

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 651/2002

%

Decided on: 19th May, 2010

UNION OF INDIA

..... Appellant

Through: Mr. P.K. Dey and Mr. Kaushik
 Dey, Advs.

Versus

SMT. SURESH DEVI & ORS.

.... Respondents

Through: Mr. Ajay Dahiya, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

- | | |
|--|---------------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

CM No. 4818/2010 (Restoration)

Appeal was dismissed in default on 15th February, 2010. By this application Appellant seeks restoration of the appeal. It is alleged that counsel for the appellant was busy in some other court, therefore, could not appear when the Appeal was taken up for hearing. Consequently, Appeal was dismissed in default. Respondent has not filed any reply to this application nor is there any serious opposition. Accordingly, appeal is restored at its original number.

FAO 651/2002

1. With the consent of learned counsels, I propose to dispose of

this Appeal today itself.

2. Appellant has assailed the order dated 6th June, 2002 passed by the Railway Claims Tribunal (Principal Bench), Delhi (hereinafter referred to as "Tribunal") whereby Appellant has been directed to pay Rs.4 lakhs by way of statutory compensation under Section 124-A of the Railways Act, 1989 (hereinafter referred to as "Act") together with interest @ 9% per annum from the date of application till its realization and the cost of proceedings. Appellant was directed to pay this amount within sixty days failing which to pay interest at the enhanced rate of 12% per annum. Out of the total amount of compensation Respondent No. 1 was held entitled to Rs.2 lakhs and Respondent Nos. 2 and 3 Rs.1 lakh each.

3. The facts, relevant for the disposal of this Appeal, are that the deceased Dharampal Dahiya used to daily commute from Sonapat to Faridabad by a train. He was holding a second class monthly pass bearing No. 56805352 with the validity period from 19th September, 2000 to 18th October, 2000. On 11th October, 2000 at about 6 pm while he was trying to enter the compartment of train no. 1 GPM at Subji Mandi Railway Station for his onward journey, all of a sudden train started moving as consequence whereof, he slipped from the foot board of the train and died. Respondents being widow and minor children of late Shri Dharampal Dahiya preferred a claim petition under Section 124-A of the Act before the Tribunal.

4. In the written statement Appellant simply denied the

averments made in the claim petition. No specific stand was taken negating the entitlement of the Respondents to the statutory compensation under Section 124-A of the Act.

5. On the basis of pleadings of the parties Tribunal framed following issues :-

1. Whether the applicant is entitled to the amount claimed as compensation on the grounds stated in the claim application?

2. Relief?

6. Both the parties adduced evidence. Respondent No. 1 examined herself as AW1. She also examined eye witness Mr. Raju as AW2 to prove the incident, inasmuch as AW2 happened to be co-passenger of the deceased as on the date of incident. So far as Appellant is concerned, it produced driver of the train Mr. Arjun Singh as RW1 and Station Master of Subzi Mandi Railway Station Mr. S.K. Prasad as RW2. Tribunal was of the view that the negative evidence of RW1 that he did not come to know about any such accident on 11th October, 2000 i.e the date of the incident, could not have been preferred as against the categorical statement of AW2, who was an eye witness to the incident. So far as statement of R2 is concerned, as per the Tribunal, corroborated the positive evidence of AW2 Raju that the incident did take place, since he had admitted having received the information on 11th October, 2000 regarding a dead body lying near the foot over bridge of the Railway Station. Tribunal preferred the testimony of AW1 and AW2 as against the RW1 and RW2 and concluded that the deceased had in fact slipped from the footboard of the

compartment of train resulting in serious injuries and consequential death which was an “untoward incident” within the meaning of Section 124-A of the Act, as such, Respondents were entitled to statutory compensation.

7. Learned counsel for the Appellant has vehemently contended that the Respondents had failed to adduce any cogent evidence to show that deceased was a bonafide passenger of the train from which he allegedly fell down. Per contra learned counsel for the Respondents has contended that the AW1 has categorically deposed that deceased was a daily commuter and was having second class monthly pass bearing No. 56805352 which was valide from 19th September, 2000 to 18th October, 2000. Copy of the said pass was even produced before the Tribunal. AW2 has categorically deposed that on 11th October, 2000 while deceased was attempting to enter in the compartment of train at Subzi Mandi Railway Station, it moved suddenly and deceased slipped from the footboard of the compartment and sustained severe injuries as a result of which he died at the spot itself. This clearly proves that deceased was a bonafide passenger having a valid monthly pass.

8. I do not find any force in the contention of learned counsel for the Appellant. First of all, Appellant did not take any stand in his written statement that deceased was not a bonafide passenger nor has led any evidence in this regard. On the contrary, it was specifically mentioned in the written statement that genuineness of second class monthly pass bearing No. 56805352 from Sonapat to

Faridabad with the validity period from 19th September, 2000 to 18th October, 2000, was being verified; meaning thereby that Appellant had accepted the existence of the said second class monthly pass. No evidence was led by the Appellant to indicate that the monthly pass was fake or fabricated one. The fact that deceased was having a monthly pass for travelling from Sonapat to Faridabad supports the statement of AW1 that deceased used to commute from Sonapat to Faridabad daily via train. AW2 has deposed that on 11th October, 2000 deceased met with an accident while boarding the train. From the statements of AW1 and AW2 it is clear that the deceased was a bonafide passenger in the train on the date of accident.

9. Learned counsel for the Appellant next contended that the deceased fell down while boarding a moving train and was himself negligent, thus, was not entitled to compensation. Deceased died due to his own negligence. I do not find any force in this argument as well. Neither a plea has been taken in the written statement that the deceased was trying to board a running train nor any evidence has been led in this regard. Neither RW1 nor RW2 have whispered a word on this score. On the contrary AW2 has categorically stated that while deceased was boarding the train it suddenly started moving. In this scenario, no rash and negligent act is attributable to the deceased.

10. Section 124-A of the Act reads as under :-

“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 travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

(Emphasis supplied)

11. Bare perusal of the aforesaid provision clearly demonstrates that if a passenger dies because of an “untoward incident” while travelling in a train, his dependents are entitled to claim compensation from the Railways irrespective of there not being wrongful act, neglect or default on the part of Railways Administration. In the application claiming compensation

claimants are not required to prove that “untoward incident” had happened because of wrongful act, neglect or default on the part of the Railway administration. In view of the proviso to Section 124-A of the Act, the passenger or his dependents would be precluded from claiming compensation only if injured or deceased, as the case may be, had suffered injuries because of his own criminal act.

12. Accidental falling of any passenger from a train carrying passengers would amount to an “untoward incident” as envisaged under Section 123(c)(2) of the Act.

13. In this case, Respondents have succeeded in proving that the deceased had fallen from the train and died at the spot itself. This accidental falling of the deceased from the train would be an “untoward incident” entitling his dependants to compensation in terms of Section 124-A of the Act.

14. In ***Union of India vs. Krishan Lal & Ors.*** reported in ***149(2008) DLT 457***, deceased was in the process of boarding the train at the platform when the train suddenly moved with a jolt as a consequence of which the deceased fell down and got crushed. This court held that deceased falling accidentally from a train carrying passengers could be an “untoward incident” within the meaning of Section 124-A of the Act entitling the claimants to receive compensation. In the said case also, plea was taken by the Railways that the deceased had contributed to the accident as she was trying to board a moving train. This court repelled this contention by saying that the Railway authorities have no business to issue tickets in excess of the carrying capacity of a train,

inasmuch as, each and every person to whom a ticket is issued would be entitled to believe that the Railway authorities has assured his or her of a safe journey.

15. In ***Union of India (UOI) vs. Smt. Murti Devi*** reported in ***AIR 2004 (Delhi) 216***, learned Single Judge of this Court, held that if a passenger dies because of an “untoward incident” while travelling in the train his dependents are entitled to claim compensation from the Railways and in the application claiming compensation they are not required to prove that the “untoward incident” happened because of a wrongful act, neglect or default on the part of the Railway administration. “Untoward incident” includes the accidental falling of any passenger from a train. The only ground on which the Railways could avoid its liability was by showing that deceased had suffered injuries because of his own criminal act, which the Railways in the present case have failed to prove.

16. In ***Union of India vs. Ram Asra Sharma and Smt. Sheela Devi*** reported in ***MANU/DE/7197/2007***, learned Single Judge of this Court, held that in case a passenger falls from a running train it amounts to an “untoward incident”. There is no requirement of law that the legal representatives of the deceased must prove rashness or negligence on the part of the driver or any of its officials or Railway administration.

17. In this case, from the testimony of AW1 and AW2 it was sufficiently proved that deceased was a bonafide passenger of the train from which he fell down. From the unshattered testimony of AW2 it was also proved that while deceased was trying to enter the

compartment of the train at Subzi Mandi Railway Station, the train suddenly started moving as a consequence of which deceased slipped from the foot board and fell down and sustained fatal injuries. This act of deceased falling down from the train would certainly be an “untoward incident” as envisaged under Section 123(c)(2) of the Act making the dependents of the deceased i.e. Respondents entitled to compensation under Section 124-A of the Act. Thus, in my view, Tribunal has rightly awarded compensation to the Respondents. I do not find the view taken by the Tribunal to be erroneous or factually incorrect or contrary to the settled legal position.

18. in view of above discussions, appeal being devoid of merits is dismissed with costs.

A.K. PATHAK, J.

May 19, 2010

ga