
(2003) 09 DEL CK 0001
In the Delhi High Court
Case No : FAO No. 625 of 2002

Union of India (UOI)

APPELLANT

Vs

Smt. Amaravati Devi and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Citation : (2003) 7 AD 280 : AIR 2004 Delhi 218 : (2003) 71 DRJ 425 : (2004) 2 RCR(Civil) 59

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : S.D. Salwan, for the Appellant; Pratima Nain, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—ADMIT.

2. Matter being short, the same has been heard with the consent of the parties and disposed of by this order.

3. The appellant has filed this appeal challenging the judgment of the Railway Claims Tribunal whereby the tribunal has awarded compensation of Rs. 4 lakhs u/s 124A of the Indian Railways Act to the respondents who are the legal representatives of the deceased who was a bonafide passenger in the train and had died because of his having fallen down from while the same was in motion.

4. The contention of Mr. Salwan, learned counsel for the appellant is that since the deceased was under the influence of liquor, he had fallen down from the train because of intoxication and his legal heirs were thus not entitled to any compensation. Under of the Act, 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. The only exception on which the railway administration can avoid the payment of compensation for death of a passenger who has died as a result of such untoward incident is that the passenger had died 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.

5. "Untoward incident" has been defined in Section 123 of the Act to mean the "accidental falling" of any passenger from a train carrying passenger Rs. In the post mortem report of the deceased it has been stated that 100 ml. Liquid was found in the stomach of the deceased with smell of alcohol. The contention of Mr. Salwan is that as the liquid taken out from the stomach of the deceased smelt of alcohol, the same clearly proved that he was intoxicated and consequently the railway administration in view of the proviso to Section 124A of the Act will not be liable to pay compensation to the legal heirs of the deceased.

6. I have carefully considered the arguments advanced by Mr. Salwan, however, I have not been able to make myself agreeable with the same. It is no doubt true that the liquid contents of the stomach smelt alcohol but that itself is not sufficient to prove that the deceased, when he had fallen from the train, was intoxicated. To avoid its liability u/s 124A of the Act, it was required of the appellant to prove before the tribunal that the deceased has fallen from the train because of intoxication. Merely because the deceased was smelling of alcohol cannot, in any case, prove intoxication. I do not find any illegality or infirmity in the observations of the tribunal that the smelling of alcohol in the stomach contents of the deceased would not by itself prove that there was a direct nexus between the alcohol and the death of the deceased, which had occurred because of his falling from the train. In my view, this case is fully covered by Section 124A of the Act and the appellant cannot avoid its liability on any of the exceptions in the said Section. For the aforesaid reasons, I do not find any merits in this appeal and the same is, accordingly, dismissed.

7. The interim orders passed on 10th December, 2002 are vacated and the respondent will be at liberty to withdraw the amount deposited in this Court.