

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.52 OF 2010

Dated 18-8-2016

Between: _____

_____ Union of India, represented by its General Manager,
South Central Railways, Secunderabad.

_____ ..Appellant.

And:

_____ Tera Akhil Dutt and others.

_____ ..Respondents.

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JUDGMENT:

This appeal is preferred against order dated 7th October, 2009 in O.A.A.No.24 of 2004 on the file of Railway Claims Tribunal, Secunderabad Bench.

Respondents 1 to 3 herein submitted application before Railway Claims Tribunal under Section 16 of Railway Claims Tribunal Act read with Section 124-A of Railways Act alleging that Salomi died in an untoward incident on 26-12-2003. According to claimants, deceased had strained relationship with her husband, she along with her sister went to Prathipadu to celebrate Christmas and purchased tickets for return journey from Mandavalli to Vijayawada on 26-12-2003 and they travelled upto Gudivada where they have to change train and while they were waiting at the station, husband of Salomi came there with an axe and killed her in the station and she died in an untoward incident and claim is estimated at Rs.4 lakhs.

Railways filed written statement stating that deceased was not a bonafide passenger since she was not having ticket and as it was not a case of fall from a

train and as she died on account of disputes with her husband, who attacked her due to her personal reasons and contended that there is no liability.

Railway Claims Tribunal conducted enquiry and on a consideration of evidence of A.Ws.1 to 3 and documents Exs.A.1 to A.6, Claims Tribunal granted compensation of Rs.4,00,000/-. Aggrieved by which present appeal is preferred.

Heard arguments.

Advocate for appellant mainly contended that even according to petition averments, the deceased was attacked by her husband and she died of such attack, therefore, it cannot be called as untoward incident to make the railways liable to pay compensation. It is further submitted that deceased was not a bonafide passenger of any train, but the Claims Tribunal granted compensation which is beyond its jurisdiction and therefore, order of Railways Claims Tribunal is liable to be set aside.

On the other hand, advocate for respondents submitted that any violent act resulting the death that took place in the railway premises, that will come under the incident of “untoward incident” and the Claims Tribunal rightly granted compensation and that there are no grounds to interfere with the same.

Now the point that would arise for my consideration in this appeal is whether the order of the tribunal is proper, legal and correct?

POINT:

The main dispute is whether the incident of attack by the husband of the deceased would fall within the ambit of violent act to make the appellant liable.

Section 123 ‘C’ of the Railways Act defined the word ‘untoward incident’. It may be useful to refer the said definition herein itself which reads as follows:

“123. Definitions:-In this Chapter, unless the context otherwise requires,-

(a) xxx

(b) xxx

(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 (28 of 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."

From the above definition, it is clear that making a violent attack or commission of robbery or dacoity would also fall within the ambit of Section 123 (c).

Now the point is whether attack of husband of deceased would fall under the violent attack?.

Advocate for appellant relied on decision of Division Bench of this Court in *UNION OF INDIA, SOUTH CENTRAL RAILWAYS Vs. KURUKUNDU BALAKRISHNAIAH AND OTHERS* (^[1]). In that case, meaning of untoward incident was examined with reference to self inflicted injury or death occasioned due to own negligence carelessness, wrongful act or prohibition, conduct of the deceased and the standard of proof required to establish those aspects. Therefore, that decision would no way helpful to the appellant.

Advocate for appellant also relied on decision of Bombay High Court in *UNION OF INDIA, VS. SANJAY SAMPATRAO GAIKWAD ETC.*, (^[2]) for the proposition that decision of untoward incident is restrictive and not inclusive or extensive.

Advocate for respondents relied on decision of Division Bench of Bombay High Court in *SANJAY SAMPATRAO Vs. UNION OF INDIA* (^[3]) in which the judgment of Single Judge relied on by the appellate

counsel was set aside and held that violent attack includes incident of pelting stones by strangers on person in precincts and railway is liable to pay compensation.

Respondent counsel also relied on by the decision of Division Bench of Kerala High Court in *UNION OF INDIA VS. ALEYKUTTY DEVASIA* (^[4]). In that case, the deceased was found dead in the railway compartment and a criminal case was registered against one Melvin Paduva alleging that he strangled the deceased to death and Sessions Court found the deceased guilty and the Railways contended that incident do not come within the purview of 123 or 124 A of Railways Act and Kerala High Court justifying the order of tribunal granting compensation held that it would fall under the category violent attack.

In C.M.A.No.1207 of 2009 (In Shantanna and another vs. Union of India, represented by its General Manager, South Central Railway, Secunderabad), this Court held that a person waiting on the platform who died on account of fall of asbestos sheet of water cooler is entitled for compensation as it would come under the definition of 123 (c) of the Act.

Here admittedly, the deceased was waiting for train at the railway station at that time, this unfortunate incident happened. When the incident was within the railway premises, it would definitely fall under the ambit of Section 123 (c) of the Railways Act and from the Division Bench decisions of Kerala High Court and Bombay High Court and the Single Judge decision of this Court, the incident would definitely fall within the meaning of violent attack, as such, the tribunal is right in granting compensation.

For these reasons, I do not find any ground to interfere with the compensation granted by Railway Claims Tribunal and appeal is dismissed as devoid of merits.

This Appeal is dismissed. No costs.

As a sequel to the disposal of this appeal,
Miscellaneous Petitions, if any, pending, shall stand
dismissed.

JUSTICE S.RAVI
KUMAR

Dated 18-8-2016.

Dvs.

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Dvs

[\[1\]](#) 2004 (1) ALT 100 (F.B)

[\[2\]](#) AIR 2002 BOMBAY 436 (1)

[\[3\]](#) AIR 2005 BOMBAY 409

[\[4\]](#) 1998 ACJ 1195