
(2017) 01 DEL CK 0106

In the Delhi High Court

Case No : FAO 70 of 2009

Urmila Devi

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Railways Act, 1989 — Section 124A

Citation : (2017) 2 ACC 12 : (2017) 238 DLT 348

Hon'ble Judges : Mr. J.R. Midha, J.

Bench : Single Bench

Advocate : Mr. Anshuman Bal, Advocate, for the Appellant; Mr. Joydeep Mazumdar, Mr. Puneet Agrawal and Mr. Rohit Dutta, Advocates, for the Respondent (Railways)

Final Decision : Allowed

Judgement

Mr. J.R. Midha, J. (Oral)—The appellant has challenged the order of the Railway Claims Tribunal whereby his application for compensation has been dismissed.

2. On 05th March, 2006 at about 10:15 p.m, late Sudhir Kumar Jha was boarding train No.2562 at New Delhi Railway Station for going to Muzaffarpur when six passengers fell on the railway line due to the heavy rush at the platform and the parcels kept by the Commercial Department on the platform. Three persons including Sudhir Kumar Jha expired whereas the other three suffered grievous injuries. The appellant is the mother of the deceased, Sudhir Kumar Jha who filed the claim petition before the Claims Tribunal. The Claims Tribunal dismissed the application for compensation on the ground that the accident does not fall within the definition of "untoward incident" under Section 123(c) of the Railways Act.

3. Mr. Joydeep Mazumdar, learned counsel for Railways has produced the record of the DRM which confirms that the parcels were stocked by the Commercial Department of Railways but tends to exonerate Railways on the ground that the

passengers are supposed to take all possible care to avoid the accident.

4. Section 124A of the Railways Act lays down strict liability or no fault liability in case of untoward incidents. Section 123(c) of the Railways Act defines "untoward incident" to include the accidental falling of any passenger from a train carrying passengers. The word "passenger" has been defined under section Section 2 (29) of the Railways Act as a person travelling with a valid pass or ticket. The Explanation to Section 124A clarifies that the word "passenger" includes a railway servant on duty; and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket and becomes a victim of an untoward incident.

5. The aforesaid provision for compensation in the Railways Act is a beneficial piece of legislation which should receive a liberal and wider interpretation as it would advance the object of the statute and serve its purpose. The untoward incident shall cover the accidents suffered by a bona fide passenger i.e. a passenger with a valid ticket, pass or a platform ticket in the railway premises.

6. In *Santosh v. Union of India*, Through General Manager, Western Railway, Mumbai, Claim No.OA(IIu)621/2012 decided on 9th December, 2016, the Railway Claims Tribunal, Mumbai Bench has interpreted the untoward incident in Section 123(c) of the Railways Act as under:

"The fundamental requirement before a victim or his family could claim compensation for injuries or death as the case may be is that the victim shall have been a passenger. The expression is technically used to limit it only to a person who has a valid ticket or a pass, in terms of s 2 (29) of the Railways Act. As regards the applicability of provision for untoward incident, the Act creates a notional extension of the definition through explanation to s 124A of the Railways Act also to a person who holds a platform ticket who may not have authority to travel by train but whose presence in the railway premises cannot be construed as unauthorised and injury or death to such a person shall also be taken as an actionable as a specie of untoward incident.

There are some confusions about the test of a person being a "passenger" (i) expressed in contra-distinction to an unauthorized person/ trespasser and (ii) raising presumptions as regards the character of a person as "passenger" in the train. Every person who transits in a train does not get to be a "passenger" under the Railways Act. There are three categories:

(i) a person with a valid ticket to travel; (ii) a person who holds a railway pass to travel and (iii) a person who holds a platform ticket. In every one of the categories, so long as he is in railway premises or a train, he shall be taken as a passenger. His or her presence in the railway premises or a train shall be taken as authorised. It is for this reason that there are decisions which make an extended meaning to the definition passenger to a person who comes into the plat form and gets into a wrong train (*Gaurav Kapoor and others v. Union of India* III(2014) ACC 639 (Del) or a person who purchases a passenger train

ticket and gets into an express train (Santoshi v Union of India, FAO 267/2014 (Del)); person travelling atop a train and not inside a passenger compartment (Raj Pal Goel and another v. Union of India 2014 ACJ 2315) or a person breaking journey without an endorsement and getting into another in continuation of the journey to the destination station (Dwarika Mahto and others v. Union of India 2013 ACJ 768). In all these situations, it is possible to feed meaning and logic to the decisions, only if we recognise that primacy always is the lawful authority to enter the railway premises when the incident of travel itself becomes secondary. The judicial tool of liberal construction for a welfare legislation could alone justify these decisions in order that the categories of persons to whom the benefit is intended to apply, being generally poor where only a modest compensation is provided under the Act, ought not to be denied even such a small benefit." (Emphasis supplied)

7. The appellants are entitled to the compensation under Section 124A of the Railways Act as the accident in question is an untoward incident and it does not fall in any of the clauses (a) to (e) of the Proviso to Section 124A. The Commercial Department of the Railways was primarily negligent in stocking the parcels on the platform which endangered the safety of the passengers on the platform and is an offence under Sections 153, 154 and 175(c) of the Railways Act.

8. The appeal is allowed and the amount of Rs.4 lakh along with interest @ 9% per annum from the date of accident i.e. 05th March, 2006 is awarded to the appellant.

9. The respondent is directed to deposit the compensation amount along with upto date interest with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Urmila Devi within 30 days. UCO Bank shall keep the said amount in fixed deposit till further orders.

10. List for disbursement on 22nd February, 2017.

11. The appellant shall remain present in Court on the next date of hearing along with particulars of her savings bank account near the place of her residence.

12. Copy of this judgment be given dasti to counsels for the parties under signatures of the Court Master.