

730

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 22.11.2016

FAO No. 533 of 2008 (O/M)

Geeta

..... Appellant (s)

Versus

Union of India

..... Respondent (s)

FAO No. 534 of 2008 (O/M)

Geeta and another

..... Appellant (s)

Versus

Union of India

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Paul S. Saini, Advocate, for the appellants
in both the cases.

Mr. Rohit Suri, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

By this single judgment, I shall dispose of two abovementioned connected appeals i.e. FAO-533-2008 and FAO-534-2008, arising out of the same incident.

On 29.1.2003, Geeta accompanied by her husband Virender and minor son Akash, aged about 2 years, travelled in Himachal Express from Chandosi to Sonapat against valid tickets No. 04093 and 04094. When the journey terminated at Sonapat railway station at platform No. 2 on

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30.1.2003, at about 12:15 midnight, according to the appellant Geeta, there was heavy rush. The deceased Virender alongwith his minor son Akash alighted from the train towards platform No. 1 side. In the meanwhile, the train started immediately without blowing any whistle, as a result of which Virender and his minor son Akash fell down on the adjoining railway line. It comes out that DUK pilot engine, which was to run through Sonapat railway station, came on the adjoining track and hit Virender and his minor son Akash. As a result of the accident, both of them died.

In the written statement, the respondents have taken the stand that both of them died due to their own act of negligence. It was denied that the deceased fell down from the train.

The Railway Claims Tribunal (in short 'the Tribunal'), while noticing that no ticket was required for Akash, minor, aged about 2 years, took the view that though the copy of the fard jamatalashi of the deceased was produced wherein the tickets were taken into possession by the police, but the said tickets were not produced by the applicant. Regarding the untoward incident, against the statement of Geeta (applicant), Inder Pal Khosla, Station Master, was examined. The station master, who was informed later on, stated that a person alongwith son de-boarded the train from offside, with the result that DUK pilot engine, which was to run through the Sonapat railway station, hit the deceased and they died on the way to the hospital. Therefore, it was the fault of the deceased in de-boarding the train from offside. The Tribunal took the view that it was an willful criminal act of the deceased since he was trying to cross the track from the offside.

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

In the present case, the DRM report is not on the file. The copy of the personal search of the deceased shows that two tickets were recovered from the deceased. These were computerized tickets, which show that though the original tickets, which were with the police, were not produced during the evidence, but the deceased was holding valid tickets. On the other hand, the Railways has not produced any evidence to the contrary to claim that the said tickets were forged.

Now, coming to the main question of the liability of the deceased, the stand of Geeta (applicant) is that her husband Virender alongwith her minor son Akash fell down from the train when the train suddenly started with a jerk. They fell on the adjoining line and were hit by DUK pilot engine, which was to run through the said line. On the other hand, the station master, who came later at the spot, took the stand that deceased Virender alongwith his minor son Akash de-boarded from the offside of platform No. 2 and was trying to cross the railway line to reach platform No. 1. Therefore, he was hit by the said engine and died.

The occurrence took place at midnight. The cross examination of the station master shows that at Sonapat railway station, several passengers de-train from the offside in the sub urban trains, but normally it is not from mail/express trains. Against the evidence of Geeta, the railways has not produced the positive evidence to show that the statement of Geeta is incorrect and that the deceased was trying to cross the railway line after de-boarding from the offside of platform No. 2 and in this process, he was hit by DUK pilot engine. Neither the driver of DUK pilot engine was

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examined nor the guard or the driver of Himachal Express were examined to depose that the deceased was infact trying to cross the railway line, so as to reach platform No. 1. Therefore, the mere statement of station master, who was not present at the spot at the time of accident, cannot be taken to be a rebuttal to the statement made by the applicant. In this case, Akash (minor) was only two years of age and being below seven years of age was not capable of knowing the consequences of his act and could not commit any crime. His rights are independent of that of his father. Therefore, even if the negligence on the part of Virender is proved, the same could not be said on the part of minor. However, in this case, the negligence is not proved.

In Union of India Versus Prabhakaran Vijaya Kumar and others, (2008) 9 Supreme Court Cases 527, the Apex Court has taken the view that in case the train is involved in the accident, then the strict liability rule of Rylands V. Fletcher (1866) LR 1 Ex 265 will apply. The Railways can avoid the liability only if it is able to prove that the case in hand is covered under one of the five clauses of proviso to Section 124-A of the Railways Act, 1989. Section 124-A of the Railways Act, 1989, lays down as under :-

“124-A. 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

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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 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 purposes 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.”

In the present case, it is proved from the statement of the applicant, which was not rebutted by the Railways by leading cogent evidence that the deceased Virender alongwith his minor son Akash fell down on the offside of the train, which being express train might have stopped only for a few minutes. It is not a case of criminal act nor it can be

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called self inflicted injury. The incident of fall from the train is covered under Section 124-A and Section 123 of the Railways Act, 1989. It being so, the findings of the Tribunal in this regard are reversed. Both the appeals are allowed. The respondents are ordered to pay Rs. 4,00,000/- in each case to the applicant/applicants with interest at the rate of 9% per annum from the date of filing of the claim petition till payment.

Both the appeals are allowed.

(KULDIP SINGH)
JUDGE

22.11.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes