

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

FAO No.4444 of 2014 (O&M)

Date of Decision: March 30, 2015

Union of India

.. Appellant

vs.

Krishna Devi and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Nitin Kumar, Advocate for the appellants.

- 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.

Union of India has filed this appeal against the judgment dated 19.12.2013 passed by Railway Claims Tribunal, Chandigarh Bench, Chandigarh, (in short 'the Tribunal') vide which a compensation of Rs.4,00,000/- (rupees four lac only) was awarded to the claimants (respondents herein).

The brief facts, which need to be noticed for the purpose of disposal of the present appeal are that deceased Babulal, a retired teacher, after buying a computerized ticket from Chandigarh Railway Station was to go from Chandigarh to Khagriya. He tried to board a

train on 24.11.2011. There was lot of rush in the train. As a result of which, he slipped from the train and fell between platform and the train and died.

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

Learned counsel for the appellant has argued that the act of the deceased in trying to board a moving train at the platform does not fall within the definition of 'untoward incident' and is 'self inflicted' injury within Section 124-A proviso B of the Railways Act, 1989 (in short 'the Act').

Admittedly, the accident took place at the railway platform, Chandigarh itself, where the speed of train is not high. Even when the speed of the moving train at the platform is between 10-15 kmph, one can easily board the train.

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 slow speed 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.”

It being so, it is held that the deceased was bonafide a passenger and that the act of slipping from the train and falling between platform and the train falls within the definition of 'untoward incident'. Therefore, there is no error in the impugned judgment.

As such, the present appeal is dismissed.

March 30, 2015
sarita

(KULDIP SINGH)
JUDGE