deceased has accidentally fell down from the train and died due to the injuries sustained in the accident fall. It was an accident fall within the meaning of term "untoward incident" as defined u/s 123(C)(2) of the Railways Act, 1989 (hereinafter referred to as "the Act") and the appellant is liable to pay

compensation statutorily u/s 124A of the Act.

(iii) In the counter filed by the appellant, it is denied that the deceased had accidentally fallen from the train and died due to the injuries suffered in the accident fall. The enquiry reveals that the deceased had fallen down from the running train before it reached the platform. The deceased was not a bona fide passenger travelled with a valid ticket for the Express train. The deceased had fallen down from the running train due to his own negligence. Hence the appellant is not liable to pay any compensation and the claim petition has to be dismissed.

(iv) After considering the factual aspects in the matter, the Railway Claims Tribunal, Chennai Bench have decided that it is an accidental fall as described in statute which should be termed as "untoward incident" and awarded compensation to the respondents. Aggrieved against the said judgment, the present appeal has been filed by the appellant before this Court.

2. Mr. M. Vellaisamy, learned counsel appearing for the appellant would submit that in as much as no valid material is forthcoming from the side of the claimants to show that the deceased was a bona fide passenger and the fall was not due to the negligence of the deceased, the appellant cannot be mulcted with any compensation.

3. On the contrary, Mr. T. Raja Mohan, learned counsel appearing for the respondents would submit that the circumstances of the case would amply establish that the accident occurred as described in claim petition, which would squarely fall within the meaning of "untoward incident" as defined in the Act and hence the appellant is liable to pay the compensation.

4. It is admitted that a ticket was acquired by the deceased bearing No.25369907 and it is also known that it was an ordinary ticket issued by Katpadi Railway Station, not for the Express train, from which the deceased fell down. The ticket was found in the pocket of the deceased at the time of inquest. Pointing out this circumstance, learned counsel for the appellant says that the deceased was not at all a bona fide passenger. But the well settled legal principle in this regard would clearly indicate that if the accident was brought under the phraseology "untoward incident", then, neither the negligence nor whether was he a bona fide passenger has to be proved. Before entering into the area of legal position settled in this regard, it is profitable to extract Sections 123(c) and 124A of the Act as follows:-

" 123(c) "untoward incident" means

(1) (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, cloakroom or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passengers from a train carrying passengers."

5. In fact the Tribunal itself found that it is an accidental fall and comes within the meaning of "untoward incident". Therefore, the question that falls for consideration in this case is, as to whether the deceased was a passenger covered by the provisions of section 124A of Railways Act or not.

124-A. 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 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."

6. In support of his contention, learned counsel for the respondents relied on a decision reported in the case of U.O.I. v. P.V. Kumar (2008) 4 MLJ 323 (SC)), in which, their Lordships have held that the expression "accidental fall of a passenger from a train carrying passengers" includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a

purposive, and not literal, interpretation should be given to the expression. It is held further as follows:-

"10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion, in either case it amounts to an "accidental falling of a passenger from a train carrying passengers". Hence, it is an "untoward incident" as defined in Section 123(c) of the Railways Act.

17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault."

7. From the judicial pronouncement by the Supreme Court, it comes to light that if the case could be brought within the purview of Section 124A of the Act, there is no need to see whether the injured or deceased was at fault.

8. Learned counsel appearing for the respondents also placed reliance on the decision of this Court reported in the case of T. V. Kunjali v. Union of India (A.I.R. 2007 Madras 285 = 2007-3-L.W. 345), wherein learned Single Judge, after discussing about the import of provision of Section 124A of the Act, has held as follows:-

"7. It is true that in the Claim Application, the appellant has pleaded that he was standing near the entrance of the compartment and due to the sudden start of the train and pushing of the passengers, he lost control of the hold, suddenly slipped and fell down and sustained injuries. But Ex.A-1 (a) and Ex.A-1(b) shows that the appellant was attempting to board a running train. Then, the question arises whether the appellant is entitled to compensation, if he has sustained injuries at the time when he has tried to board a train as alleged by the respondent. Section 123 of the said Act defines "untoward incident". It says "accidentally falling of any passenger from a train carrying passengers".

(Proviso 124-A of the said Act omitted).

The said proviso does not cover the case of a person, who sustained injury while attempting to board the train. As rightly pointed out by the learned counsel appearing for the appellant, the case on hand will not cover the categories listed under the proviso to Section 124(a) of the said Act. The said proviso clearly lists certain categories of persons who are not entitled to compensation in the case of injury or death occurred thereon. Admittedly, in the present case, even if the plea of the respondent that the appellant suffered injuries while boarding the train is taken to be true, still the respondent-Railway Administration is liable to pay compensation to the appellant."

9. In yet another decision cited by the learned counsel appearing for the respondents reported in the case K. Vidya Kumari v. Union of India, South Central Railway (2004 ACJ 1420), learned Single Judge of this Court has

rendered an identical opinion as to the circumstances where a passenger died out of untoward incident. The operative portion of the decision reads thus:-

" 7. As can be seen from the aforesaid provisions, a passenger who has purchased a valid ticket for travelling by a train carrying passengers, and even a person who possesses a valid platform ticket is covered by this definition, and when becomes a victim of an untoward incident, he is entitled for compensation. There is no specific mention in this section that a passenger should possess a ticket only in respect of the train from which he had an accidental fall. Since a person who possesses a platform ticket is also entitled for compensation, possession of a valid ticket for a particular train, becomes immaterial. A passenger possesses a valid ticket for a train carrying passengers is sufficient to claim compensation, provided he becomes victim of an untoward incident."

10. The aforesaid decision throws much light in order to clarify the term "injured" or the "deceased" who was victim of untoward incident. The only statutory requirement is that the case should not be brought under proviso to Section 124A of the Act. In any of the events, apart from the categories enumerated in the proviso to Section 124A of the Act, it could be definitely and unhesitatingly held that the victim deserves to get compensation. Adverting to the facts of this case, there was an accidental fall and the perusal of the evidence also shows that there was no negligence on his part. It transpires from evidence that while the train was reaching the platform No.2 of the station, the deceased suddenly slipped and fell down and got into the wheels.

11. In view of the circumstances of the case and the legal position on this point, it has to be necessarily observed that the claimants are entitled for compensation. The order passed by the Railway Claims Tribunal does not suffer from any factual or legal infirmity, so as to invite interference from this Court. The observations and findings of the Tribunal could not be dislodged, which deserves to be confirmed and accordingly confirmed.

12. Learned counsel appearing for the respondents would submit that the appellant has already deposited entire award amount, which is in the deposit. Since claimants 2 to 4 are minors, the first claimant viz. the wife of the deceased may be permitted to withdraw the Interest accrued on the compensation available to the minors. Accepting his request, it is ordered accordingly. In fine, the civil miscellaneous appeal fails and the same is dismissed. No costs.