
(2009) 04 AHC CK 0785
In the Allahabad High Court

Union of India (UOI)

APPELLANT

Vs

Virendra Bharti and Another

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Citation : (2010) ACJ 2353 : (2009) 3 AWC 2383 : (2011) 7 RCR(Civil) 518

Hon'ble Judges : Amitava Lala, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—This appeal arises out of the judgment and order dated 16th May, 2008, passed by the Railway Claims Tribunal, Gorakhpur Bench in Application No. O.A./II/279/02DEOS, Shri Virendra Bharti and Anr. v. Union of India, whereby the Tribunal allowed the claim petition of the respondents/claimants and awarded compensation to a tune of Rs. 4,00,000 with interest on account of death of deceased Arun Kumar Bharti in an untoward incident on 23rd September, 2001.

2. There is no dispute with regard to nature of accident resulting in death of the deceased. From the evidences and the submissions of the contesting parties, it appears that the deceased was travelling by train having valid ticket but his body was leaning out of the coach when struck against a signal pole of the railway, as a result whereof he fell down from the train and expired. Parents of the deceased are the claimants. The real controversy is whether the accident is self-inflicted injury or untoward incident. The Tribunal held that the case of the respondents/claimants is totally covered by Section 123(c) read with Section 124A of the Railways Act, 1989. Section 123(c) of the said Act speaks about untoward incident when Section 124A speaks about the compensation on account of untoward incident. A Division Bench of this Court presided over by one of us (Amitava Lala, J.) has already held in a judgment in Union of India (UOI) Vs. Smt. Vidyawati Tiwari, Ved Prakash Tiwari and Gyan Prakash Tiwari, that the first

test in such circumstance would be whether the deceased was a bona fide passenger or not. In this case, there is no doubt that the deceased was a bona fide passenger. To substantiate the word "bona fide" we hold and say that in our country there is a difference between reserved compartments and unreserved compartments. Facilities of reserved compartments cannot be equated with the unreserved compartments at all. In the cases of reserved compartments, the seats of the valid ticket holders are reserved. Journey is comfortable. Identities are known. Normally, there is no chance of leaning out of the door by any one. If it happens, self-inflicted injury or criminal act cannot be ruled out and as such accurate analysis of evidence only rule out such possibility. But in the cases of unreserved compartments there is no such scope of identification. Who will come first, he will occupy the seat. Journey is not comfortable. If the seats are not available, passengers are compelled to stand in the coach and when rush is more, passengers are compelled to stand even on a footboard. Sometimes their bodies are leaning from the doors or open windows. On the other hand, railway authorities are issuing tickets irrespective of accommodations at their peril. Therefore, railway authorities are obviously responsible for the cause.

3. The railway is an essential means of transport for the general people. Even today number of trains and number of people is mismatching. Therefore, many passengers, in spite of having valid tickets, are compelled to travel by the trains at their own risk and responsibility, which cannot be construed as self-inflicted act. Standing on the foot-board or leaning body of a passenger from the railway compartment is such type of common knowledge that it hardly requires any evidence or proof.

4. In this particular case, a plea has been taken by the railway authorities that as because the body of the deceased was leaning out from the compartment, therefore, the nature of injury is self-inflicted injury but not an untoward incident. However, the Tribunal held that the deceased acted carelessly which, however, cannot be said to be self-inflicted injury. Reasoning of the Tribunal may not be clear or categorical but the import of the Tribunal to draw a finding cannot be said to be incorrect. Tribunal wanted to say that a journey of such nature may be at the risk and responsibility of the passenger but it cannot be said to be self-inflicted. In further, we are of the view that unless it is proved beyond doubt that the passenger is careless by establishing cause with materials, it is very difficult to hold and say that the deceased was careless and thereby his action is hit by the principle of self-inflicted injury. According to us, even if it is a case of risk v. risk, equity tilts sharply in favour of the deceased. We also agree with the decision of the Tribunal that a conscious act to harm one only lead to say that the same is self-inflicted injury. Therefore, we are of the view that cause of self-inflicted injury has not been proved beyond doubt as alleged or at all.

5. Hence, following the maxim that *potior est conditio possidentis* meaning thereby possessors condition is better and further *praesumptio violenta valet in iure*, meaning thereby law values strong presumption, we uphold the judgment

and order passed by the Tribunal. So far as payment of compensation is concerned, since the Union of India has preferred the appeal within the prescribed period of preferring the appeal, the compensation amount will not carry simple interest @ 16% per annum but will carry simple interest @ 8% per annum from the date of the order passed by the Tribunal till the payment. Thus, the appeal is disposed of.

No order is passed as to costs.

A.P. Sahi, J.

6. I agree.