

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

+ **FAO No.344/2012**

% **6th March, 2014**

CHAMPA DEVI

..... Appellant

Through: Mr. Anshuman Bal, Advocate.

Versus

UNION OF INDIA THROUGH GENERAL MANAGER, NORTHERN
RAILWAY, NEW DELHI

..... Respondent

Through: Mr. A.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 8.2.2012 which has dismissed the claim petition.

2. The claim petition has been dismissed because the Tribunal holds that when the train is being placed at a platform it is not a 'train carrying passengers' as per the meaning of the expression as found in Section 123(c) of the Railways Act, 1989 and therefore there is no untoward incident for the Railways to be fastened with the liability of compensation.

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The relevant paras of the impugned judgment dated 8.2.2012 reads as under:-

“The Untoward Incident, as defined under Section 123 (c) of the Railways Act, 1989 is reproduced below:-

“123. “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 Activity (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

(2) the accidental falling of any passenger from a train carrying passengers.”

Thus, as per Item 2 above, only that incident is to be qualified as untoward, in which accidental falling of any passenger has taken place from a train carrying passengers (emphasis supplied). The legislative intent underlying Section 123(c)(2) of the Railways Act is not to include those incidents as *Untoward Incidents*, wherein the accidental falling has occurred from a train not carrying passengers, say a goods train, a parcel train or an empty rake under shunting movement for placement or removal from the platform. Since in the instant case, the incident of falling down while boarding has occurred on a empty rake, which was in process of being placed at the platform as a part of shunting movement, so as to take the form of a train, and the passengers had not at all boarded it, the said empty rake at the relevant time of the alleged incident cannot be termed as a train carrying passengers. Hence, the incident in question does not come under the purview of an Untoward Incident, as defined under the Act and as alleged in the claim application.”

3. The admitted facts are that the deceased Sh. Devender Nath Gourd died in an untoward incident on 28.8.2010 while trying to board the Shalimar Express train when it was being put on platform. The admitted

facts in this regard are contained in paras 6.1 to 6.4 of the impugned judgment and which read as under:-

“6. Examination of Evidence:-

Examining the evidence including the oral and documentary evidence adduced by the applicant and the respondent, and the submissions of the Learned counsel for both sides, the following points emerge:-

6.1 The case of the applicant, as pleaded in the claim application, is that she along with her husband Devender Nath Gourd (s.d) were going from Jammu to New Delhi in Shalimar Express Train. There was heavy rush in the train. When the deceased was in the process of boarding the train, he fell down from the train and received fatal injuries in the accident. The accident occurred on account of negligence of the Railways. The ticket of the deceased was lost during the said accident.

6.2 The documents, placed on record by the applicant, as indicated in Para 3 above are examined as under:-

6.2.1 Copy of Police Report (AW1/4):- It reveals in the statement of the applicant given to the police at the spot that they were to go by Shalimar Express Train to Delhi. At about 9.00 p.m., when Shalimar Express Train was being placed on Platform No.3, her husband tried to board the train, slipped, fell down on the platform and sustained fatal injuries. The statement of the eye witness Ramesh Kumar reveals that he along with the deceased Devender Nath Gourd, Champa Devi and Kumari Shalu Sharma were waiting for the train. At about, 9.00 p.m., when the train was being placed on Platform No.3, the deceased hurriedly tried to board the train, slipped and fell down on the track. The other eyewitness, Shalu Sharma has stated in her statement to the police that she along with uncle Devender Nath Gourd, aunt Champa Devi were waiting at Jammu Tawi Railway Station for the train. At 9.00 p.m, when Shalimar Express Train was being placed on Platform No.3, uncle Devender Nath Gourd suddenly, while boarding the train, fell down and sustained fatal injuries.

6.2.2 Postmortem Report (AW1/5):- The M.O has opined therein that the death in this case is due to hemorrhage and shock because of blunt trauma abdomen.

6.2.3 Final Police Report:- It discloses that on 28.8.08, one male person, while boarding Shalimar Express Train on Platform No.3, fell down and was injured seriously and later succumbed to the injuries in GMC Hospital, Jammu.

6.3 The respondent's evidence is examined as under:-

6.3.1 Suresh Kumar Sharma, Constable, RPF, Pathankot as RW-1 has deposed during oral evidence that during his duty at about 20.40 hrs, at Platform No.3, when Shalimar Express Train was being placed, one person hurriedly tried to board the general coach of the moving train, slipped and was hit by the train. During cross-examination, he deposed that the police had not taken his statement. He had given his statement on 23.5.11 to RPF. He denied the suggestion that S.I had not taken his statement as he had not seen the incident. RW-1 also placed on record RW1/1, the statement given to the Inquiry Officer, RPF, which also supports his oral evidence.

6.3.2 DRM's Report:- It discloses in its conclusion that the deceased's wife Champa Devi has told in her statement that her husband, in order to grab seats, was hurriedly trying to board the moving train Shalimar Express, which was being placed on the platform, slipped, fell down and was hit by the train.

6.4 The statements of Champa Devi, eyewitness Ramesh Kumar and Shalu Sharma, the evidence of RW-1 and the contents of DRM's report, all speak in one voice that while the train Shalimar Express was being placed on Platform No.3, the deceased Devender Nath Gourd tried to hurriedly board the moving train, slipped, fell down and was hit by the train. Thus, there is no doubt or dispute that the incident happened while an empty rake/train of Shalimar Express was being placed on the platform. Therefore, in the instant case, the incident happened even before the train was placed on the platform for boarding of passengers."

4. The issue is therefore when an accident happens when a train is said to be boarded while being placed on the platform would or would not be covered under the expression 'untoward incident'. I may note that it is not the case of the respondent/Railways that the train being at a very high speed was sought to be boarded by the deceased or that a passenger is not entitled to open the door while the train is being placed on the platform for getting into the train.

5. I have only yesterday had an occasion to examine this issue and which was against the identical judgment of the Tribunal giving identical

reasoning as in the present case and I have allowed the appeal and held that an accident which happens while trying to board the train which is being placed on the platform will be included in the expression ‘untoward incident’ as per the meaning of the expression in Section 123(c) read with Section 124A of the Railways Act, 1989. This is in the judgment in the case titled as *Smt. Rekha @ Rani & Ors. Vs. Union of India* in FAO No.274/2012 decided on 5.3.2014. Paras 4 to 6 of this judgment are relevant and the same read as under:-

“1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 28.3.2012 which has dismissed the claim petition.

2. The facts of the case are that the deceased Sh. Balmukund, husband of the applicant/appellant no.1, died in an untoward incident on 8.1.2011 at Nizamuddin railway station. The deceased was to travel from Nizamuddin to Jhansi by Bhopal Express train.

3. That there is an untoward incident and the deceased died by falling from the train becomes clear from the documents Ex.AW1/7, statement of Investigating Officer; Ex.AW1/12 statement of RPF Constable; RW1/1 being the document showing the falling of passenger between the platform and the track while placing the train at the platform from washing line to the platform no.3; similar documents Ex.RW1/3, Ex.RW1/5 and the DRM report R1. All these documents are mentioned in para 3 of the judgment of the Tribunal and which reads as under:-

“ **Examination of Evidence:-**

Examining the evidence including the oral and documentary evidence adduced by the applicant and the respondent, and the submissions of the Learned counsel for both sides, the following points emerge:-

3.1 The applicant deposed during cross-examination that she was not an eyewitness to the incident, and that on the day of the incident, she was at her village. Thus, her evidence is based on hearsay.

3.2 The documents, placed on record and as indicated in Para 1.2 above are examined as under:-

3.2.1 Exht. AW1/5:- S.M/HNZM's Memo to RPF/GRP at 21.40 p.m. on 8.1.11 reads as "Attend 12156 on Platform No.3, Okhla end due to two persons run over."

3.2.2 Exht.AW1/6:- It reveals that Hd. Constable Girdhari Lal has informed at 9.40 p.m that at Nizamuddin Platform No.3, two persons are run over by Bhopal Express Train, who are dead on the spot.

3.2.3 Exht. AW1/7:- It discloses that the I.O, on reaching the spot at Platform No.3, Okhla, found that two persons have fallen down from running Bhopal Express, lying dead on the track.

3.2.4 AW-1:- The apparent cause of death of the deceased was due to train accident.

3.2.5 Exht. AW1/9:- This is the statement of Sarvesh Kumar Yadav, who stated that at about 9.35 p.m, the train Bhopal Express arrived on Platform No.3. There was heavy crowd and he boarded in separate general coach. Then there was noise from the public that two persons have died being run over due to falling down from the moving train.

3.2.6 Exhts. AW1/10 and AW1/11:- These are the statements of Hemant Kumar, elder brother and Khem Chand, AW-2, friend of the deceased, who identified the dead body to be of Balmukund.

3.2.7 Exht. AW1/12:- Statement of Constable, RPF, who stated that at 9.35 p.m. after attending Golden Temple Express, which had come on Platform No.2, he had reached Okhla side. Then, on Platform No.3, Bhopal Express 12156 was being placed and there was heavy crowd for boarding the train. Due to crowd, two passengers have fallen down from the moving train while boarding the train.

3.3 The respondent's evidence is examined as under:-

3.3.1 RW-1, Dy. S.S/Nizamuddin deposed during oral evidence that when he reached the spot, RPF staff and passengers of the said train informed him that when the rake of train 2156 was being placed at platform, the deceased was trying to board the empty rake and met with the accident and died on the spot. During cross-examination, he deposed that when he received the information about the accident, he was in his cabin and he reached the accident spot after five minutes. On being questioned by the Court, he deposed that 2156 was placed at 21.20 hrs. The accident happened earlier to that. He also deposed that the scheduled departure of the train was 21.00 hrs and the train is placed about 45 minutes earlier. However, on that day, it had come 10.20 hrs late and it left at 22.37 hrs. He

further deposed that when the train was being placed, doors and windows of the train were closed.

3.3.2 Exht. RW1/1:- It reveals that “As reported by on-duty RPF staff, Nizamuddin, on Platform No.3 towards Okhla end that two unknown male passengers fell down between Platform and the track while placement from washing line to Platform No.3 at 21.20 hrs.

3.3.3 Exht. RW1/2:- It is the same as Exht.AW1/5.

3.3.4 Exht. RW1/3:- It discloses that “two persons killed at the time of placing rake to Platform No.3.”

3.3.5 Exht. RW1/4:- It discloses that the train 12156 left from Platform No.3 at 22.37 hrs.

3.3.6 Exht. RW1/5:- It reveals that two passengers were killed by ECR (empty coaching rake) 2156 while placing from washing line to Platform No.3. The train departed at 22.37 hrs.

3.3.7 DRM’s Report (R-1):- It reveals at page 6 at Para VI that the time of occurrence was 21.20 hrs on 8.1.11. It further discloses in Para 9 that the incident happened during placement of 2156 on Platform No.3 from washing line. It further reveals in Para 10 that the condition of doors and windows as closed as per on-duty staff. R-2 further reveals on page 2 “Brief Findings of the Inquiry” that on 8.1.11, 12156 Express due to put back was being placed at 21.35 hours on Platform No.3. Due to heavy crowd, the deceased while boarding the general class coach fell down between the platform and the train and he was run over.

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4. The reason given by the Tribunal for dismissing the claim petition is that the deceased cannot be said to have died by falling from a “train carrying passengers” because the empty train/rake was being placed at the platform from the washing line. Tribunal has therefore held that the movement of placing of the train on the platform is not of a train carrying passengers i.e the train would be empty and therefore in such a train there cannot be an ‘untoward incident’ as per Section 123 (c) read with Section 124A of the Railways Act, 1989. The relevant portion of the impugned judgment reads as under:-

“Thus, as per Item 2 above, only that incident is to be qualified as untoward, in which accident falling of any passenger has taken place from a train carrying passengers (*emphasis supplied*). The legislative intent underlying Section 123 (c)(2) of the Railways Act is not to include those incidents as *Untoward Incidents*, wherein the accidental falling has occurred from a train not carrying passengers, say a goods train, a parcel train or an empty rake under shunting movement for placement or removal from the platform. Since in the

instant case, the incident of falling down while boarding has occurred on an empty rake, which was in the process of being placed at the platform as a part of shunting movement, so as to take the form of a train, and the passengers had not at all boarded it, the said empty rake at the relevant time of the alleged incident cannot be termed as a train carrying passengers. Hence, the incident in question does not come under the purview of an Untoward Incident, as defined under the Act and as alleged in the claim petition.”

5. In the facts of this case I am of the opinion that the deceased Balmukund died on account of ‘untoward incident’ inasmuch as he died while trying to board the train while the same was placed at the platform no.3 at the Nizamuddin railway station. The only meaning which can be ascribed to the expression “train carrying passengers” is that the train must be a passenger train i.e the train is not a goods train. Even if the passenger train is empty, trying to board such a train will be trying to board a train carrying passengers. The Tribunal has fallen into an error in holding that till a passenger train is placed on a platform no untoward incident takes place. What is material in law is of taking place of untoward incident and it cannot be held that there is no untoward incident when the train is being placed at the platform. If the reasoning of the Tribunal is accepted then a first passenger getting on to a train will be getting in an empty rake and even if there is an untoward incident qua such passenger, such a passenger will not be able to claim compensation because till he has climbed inside the train, the bogie will be empty. Such an interpretation cannot be given to the expression untoward incident. It is also relevant to note, and very material, that it is not the case of the respondent/Railways that the train was moving at a fast speed while being placed on the platform, and therefore, there is not ordinary negligence but criminal negligence for disentitlement to compensation under Section 124-A. It is settled law and so held by the Supreme Court in various judgments that even if there is negligence, Railways cannot deny its liability unless the negligence becomes a criminal negligence. Therefore, it is held that in the facts of the present case there was an ‘untoward incident’ of the deceased falling from the train and hence a claim petition is to be allowed.

6. I am indeed perplexed at the findings of the Railway Claims Tribunal in the present case inasmuch as Railway Claims Tribunal would be every day dealing with the judgments of the Supreme Court in the cases of *Jameela & Ors. Vs. Union of India*

(2010) 12 SCC 443 and *Union of India Vs. Prabhakaran Vijaya Kumar and Ors.* (2008) 9 SCC 527 which hold that even if a person is negligent yet compensation has to be awarded. In the case of *Prabhakaran Vijaya Kumar (supra)* Supreme Court has specifically held that the accident to be of falling from the train includes the situation if the passenger was trying to climb on the train and that it is not necessary that a passenger should have climbed on the train and then he had fallen from the train and thus an accident happening while getting into an empty rake/bogie will be covered in the expression 'untoward incident'. The finding of the Tribunal is clearly violative of the direct ratio of the judgment of the Supreme Court in the case of *Prabhakaran Vijaya Kumar (supra)* which states that falling down while trying to get into the train is covered in the expression 'falling from the train'. The Tribunal has unfortunately not dealt with the ratio of the judgment in the case of *Prabhakaran Vijaya Kumar (supra)* and has denied compensation on the ground that there is no falling from 'a train carrying passengers'. The relevant paras in the case of *Prabhakaran Vijaya Kumar (supra)* read as under:-

“10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh v. Union of India* : (2003) IILLJ735SC, B.D. Shetty v. *CEAT Ltd.* : (2001) IILLJ1552SC, *Transport Corporation of India v. ESI Corporation* : (2000) ILLJ1SC.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. v. The Workmen* : (1961)ILLJ328SC , *Jeewanlal Ltd. v. Appellate Authority* : (1984)IILLJ464SC , *Lalappa Lingappa and Ors. v. Laxmi Vishnu Textile Mills Ltd.* : (1981)ILLJ308SC , *S.M. Nilajkar v. Telecom Distt. Manager* : (2003)IILLJ359SC etc.

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. **a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process.** In other words, a purposive, and not literal, interpretation should be given to the expression.

15. Section 2(29) of the Railways Act defines 'passenger' to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states:

“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 purpose 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.

17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.

52. In view of the above, we are of the opinion that the submission of learned Counsel for the appellant there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected.” (underlining added)

7. In view of the above, the appeal is allowed. The impugned judgment of the Railway Claims Tribunal is set aside. Appellants will be entitled to statutory compensation of Rs.4 lacs alongwith interest @ 7 ½% per annum simple from the date of filing of the petition till payment. Parties are left to bear their own costs.”

6. Adopting the reasoning and ratio in the case of *Smt. Rekha (supra)* this appeal is also liable to be allowed and is accordingly allowed. The impugned judgment of the Railway Claims Tribunal is set aside. Applicant/appellant will be entitled to statutory compensation of Rs.4 lacs alongwith interest @ 7 ½% per annum simple from the date of filing of the petition before the Tribunal till payment. Parties are left to bear their own costs.

MARCH 06, 2014
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VALMIKI J. MEHTA, J.