

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#2.

+ FAO 293/2010

Decided on:25.10.2010

SAMPATI YADAV & ORS Appellants
Through: Mr.Yogesh Swaroop, Adv.

versus

UNION OF INDIA Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **MOOL CHAND GARG,J (Oral)**

C.M.14037/2010

For the reasons stated in the application, delay in refilling the appeal is condoned and the application is allowed and disposed of.

FAO 293/2010

1. The appellants are aggrieved by the order passed by the Railway Claims Tribunal dated 15.04.2010 dismissing a claim petition filed by them under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124A of the Railways Act filed on the ground that they are the dependants of the deceased Late Sh. Ram Avadh Yadav who died in a untoward incident while travelling in rail.
2. Before the Tribunal the appellants had averred that Shri Ram Avadh Yadav (deceased), boarded train No.5036 from Muradabad to Delhi on 21.07.2008 after purchasing a ticket from Muradabad. It is further emphasized that the compartment of the train was overcrowded and there was heavy rush in the general compartment and due to that Sh. Ram Avadh Yadav was not feeling well and so he fell down and received head injuries and became unconscious. Thereafter, he was brought to hospital where he was attended by the doctor on 21.07.2008

& during treatment he died. Postmortem examination of Shri Ram Avadh Yadav (deceased) was conducted vide Postmortem Report No.972/2008 dated 26.07.2008 in Aruna Asaf Ali Hospital, Delhi. It was further stressed in the claim petition that Sh. Ram Avadh Yadav (deceased) lost his ticket alongwith other articles in the untoward incident. Thus, the relief claimed by the appellant was that the respondent be directed to pay ₹4,00,000/- along with interest @ 24% per annum to the appellants till realization of the amount, on account of death of Sh. Ram Avadh Yadav in an “untoward incident”.

3. The respondent contested the claim petition by filing the written statement wherein they raised certain objections viz that the alleged incident is not covered under Section 123, 124 and 124A of the Railways Act, 1989; that the application is vague and does not disclose the full particulars regarding the incident; that the deceased does not fall within the ambit of the definition of passenger as per the provisions of Section 2(29) of the Railways Act. The respondent denied that the deceased came to Moradabad, regarding admission of his son namely Jitendra Yadav in Polytechnic College. Rest of the paras of the claim petition were denied for want of knowledge and for that purpose the claimants were to be put to strict proof.

4. On the basis of the pleadings of the parties, the following issues were framed on 08.07.2009:-

1. Whether the deceased Sh. Ram Avadh Yadav S/o Sh. Bhaggan Yadav was bonafide passenger of passenger train No.5036 from Muradabad to Delhi as on 21.07.2008?
2. Whether the death of Sh. Ram Avadh Yadav was caused due to an untoward incident as defined in Section 123(c) read with Section 124A of the Railways Act?
3. Whether the applicants are the sole dependants of the deceased Sh. Ram Avadh Yadav and are entitled to get compensation as claimed?
4. Relief?

5. In support of their claim application, the claimants submitted the affidavits of Smt. Sampati Yadav and Shri Jitender Yadav in evidence and both were cross-examined as AW1 and AW2 respectively.

The claimants had also placed on record the documents AW1/2 to AW1/10 in evidence. As against this, the respondent did not adduce any evidence on its behalf either oral or documentary.

6. While deciding issue No.1 in favour of the appellants, the Tribunal decided issue No.2 against the appellants. In this regard the Tribunal has taken note of the documents which were placed on record and after analyzing the evidence including the definition of “untoward incident” as defined under Section 123(c) of the Railways Act has come to a conclusion that it was not a case where death of Ram Avadh Yadav was caused in an untoward incident and thus, answered the said issue in negative. The reasons given by the Tribunal in this regard are reproduced hereunder:

“After perusal of record & arguments advanced by the parties, it is clear that AW1 and AW2 are not the eyewitnesses to the incident and they have no personal knowledge about the incident. The applicants neither examined any eyewitness which could establish the circumstances under which the death of Sh.Ram Avadh Yadav (deceased) had occurred, nor they have stated that there was any eyewitness to the incident. The fact that Sh.Ram Avadh Yadav died, on account of an untoward incident, must be proved by the applicants in order to claim compensation under Section 124A of the Railways Act and there is no such presumption that the death of a person had occurred on account of an untoward incident merely because the deceased has died in the train, due to sudden illness, while travelling in the train. In every case of death of a passenger, which occurs during the course of the journey by train, no amount of compensation is given, unless the death of the (deceased passenger) had occurred on account of an “untoward incident” within the meaning of Section 123(c) of the Act. Therefore, the burden of proof rests on the applicants to prove that the death of the passenger had occurred on account of an “untoward incident” within the meaning of Section 123(c) read with Section 124A of the Act. But, this does not mean that the applicants, who have come before the Tribunal for relief, must necessarily prove it by direct evidence, they may prove it by circumstantial evidence. It is of course, impossible to lay down any rule as to the degree of proof, which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. In the instant case, admittedly AW1 and AW2 are neither direct nor circumstantial witnesses. However, the fact that Sh. Ram Avadh Yadav had died due to some illness during the course

of his journey in the train, appears to be not in dispute. But the circumstances leading to the death of Sh.Ram Avadh Yadav were not witnessed by any one. Death due to sickness or illness does not attract the definition of "untoward incident" under Section 123(c) of the Railways Act, nor it comes within the purview of Section 124A. The document AW1/5 clearly revealed that the deceased developed sudden illness during his journey and became unconscious and was brought to the hospital by the police, where he expired. Therefore, the evidence adduced on behalf of the applicants is neither sufficient nor satisfactory to show that the deceased had died on account of "untoward incident" within the meaning of Section 123(c) read with Section 124A of the Act. On the other hand, the material placed on record by the applicants themselves, would clearly reveal that the deceased had developed sudden sickness during his journey by a train and had died on account of such illness. Under such circumstances, it is clear that death of Sh.Ram Avadh Yadav, did not occur on account of an "untoward incident" within the meaning of Section 123(c) of the Act. Therefore, the incident in question does not come within the purview of Section 124A of the Act. Therefore, the incident in question is neither an "untoward incident" under Section 124A nor a train accident under Section 124A of the Act. In the facts and circumstances of the case, no legitimate inference can be drawn about the cause of death either due to an untoward incident or due to a train accident. Therefore, by no stretch of imagination the death of Sh.Ram Avadh Yadav could be said to have occurred on account of an "untoward incident". The documents placed on record by the applicants also prove that it was not an "untoward incident" and I observe that the facts of the claim application are also not convincing, so they cannot be considered. The maxim "**allegiance contraria non est audiendus**" is applicable in this case which means that he, who alleges contradictory things, is not to be heard. A man shall not be permitted to "blow hot & cold". All the inferences go against the appellants. I find modicum of merit in the submissions of Ld. Counsel for the respondent and there is no momentum of force in the submissions of Ld. Counsel for the applicants. Hence, the applicants failed to prove the above mentioned issue. So, this issue is decided in negation & against the applicants & in favour of the respondent.

Once the main issue No.2 is decided in negation, the other supplementary issues carry no weightage & relevance."

7. Section 123(c) of the Railways Act which defines "untoward incident" reads as under:

“123. Definitions.- In this Chapter, unless the context otherwise requires, --

.....

(c) "untoward incident" means—

- (1) (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; 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”

8. Nothing has been brought to my notice by learned counsel for the appellant as to how the claim of the appellant could succeed inasmuch as he has not been able to show as to how the incident in which the illness of the deceased Ram Avadh Yadav occurred while traveling and his death after he was taken to the hospital could have occurred on account of untoward incident within the meaning of 123(c) of the Railways Act.

9. Accordingly, I find no reason to interfere with the findings returned by the Tribunal which are in accordance with law. Consequently, the appeal filed by the appellant is dismissed at this stage itself.

10. No costs.

MOOL CHAND GARG,J

OCTOBER 25, 2010

‘anb’