
(2011) 07 DEL CK 0362
In the Delhi High Court
Case No : FAO No. 408 of 2008

Union of India (UOI)

APPELLANT

Vs

Shukh Lal Mandal and Another

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 124A

Citation : (2011) 07 DEL CK 0362

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Geetanjali Mohan, for the Appellant; R.R. Jangh, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this first appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment of the Railway Claims Tribunal dated 6.6.2008 which allowed the claim petition of the Respondents, and which petition was filed for claiming compensation for the death of one Sh. Nagardeep Mandal.

2. The facts as laid out in the claim petition were that the deceased was a bonafide passenger travelling on 8.6.2003. On the train journey when the train passed through Turiganj Railway Station, the deceased fell down from the running train on being pushed by the heavy crowd of passengers and jerk of the train. The deceased Nagardeep Mandal was travelling with Mr. Bikash Chandra Mandal who pulled the chain and whereby the train stopped. Sh. Nagar Deep Mandal had in the meanwhile succumbed to his injuries on account of the fall from the train. The only defence of the Appellant/Respondent before the Railway Claims Tribunal was that the deceased died due to his own negligence as he was standing at the door of the sleeper class compartment and where he slept and therefore fell off the train due to his own negligence.

3. The Railway Claims Tribunal has referred to the testimony of the co-passenger AW-2 Bikash Chandra Mandal as to the untoward incident and held that the death of the deceased was on account of having been pushed out by heavy crowd of passengers and the jerk in the train. It was established on record that the compartment was overcrowded. The Railway Claims Tribunal also noted that the deceased was forced to take a seat near the door because of this overcrowding and from where he fell down. The Railway Claims Tribunal also held that the Railways failed to show that there was No. overcrowding in the train. Few of the relevant observations of the Railway Claims Tribunal which are relevant, read as under:

That is to say, the deceased was sitting at the gate not by choice, but out of the compulsion. It is a matter of common knowledge that the railway tickets are issued from one station to the other without even having any data as to whether the seats are available in the train for the passenger, who is purchasing the ticket. The Tickets are issued at random without even specifying whether the passenger has to travel by boarding the train at the gate or on the roof top or hanging on the steps of the compartment. As I have already noticed, the Respondent Railway Administration has not been able to show that there was No. over-crowding in the train and that the deceased was not required to travel in the train by sitting near the gate. It has also not been able to show that the passengers commensurate to the seats available in the compartment had boarded the train. On the other hand, the material placed on record would clearly reveal that the compartment was over-crowded with passengers and the deceased was forced to take a seat near the gate of the compartment. In the fact situation, the Railway Administration cannot be allowed to run away from its responsibility that a human being has to travel and it is not the luggage, which is to be carried and dumped. Railways owe certain common law duty while dealing in such a hazardous transport system. There is a duty cast on the Railways to ensure safety of passengers travelling in the train. In the instant case, there is nothing on record to show that the Railways have acted reasonably and properly to ensure safety of passengers.

4. I may note that the impugned judgment is dated 6.6.2008 and whereafter the legal position has been settled by the Supreme Court in the recent decision of Jameela and Others Vs. Union of India (UOI), . Paras 7,10, 11 and 12 of the judgment are relevant and the same 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).

5. A reading of the ratio in the case of Jameela (supra) shows that even if the deceased fell from the train due to his own negligence it will not have any effect on the compensation payable u/s 124-A of the Railways Act, 1989. This is specifically stated by the Supreme Court in para 7 of the judgment. It is also the ratio of the judgment in Jameela's case (supra) that unless a criminal act as envisaged under Clause (c) of Section 124A of the Act has an element of malicious intent or mens rea, it would not mean that the incident is not an untoward incident inasmuch standing at the open doors of a compartment of a running train may be a negligent act, even a rash act but the same is certainly not a criminal act.

6. In view of the above, there is No. merit in the appeal. The appeal is accordingly dismissed leaving the parties to bear their own costs. Trial court record be sent back.