
(2011) 01 DEL CK 0409
In the Delhi High Court
Case No : FAO 418 of 2008

Vidyawati

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 16
Railways Act, 1989 — Section 123, 123(2), 124A

Citation : (2011) 179 DLT 310

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; Rajdipa Behura and Satish Mishra, for the Respondent

Judgement

Mool Chand Garg, J.—This appeal arises out of an order dated 18.2.2008 passed by the Railway Claims Tribunal, Principal Bench, Delhi (hereinafter referred to as "the Tribunal"), whereby the learned Tribunal has dismissed the claim of the Appellant filed u/s 16 of the Railway Claims Tribunal Act for payment of compensation on account of death of Sh. Vijay Kumar, who was admittedly a bonafide passenger.

2. According to the Appellant, the deceased boarded the EMU passenger train from Palwal Railway Station for Delhi and when the train was running between Faridabad and TKD railway stations, the deceased while proceeding towards the door of the train for throwing out the contents of the stomach, accidentally fell down from the train due to jerk and sustained injuries on his person and died.

3. The claim was contested by the Respondent-Railway Administration by filing a written statement, wherein they had taken a plea that the death of the deceased had occurred on account of his own negligence inasmuch he was hit by the pole of signal and not due to jerk as alleged.

4. The Tribunal recorded the evidence led by the parties which comprises of the

statement made by the Appellant as AW-1. The Appellant also examined another witness as AW-2 and also placed on record the documents which are exhibited as AW 1/2 to 1/10. On behalf of the Respondents, three witnesses, namely, RW 1, 2 and 3 were examined. They also filed a document which was exhibited as Ex. R1.

5. While deciding Issue No. 1 in favor of the Appellant by holding that the deceased passenger was a bona fide passenger in the train on the relevant day, the Tribunal relying upon the documents placed on record by the Appellant took a view that in terms of the verification report of the SHO and the Final report as per Exhibits A3 and A4, the deceased was traveling by hanging to the door of the train and was struck or hit by the signal pole and then fell down from the train. It was observed that these documents were part of the documents exhibited by the Appellant herself and these could be used against the Appellant.

6. Admittedly, AW-1 being the mother of the deceased was not an eye-witness to the incident. She has filed the documents which were supplied by the Railway Administration. As far as the testimony of AW-2 is concerned, it has not been accepted by the Tribunal. However, despite there being no evidence to show that RW-3 was an eye-witness, the Tribunal has accepted his statement and thereby, has also accepted the correctness of the DRM's report. The Tribunal ruled out the possibility of the falling of the deceased as an accidental fall in terms of Section 123(c)(2) of the Railways Act but observed that in this case, the deceased fell down on account of his negligence and thus, was responsible for his own death. It was, therefore, observed that it was a self-inflicted injury as per Clause (b) of proviso to Section 124A of the Railways Act and, therefore, decided Issue No. 2 against the Appellant and consequently, dismissed the claim.

7.1. have heard the submissions made on behalf of the parties and have gone through the judgment delivered by the Apex Court in the case of Jameela and Others Vs. Union of India (UOI), which appear to be fully applicable to the facts of the present case. In the aforesaid case, in a similar situation where the deceased passenger fell down while standing at the open door of the train compartment allegedly in a negligent manner, the Apex Court held it to be an "accidental fall" and being not involved in a criminal act so as to attract Clause (c) of proviso to Section 124-A, the Apex Court held that the Railway was liable for compensation. Relevant observations made by the Apex Court in the aforesaid judgment appear in paras 5, 6, 9 and 10, which are quoted hereunder for the sake of reference:

5. 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 124A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway 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 of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway 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 124A of the Act.

6. Chapter XIII of the Railways Act, 1989 deals with the Liability of Railway Administration for Death and Injury to Passengers due to Accidents. Section 123, the first Section of the Chapter, has the definition clauses. Clause (c) defines "untoward incident" which insofar as relevant for the present is as under:

123 (c) untoward incident means--

(1) (i) xxxx

(ii) xxxx

(iii) xxxx

(2) the accidental falling of any passenger from a train carrying passengers. Section 124A of the Act provides as follows:

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 purposes of this section, "passenger" includes--

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

(Emphasis added)

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9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway 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 124A. A criminal act envisaged under Clause (c) must have an element of malicious intent or means 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 railway must fail even after assuming everything in its favor.

10. We are, therefore, constrained to interfere in the matter. The judgment and order of the High Court coming under appeal is set aside and the judgment and order of the Tribunal is restored. Since a period of more than 10 years has already elapsed from the date of the judgment of the Tribunal, the compensation money along with interest need not be kept in fixed deposits, but should be paid to the Appellants in the ratio fixed by the Tribunal. The payment must be made within 2 months from today.

8. In the present case, even if the DRM's report, which has been accepted by the Tribunal as a gospel truth is taken as correctly made, the situation would still not warrant that in the present case, the passenger was guilty of any criminal act so as to cover the case under Clause (c) of proviso to Section 124-A.

9. In any event, no evidence has been led even by the Respondent to prove that anybody saw the passenger traveling in the train negligently so as to bring his conduct in the exceptions provided for u/s 124A of the Railway Claims Tribunal Act. In these circumstances, considering the law laid down by the Apex Court in the case of Jameela and Ors. (supra), the order passed by the Tribunal cannot be sustained.

10. Consequently, the appeal is allowed and the Respondents are directed to pay Rs. 4 lakh, which is the amount fixed towards compensation in case of death, to the Appellant along with interest @ 9% per annum w.e.f. the date of filing of the claim petition. The amount shall be paid by the Respondent within one month from today, failing which the claim amount and the interest amount as has been accrued on the compensation amount shall carry further interest @ 9% p.a. from the date of this order till the realization of amount. A copy of this order be sent to the Tribunal along with records.