

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

+ **FAO 141/2014**

% **16th May, 2014**

UNION OF INDIA Appellant

Through: None

Versus

SH. RAVI@RAVINDRA PRAKASH Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM 8613/2014 (Exemption)

Allowed, subject to just exceptions.

CM 8614/2014 (Delay)

For the reasons stated in the application, the delay in filing the appeal is condoned.

The application is accordingly disposed of.

+FAO 141/2014 & CM 8615/2014 (Stay)

1. No one was present for the appellant on the first call. Even on the second call no one is present although it is 2.25 P.M. I have therefore perused the record and am proceeding to decide this appeal.

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2. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 20.11.2013 which has allowed the claim petition filed by the respondent for the injuries sustained by him in an untoward incident on 29.9.2011.

3. The facts of the case are that the respondent on 29.9.2011 at about 8.30 P.M. purchased a journey ticket from Bahadurgarh railway station for travel to Delhi. It is pleaded in the claim petition that when the train reached Mundka railway station, respondent got down to give way to the passengers who were getting down at Mundka railway station, but while re-boarding the train, there was a sudden jerk and movement of the train, as a result of which the applicant slipped and fell in between the train and the track and suffered a crush injury on the right leg. Respondent's right leg below the knee was amputated on the same day. The subject claim petition was therefore filed.

4. Appellant contested the claim petition and pleaded that the respondent was not a bona fide passenger. It was also pleaded that there was no untoward incident as alleged by the respondent.

5. The Tribunal has held that respondent was a bona fide passenger because the ticket was filed and proved as Ex. AW 1/2. It bears note that in fact there is mention of the recovery of the train ticket in the Jamatalashi/search report dated 29.9.2011 of the police, and which is proved

as Ex. AW 1/10 by the respondent. The Tribunal has therefore held that the respondent was a bona fide passenger. Tribunal has also further held that the happening of the untoward incident is proved by means of the fact that the deceased was taken to Sanjay Gandhi Memorial Hospital when someone called the police PCR. The mention of the incident is found in the DD entry no. 18 dated 29.9.2011, and same has been proved and exhibited as Ex. AW 1/7. Another DD entry with respect to incident is exhibited as Ex. AW 1/10. Tribunal also notes that in fact the DRM report filed by the appellant Ex. R1 also does not dispute the incident but it only states that the deceased got injured due to his own negligence while trying to board a running train.

6. The Tribunal has given the following valid observations for holding that there was an “untoward incident” within the meaning of the expression in Section 123(c) and Section 124A of the Railway Act, 1989 :

“8. According to the applicant, when the train reached Mundka Railway station, he got down to give way to the other passengers, who were de-boarding the train at Mundka railway station and while he was again boarding the train, due to sudden moment and jerk of the train, he slipped and fell down and suffered a crush injury on the right leg, as he was caught in between the train and the track. The incident is said to have occurred at about 20:45 hours on the night of 29.9.11 at Mundka railway station. The respondent would contended that there has been no report to the railway authorities and there is no record of the incident either with the crew of the train or with the station authorities of Mundka railway station. Even according to the applicant,

immediately after the incident, someone called the police on PCR and he was shifted to Sanjay Gandhi Memorial Hospital within half an hour of the incident. It is quite possible that on seeing the serious nature of injuries sustained by the applicant and his precarious condition, he was shifted to the hospital by the members of the public without going through the formalities of reporting to the station authorities. Simply because no formal report was lodged with the station master by anyone and no entry is made in the station diary, it cannot be inferred that no incident has taken place at all.

9. Exhibit AW1/7 is DD number 18 dated 29.9.11 of Kishanganj railway PS entered at 22:05 hours on the same night of September 29, 2011 regarding the information received on the wireless set by the PCR regarding the incident at Mundka railway station. In Exhibit AW1/7, it is further stated that in the said incident, some person suffered a crush injury on the leg at Mundka railway station. Exhibit AW1/10, DD entry 18-P dt. 29.9.11 shows that the journey ticket was seized from the applicant by the Head Constable of Kishanganj PP at the hospital. Exhibit AW1/9 is the MLC registered at Sanjay Gandhi Memorial Hospital, which also shows that the applicant was brought to the hospital at about 11 PM on September 29, 2011 by the Head Constable Shri Yaduvindra. The alleged history of injury is noted as railway track accident in exhibit AW1/9. From the above, it is clear that on the same night within two hours, the applicant was taken to the hospital and was admitted there in an injured condition. Exhibit AW1/6 is the return report dated 30.9.11 of the police, which also states that the Head Constable Shri Yaduvindra has taken the injured to the hospital and admitted him and that the applicant was unfit to make any statement on that night. Exhibit AW1/8 is a statement of the applicant recorded on October 1, 2011, wherein, he narrated the incident after regaining consciousness. The applicant has also filed the discharge card issued by Sanjay Gandhi Memorial Hospital, which shows that he was admitted on September 29, 2011 and discharged on 29.11.11 and he has undergone a traumatic amputation of right leg below the

knee. The applicant has also filed voluminous documentary evidence in the nature of medical prescriptions and treatment record and bills showing the nature and extent of the treatment undergone by him. The above evidence adduced by the applicant would clearly go to establish that the applicant had in fact an accidental fall from the train on the night of September 29, 2011 at Mundka railway station while re-boarding the train and he suffered a crush injury and was admitted in the hospital on the same night, where his right leg was amputated below the knee and he underwent treatment for about two months as in-patient.

10. Even the DRM report, exhibit R1 does not dispute that incident as such but only states that as the applicant was trying to board a running train, the incident is attributable to his own negligence, for which the railway may not be held responsible. On the aspect of negligence vis-à-vis the liability of the Railways, the Honorable Apex Court in **Jameela & Ors. Vs. Union of India, (2010 ACJ 2453)** held as under:-

“The manner in which the accident is sought to be reconstructed by the Railways, 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 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in his favour.”

11. In **Prabhakaran Vijaya Kumar Vs. Union of India**, reported in 2008 ACJ 1895, the Hon’ble Apex Court held as under :-

“ 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."

12. According to the applicant, while he was re-boarding the train, there was a sudden movement and jerk, which resulted in his fall from the train as he slipped his leg. The respondent would contend that the applicant was trying to board a running train. It is to be noted that the applicant was travelling from Bahadurgarh to Delhi and enroute at Mundka railway station, he got down to give way to other passengers, who were de-boarding. Whether the train started after the applicant completely boarded the train or the applicant was trying to board a train, which had already started, is not of much consequence. When once it is found that the accidental fall occurred while the applicant was boarding the train, the respondent would be liable. Even assuming that the applicant attempted to board a running train, such conduct may amount to rashness and negligence on his part, but certainly would not constitute a criminal act. The respondent cannot seek to avoid its responsibility to pay compensation unless it is established that any of the exceptions contained in the proviso to Section 124-A of the Railways Act, 1989 is attracted."

7. I completely agree with the aforesaid conclusions and the Tribunal has rightly held that the deceased suffered injuries in his leg which had to be amputated below the knee on account of an untoward incident.

8. Before the Tribunal, the respondent, at the stage of final argument, contended that the respondent was smelling of alcohol at the time of the incident and which is proved by MLC Ex. AW 1/9, but, the Tribunal has rightly noted that respondent has not placed on record any evidence to show the nature and level of intoxication, and therefore, mere smell of alcohol

cannot lead to the inference that the respondent was intoxicated. I additionally note that the written statement filed by the respondent before the Tribunal does not show that this defence was taken. Therefore, in my opinion, it is clear that the claim petition could not be dismissed on account of alleged “intoxication” not only because there is no such pleading in the written statement of the appellant, but also because such a grave allegation ought to be specifically raised in the pleadings so that the opposite party would have a chance to effectively meet the same. Also the Tribunal rightly notes that mere smell of alcohol is different from being intoxicated and which intoxication will have to be criminal negligence before the liability of the appellant can be denied in terms of Section 123(c) read with Section 124A of the Railways Act, 1989.

9. In view of the above, I do not find any merit in the appeal, and which is therefore dismissed, leaving the parties to bear their own costs.

MAY 16, 2014
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VALMIKI J. MEHTA, J