

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1734 of 2013 (O&M)

Date of Decision: March 27, 2015

Paramjeet Kaur @ Anju and others

.. Appellants

vs.

Union of India and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.S. Budhwar, Advocate for the appellants.

Mr. Nitin Kumar, Advocate for respondent No.1.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? Yes.*
- 2. To be referred to the Reporters or not ? Yes.*
- 3. Whether the judgment should be reported in the Digest? Yes.*

Kuldip Singh J.

CM-8853-CII-2013

There is a delay of 109 days in filing the present appeal.

Keeping in view the fact that important question of law is involved and the fact that the applicant-claimants were not aware about the fact that the appeal could be filed against the Award passed by the Railway Accidents Claims Tribunal, delay of 109 days in filing the present appeal is condoned.

Application stands disposed of.

F AO-1734-2013

Unsuccessful applicants-appellants have filed the present appeal against the judgment dated 30.08.2012 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (in short 'the Tribunal') vide which the application of the applicants-appellants for grant of compensation was dismissed.

Applicant-appellant No.1 is the wife of deceased Sham Sunder and applicant-appellant Nos.2 to 4 are minor daughters of the deceased.

On 20.09.2010, Sham Sunder (now deceased) had gone to Makhu for collection of some dues from a party, who had booked his tent. On the same day when the deceased was returning from Makhu to Malanwala Khas, while boarding the train at Makhu Railway Station, he accidentally fell down from the train and sustained fatal injuries and died at the spot. On the memo issued by the Station Master of Makhu Railway Station to GRP, inquest proceedings were conducted, statements of various persons were recorded. On the personal search of the dead body, a railway ticket from Makhu to Malanwala Khas was recovered. The GRP mentioned in the record that the deceased died due to railway accident as a result of fall from the train.

Union of India, in the reply, claimed that the deceased was not a bonafide passenger as no railway ticket was recovered from the person of deceased. It was further claimed that the deceased died due to his own negligent and deliberate act. The

deceased does not fall within the category of passenger or bonafide passenger.

From the pleadings, the following issues were framed:

“1. Whether the deceased was a bonafide passenger at the time of incident?

2. Whether the incident is covered with ambit of section 123(c) read with Section 124-A of the Railway Act?

3. Whether the applicant(s) is/are the sole dependants of the deceased?

4. Relief.”

While deciding Issue Nos.1 and 2 together, the Tribunal held that the deceased was not a bonafide passenger. It was held that the deceased was not travelling in any train and was not a bonafide passenger at the time of accident. He was run over while trying to board a moving train. It was further held that the accident is not covered under untoward incident as defined under Section 123 (c)(2) read with Section 124-A of the Railways Act, 1989 (in short ‘the Act’). Hence, issue Nos.1 and 2 were decided against the applicants-appellants.

Issue No.3 to the effect that the wife and three minor daughters of the deceased were his dependants, was decided in affirmative.

Consequently, the application was dismissed by the Tribunal.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The evidence produced before the Tribunal shows that from the dead body, a railway ticket dated 20.09.2010 from Makhu to Malanwala Khas was recovered. The copy of the same is Annexure A-4. The personal search was conducted by GRP, Ferozepur. Therefore, the deceased was having a ticket to board the train. The report of DRM (Ex.R-1) recorded on the date of accident shows that the deceased came running and tried to board the train negligently and fell down and received serious injuries and died. According to DRM report, the Railway is not responsible for the accident. Railway Guard, namely Kailash Parshad Singh, filed his affidavit as RW-1, in which he also stated that he was on duty as a Guard on the said train. When the train started from Makhu Railway Station, the deceased started boarding the running train and fell down and got injured. By the time the train stopped, the person had been run over by the train. He accordingly, informed the Station Master. According to him, the incident occurred due to negligence of the person, who tried to board the running train, which was at a considerable speed. During cross-examination, he admitted that when the train starts from the Railway Station, it has the speed of 5 Kmph and it increases after passing the whole station. The Guard claimed that nobody can board the running train. He further admitted that the train never gains speed instantly. It was DMU train.

In this way, according to the stand of the Railway itself, it is clear that the deceased, who was having a valid ticket, came running and tried to board the train, which was still at the Railway

Station and had started moving. According to the Guard, when a train starts moving, its speed is 5 Kmph and the speed is increased after the passing of the platform.

Since, the occurrence took place at the Railway Station itself, it goes to show that at the time of accident speed of the train was 5 Kmph. At such a speed, one can easily board even a moving train. Therefore, I do not agree with the findings of the Tribunal that since the deceased could not board the train, therefore, he is not a passenger or bonafide passenger.

Section 123(c) defines the untoward incident is as under:

“(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 including 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.] (emphasis supplied).

Therefore, falling of any passenger from the train carrying passenger is 'untoward incident' within the definition of Section 123 (c)(2) of the Railway Act. Sub Sections of Section 124 of the Railway Act provides as under:

“[124A. Compensation on account of untoward incident. –

When in the course of working a railway an untoward incident occur, 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.”*

A perusal of Section 124 of the Railway Act shows that it is not necessary that fall on account of wrongful/negligent act of the railway administration should be proved.

Section 124-A of the Railway Act contained a non obstante clause laying down that 'notwithstanding' anything contained in any other law, the railway is liable to pay compensation to such an extent as may be prescribed and to that extent only for

loss occasioned by death or injury to a passenger as a result such 'untoward incident'.

Learned counsel for Union of India has argued that the present case falls within the explanation (b) and (c) of the proviso. It has been argued that trying to board a running train falls within the definition of 'self inflicted injury' and also 'his own criminal act'. Therefore, no compensation is to be awarded. This Court is to examine whether receiving injury while trying to board a train, which is at the speed of 5 Kmph amounts to self inflicted injury. Self inflicted injury has not been defined anywhere in the act. Therefore, its literal meaning is to be taken, which means that injury caused by the injured himself, which is not there in the present case. The present injury is out of rash act of the deceased while trying to board a train, which had started moving. The criminal act is also not defined in the Railway Act. However, the use of word 'criminal act' goes to show that there must be an element of criminal knowledge or intention. Similarly, it is also not a criminal act. In the present case, the deceased was not going to commit any crime against the railway or any other person. The act of trying to board a moving train, which is a common scene at the railway station, at the best can be called a rash or negligent act. But certainly not a criminal act. The matter was examined by Hon'ble the Supreme Court in case of ***“Union of India vs Prabhakaran Vijaya Kumar and others”*, 2008 (3) R.C.R.(Civil) 577.**

In the above-noted case also, the following facts were noticed by the Hon'ble Apex Court:

“8.However, the evidence of DW-1, D. Sajjan, who was the Station Master at the railway station corroborates the evidence of PW-2. DW-1 had deposed that he saw one girl running towards the train and trying to enter the train and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the Tribunal held that this was not an ‘untoward incident’ within the meaning of the expression in Section 123(c) of the Railways Act, 1989 as it was not accidental falling of a passenger from a train carrying passengers.”

Therefore, the facts of both the cases are similar. The Hon'ble Apex Court examined the case law on the point and after perusal of Sections 129 and 124-A of the Railway Act, observed as under:

“16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.

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.”

*It was held that Section 124A of the Railway Act incorporates principal of strict liability, which originated in the judgment of British High Court in case of “**Rylands v.***

Fletcher, 1866 LRI Ex 265, which was later on laid down by the Constitution Bench of Hon'ble the Supreme Court of India in case of "M.C. Mehta v. Union of India, AIR 1987 Supreme Court 1086, which was observed as under:

"39. In India the landmark Constitution Bench decision of the Supreme Court in M.C. Mehta v. Union of India, AIR 1987 Supreme Court 1086 has gone much further than Rylands v. Fletcher (supra) in imposing strict liability. The Court observed "if the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads." The Court also observed that this strict liability is not subject to any of the exceptions to the rule in Rylands v. Fletcher (supra).

40. The decision in M.C. Mehta's case (supra) related to a concern working for private profit. However, in our opinion the same principle will also apply to statutory authorities (like the railways), public corporations or local bodies which may be social utility undertakings not working for private profit."

On the other hand, learned counsel for the appellants has relied upon the authority of "**Jameela and others vs. Union of India**", 2010 ACJ 2453.

A perusal of said authority shows that in the said case,

the deceased was standing on the open door of the running train and she fell down from the train. The Railway was held liable to pay the compensation. Therefore, when a passenger was negligently standing, holding the handle of the door of the train and fell, even than the railway was held liable.

Learned counsel for the appellants has relied upon the following authorities of the Delhi High Court:

1. Santosh and others vs. Union of India, 2011(8) AD (Delhi) 562.
2. Rama Shankar Sharma vs. Union of India, 2008 AIR (Delhi) 87.
3. Sukhdev Kamlani vs. Union of India (FAO No.374 of 2009, decided on 08.08.2011).

I am of the view that in the authoritative pronouncement of Hon'ble the Supreme Court of India, the authorities of other High Courts are not to be followed.

It being so, it is held that the deceased was in fact a passenger as defined under Section 129 of the Railway Act and that it was 'untoward incident' and his legal heirs i.e. wife and children are entitled to the compensation. The findings of the trial court regarding issue Nos.1 to 4 are reversed.

In view of the Railway Accident and Untoward Incident Compensation Rule 1988, as amended by 1977 Rules, ₹4,00,000/- (Rupees four lacs only) is awarded as compensation to the applicants-appellants. It shall be equally shared by the applicants-appellants. The share of the minor(s) shall be invested in long term FDRs in National Bank of choice of their guardian, wherein their

date of birth shall be recorded and will be paid to them on becoming their major without any further order from any court. However, applicant-appellant No.1, widow of the deceased will be entitled to withdraw interest thereof for upbringing of the minor(s).

Accordingly, the appeal is allowed.

March 27, 2015
sarita

(KULDIP SINGH)
JUDGE