

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.3149 of 2012(O&M)

Date of decision: 02.12.2016

Satnam Kaur and another

.....Appellants

versus

Union of India

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Paul S. Saini, Advocae for the appellants
Ms.Chetna Rao, Advocate for the respondent

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

Kuldip Singh, J. (Oral)

This is an appeal filed against the judgment dated 19.12.2011, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal'). vide which, the claim application filed by the applicants/ appellants was dismissed.

The facts of the case, as gathered from the file, are that on 27.8.2010 Kabal Singh aged about 18 years, who was son of the applicants, purchased a 2nd class ordinary ticket bearing No.76377 ex-Jhawar to Chhinna. He was travelling on train No.8 ABP (DMU) from Jhawar railway station to Chhinna and going to his village. He was standing near the door of the train. When the train reached near Dhariwal canal, Kabal Singh who was apparently standing near the door and peeping outside struck against the railway bridge and fell down in Dhariwal canal and died of drowning. His

body was recovered three days later.

In the written statement, respondents have taken usual stand that the deceased was not a bona fide passenger and there was no negligence on the part of the respondents. From the pleadings, following issues were framed:-

- 1. Whether the deceased was a bonafide passenger at the time of incident?*
- 2. Whether the incident is covered within ambit of section 123 (c)(2) read with Section 124-A of the Railways Act?*
- 3. Whether the applicants are the sole dependents of the deceased?*
- 4. Relief*

The Tribunal while relying upon the statement of AWs as well as DRM report concluded that the deceased was standing on the door of the compartment and peeping outside and hit the railway bridge and thereafter, fell in the Dhariwal canal and died of drowning. It was held that it is an act of negligence on the part of the deceased for which, the railway is not responsible. The reliance was made on the statement of AWs Onkarnath, Manohar Lal and Balbir Singh as well as DRM report Annexure R1. The railway ticket was not recovered from the person of the deceased but from his school bag. Deceased happened to be a student of 10+2.

Now, the question would arise whether the said act of the deceased is a criminal negligence on his part?

The matter was considered by the Apex Court in Union of India vs. Prabhakaran Vijaya Kumar and others, 2008(3) RCR (Civil) 577, wherein the Apex Court held that the rule of strict liability, as laid down in the case of Rylands vs. Fletcher, 1866 LRI Ex 265, will apply.

In this case, negligence on the part of the deceased or fault on

part of railway is irrelevant. Section 124A of the Railways Act is reproduced as under:-

124A. 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 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. 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.*

The act of the deceased in peeping outside from the door of the compartment can be called a foolish act but not a criminal act. Therefore, the view taken by the Tribunal that it was a criminal negligence is not sustainable in the eyes of law. It is apparently a case of untoward incident

involving railway and under the rule of strict liability whether there is any fault of the railway or not, the railway is liable to pay the compensation. Hence, the impugned judgment is set aside. The appeal is allowed. The respondents are ordered to pay Rs.four lacs compensation to the applicants/ appellants in equal share with interest @ 9% per annum from the date of filing of claim application i.e. 18.10.2010 till payment.

02.12.2016*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes