

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

+ **FAO 405/2007**

Reserved on:25.10.2010.

Decided on :08.11.2010

UOI THR. GENERAL MANAGER NORTHERN RAILWAY

..... Appellant

Through Mr. Jagjit Singh, Adv.

versus

KRISHAN KUMAR GOEL

..... Respondent

Through Ms. Shalini Kapoor, Adv.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J.**

1. This Appeal is directed against the order passed by the Railways Claim Tribunal in O.A No. 2/2005 whereby the claim petition preferred by the Respondent has been allowed and the tribunal has awarded a sum of Rs. 4, 00,000 along with interest at the rate of 9% to the Respondent and aggrieved by the said order the Union of India has come in appeal against the order dated 14.06.2007.

2. The facts necessary to be noted for the present appeal are that the deceased alongwith the respondent who is the husband of the deceased and his sister purchased second class unreserved tickets on 13.11.2004 to travel from Delhi to Bhatinda (Punjab) and while they were using the foot over-bridge to platform no.1, a stampede occurred at the New Delhi Railways station due to heavy crowd and unprecedented rush which resulted in the death of the deceased.

3. A claim petition was filed before the Railways Claim Tribunal on 11.1.2005 by the husband of the said deceased wherein he prayed for the payment of compensation amounting to Rs. 4,00,000 in addition to Rs. 25,000 and it is pertinent to mention here that the Railways has

already paid a sum of Rs. 1,06,000 as ex-gratia compensation to the Respondent.

4. The appellant, in his written statement, inter alia, raised the following contentions:-

(a) That the claimant is not the dependant of the deceased and hence the claim petition is not maintainable.

(b) That the incident occurred due to the negligence and misconduct of the deceased and the Railways is protected u/s 124 (A) (b) of Railways Act.

(c) That the deceased was not a bona fide passenger.

5. On pleadings of the parties, the division bench of the Railways Claims Tribunal framed the following issues :-

“(i) Whether the death of the deceased in a stampede amounts to an ‘untoward incident’ and whether the railway administration in such a case is liable to pay compensation and also whether the deceased was a passenger within the meaning of the inclusive definition of the term passenger given in explanation to Section 124-A of the Act.

(ii) Whether the husband (Respondent) and children of the deceased are dependants of the deceased within the meaning of section 123(b) of the Act.”

6. The Ld. Judge while dealing with issue no.1 has observed that the issue is covered threadbare by this very tribunal in OA 13/2005 whereby the tribunal has discussed at length the liability of the railway administration in the incident of death in a stampede. The observations are quoted for the sake of clarity:-

“Hence in view of the decision of the Tribunal rendered in OA 13/2005 on 22.8.2006 and for the very same reasons, it is to be held that the death of the deceased, which has occurred in a stampede, amounts to an untoward incident and as such the railway administration is liable to pay compensation for the same.”

7. In this regard reference has been made by the Id. Judge to the Calcutta High Court judgement of Shaymal Baran Saha v. State of West Bengal & ors. 2001 ACJ 1279 in which the court held that the state having failed and neglected to take adequate measures to ensure safety, security and well being of the people who had stood in the queue and the police arrangement being ineffective and

inadequate , the state is liable for negligence for the breach of their lawful duties towards the plaintiff.

8. As per issue no.1 it was further observed by the Id. Judge that
“the statement of facts made by AW-1 in his affidavit as well as in his evidence before the tribunal with regard to purchase of tickets by the deceased is quite natural and trustworthy. There is absolutely no reason for us to doubt the testimony of AW-1 in this regard. The evidence given by AW-1 before the Tribunal besides being cogent and natural, the same appears to be probable with regard to the purchase of tickets etc. by the deceased and hence it can be safely accepted.”

9. As per issue no.2 the learned judge has further observed and held that

“ The applicant herein are the husband and children of the deceased, who died in the stampede, which is an untoward incident . They are the dependants of the deceased within the meaning of Section 123(b) of the Act. Hence they are clearly entitled to compensation under section 124-A read with 125 of the Railways Act.”

10. Appellants have further taken a plea that the train ticket has not been placed on record to which the Id. Judge pointed out that just because the train tickets have not been produced before the Tribunal, it cannot necessarily lead to the conclusion that the deceased was intending to travel in the train without a valid ticket. Further reliance has been placed in the case of UOI v. Aggala Dileshwar Rao III (2006) ACC 652 wherein it has been observed that

“ Simply because the applicant was not able to produce the ticket it cannot be concluded that he was travelling without a ticket and accordingly believed the statement of the applicant, otherwise the presumption should always be in favour of law abiding nature of a citizen rather than a citizen who has committed an offence and accordingly held that the applicant was a bonafide passenger”

11. Heard the counsel and having gone through the judgement under challenge I find that this issue has been dealt exhaustively by the Tribunal and the learned judge has correctly arrived at the finding that firstly the incident was an “untoward incident” and the railways administration is under the liability to pay the compensation for the

death of the deceased and secondly the respondents are the rightful dependants of the deceased within the meaning of sec. 123 (b) of the Act.

12. A bare reading of the Rule 3 (1) of The Railway Accidents And Untoward Incidents (Compensation) Rules, 1990 states that

“the amount of compensation payable in respect of death or injuries, shall be as specified in the Schedule”

Further Rule 4 states the limit of compensation which states that

“ Notwithstanding anything contained in rule 3, the total compensation payable under that rule shall in no case exceed [rupees four lakhs] in respect of any one person.

13. Hence a bare perusal of the rules shows that the maximum limit of compensation is rs.4,00,000 as per the given schedule and hence the ex-gratia amount of rs,1,06,000 has to be adjusted against the same in as much as the abovementioned Rule 4 clearly states that that in no case the compensation amount should exceed Rs. 4,00,000.

14. Further in this regard reference shall also be made to a Bombay High Court judgement *Shobha ws/o Suresh Wankhede and ors. Vs. Union of India 2002 (4) MhLj 349* wherein the husband of the appellant working as a Ticket Train Examiner while on duty, fell out of a running train and died. The widow of the deceased was paid an ex-gratia amount of Rs 5000 and further compensation to the tune of Rs 99,000/- under workmen compensation Act. Later when she claimed compensation under Railway Claims Tribunal, it was observed by the Id. Judge that:-

“the compensation which has been recovered under the Workmen’s Compensation Act 1923 must be duly adjusted against the compensation which is awarded under the former Act. The outer limit of compensation is thus circumscribed by the total compensation which has been awarded under any one enactment which the workmen or his dependants can receive.”

15. Hence in view of the above discussion, the entire amount payable to the Respondent is the difference between the outer limit of

compensation prescribed under the Rules i.e ₹4,00,000 and the Ex-gratia amount of ₹1,06,000 which has already been paid by the Appellant to the Respondent which amount comes to ₹2,94,000/-. The appellant is directed to pay the amount of ₹2,94,000/- to the respondent within a period of 2 months from today, if not already paid.

16. The Appeal is, accordingly, disposed of.

17. No costs.

C.M.17662/2007(stay)

Since the impugned order stands modified, interim order is vacated.

NOVEMBER 08, 2010
'ps'

MOOL CHAND GARG,J