
(2010) 05 P&H CK 0106
In the Punjab And Haryana At Chandigarh

Union of India (UOI)	Vs	APPELLANT
Smt. Sarla and Others		RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Railways Act, 1989 — Section 123, 124, 124A
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (2011) ACJ 1841 : (2010) 159 PLR 152 : (2012) 2 TAC 536

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order of learned Railway Tribunal, Chandigarh, dated 31.3.2009, vide which a claim petition filed by legal representatives of deceased Om Parkash has been allowed and widow of the deceased has been awarded Rs. Two lacs, whereas his two children namely Vinod Kumar (son) and Baby Poonam (daughter) have been awarded Rs. One Lac. each with simple interest @ 9% per annum from the date of filing of the claim petition i.e. 7.12.2005, till the payment is made. Out of which, 50% share of amount of applicants Nos. 1 and 2 (son and daughter respectively) has been ordered to be kept in fixed deposits in their favour in any Nationalized Bank for three years and the total amount of Rs. One Lac. awarded to Baby Poonam (minor daughter) has been ordered to be kept in fixed deposit till she attains the age of majority with a further rider that no charges whatsoever shall be created on it. The banking charges were ordered to be borne by the Railways and mother of Baby Poonam was given liberty to draw quarterly interest on the fixed deposit for the purpose of her education and welfare.

2. On 12.4.2005, Om Parkash (since deceased) boarded EMU train coming from Shakurbasti and going to Palwal via Faridabad as he had to attend a "Vaid" for the purpose of his treatment as he was suffering from paralysis. After about 1

1/2 kilometer from Faridabad between Faridabad Railway Station and New Town, Faridabad Railway Station, strong breaks were applied to the train by its Driver, as a result of which, passenger Om Parkash fell down due to powerful jolt/zerk on parallel railway track and was runover by a high speed train coming from opposite side, cutting his body into various pieces. Some one informed Dy.SS/ Faridabad, who sent an intimation to GRP vide memo dated 12.4.2005. Inquest report No. 54 dated 12.4.2005 was prepared. Post mortem was also conducted on the same day and the statement of one Vijay Kumar co-passenger was recorded who had seen the whole incident.

3. Respondent/appellant-Railways contested the claim petition denying causing of any untoward incident and liability of the Railways in terms of Section 123(c) read with Section 124A of the Railways Act, 1989 (for short, "the Act"). It was also alleged that the deceased Om Parkash was not in possession of any ticket and was not a bonafide passenger.

4. No replication was filed and on the basis of pleadings, the parties were sent to trial on the following issues:

1. Whether the deceased was bonafide passenger as alleged?
2. Whether the incident in question is covered within the parameters of Section 123(c) read with Section 124A of the Railways Act?
3. Whether the applicants are the only dependants of the deceased?
4. Relief.
5. Both the parties led voluminous oral as well as documentary evidence which includes the statements of Vinod Kumar (son of the deceased) who appeared as AW-1 and Vijay Kumar, a co-passenger as AW-2.
6. The learned Tribunal after appreciating the evidence on record gave a considered opinion that the deceased Om Parkash died in an untoward incident as he had fallen down from the train due to zerk and as the respondent/authority failed to discharge onus to prove that he was not a bonafide passenger, the liability of Rs. Four lacs, was imposed on the respondent to be paid to the claimants/legal representatives of deceased Om Parkash alongwith 9% per annum simple interest.
7. This appeal has been filed by the Railways/respondent alongwith an application i.e. C.M. No. 7593-CII of 2010 u/s 5 of the Limitation Act, 1963 (for short, "the Act") for condonation of delay of 170 days in filing of this appeal.
8. While hearing the application, learned Counsel for the appellant argued the entire case on merit as well. Therefore, before deciding as to whether notice in the application is required to be issued or not, it was found appropriate to deal with the merits of the case from which it was found that there is no case in favour of the appellant and the appeal deserves to be dismissed.

9. However, learned Counsel for the appellant has argued that the appellant is not liable to be penalised for the purpose of compensation because it is not a case of untoward incident, therefore, the claimants are not entitled to any compensation.

10. Adverting to the arguments raised by learned Counsel for the appellant, it would be relevant to refer to the provisions of the Act, namely Section 123(c) and Section 124A 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 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.

11. Learned Counsel for the Tribunal has found that the statement of AW-2 Vijay Kumar does not inspire confidence, but at the same time, evidence of Guard has also been found to be irrelevant. Insofar as the place of occurrence is concerned, it is in the Railways precincts and the deceased was admittedly run over by a fast train coming from the other side while he was lying on the railway track having been thrown out of the crowded train due to sudden zerk. In this connection, Section 123(c)(2) of the Act specifically provides that accidental fall of any passenger from a passenger train would come within the definition of untoward incident and Section 124A provides that in case of injury, the injured shall be entitled to compensation and in case of his death, legal representatives of the deceased would get compensation except where the injuries are self inflicted or due to his own criminal act. It is not a case of suicide or attempted suicide, act committed by him in a state of intoxication or insanity, any natural cause of disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

12. In the present case, the dead body of the deceased was found on the railway track. Station Memo was issued to GRP who conducted further proceedings informing that the death was caused due to railway accident.

13. Insofar as question of bonafide passenger is concerned, the learned Tribunal has found that as the body of the deceased Om Parkash was cut into many pieces and his clothes were torn, there is every possibility of his having lost the ticket. Moreover, in the case of Devkabai and Ors. v. Union of India 2007 (5)

R.C.R. 50, it has been held that "plea of Railway that deceased was travelling without ticket and was not a bonafide passenger cannot be believed that the police authorities did not make any efforts to discover or recover the ticket".

14. In the case of Maniben Paljibhai Parmar v. Union of India 2005 (1) R.C.R. 255, it has been held that "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"

15. Thus, keeping in view the facts that no evidence has been led by the respondent/appellant to discharge the burden that the deceased was travelling without ticket, therefore, it is presumed that he was a bonafide passenger.

16. In view of the above discussion, I do not find any merit in the present appeal, nor did I find any merit in the application for condonation of delay as no sufficient reason has been mentioned therein. Hence, both the application as well as the appeal are hereby dismissed, though without any order as to costs.