

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

**FAO No.2205 of 2014 (O&M)
Date of decision : August 08, 2016**

Sheela Devi

..... Appellant

Versus

Union of India

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amit Jaiswal, Advocate for the appellant.

Mr. Banni Thomas, Advocate for the 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 ?

KULDIP SINGH J.

The short point arising for consideration in the present first appeal is whether, if a bonafide passenger having valid ticket is leaning out of the door of the train and is hit by a pole and consequently dies, will it amount to self inflicted injury or his own criminal act?

The facts of the present case are that in this case, one Munna Kumar having a valid journey ticket was travelling from Patna to Ludhiana on 27.03.2011. When the train was passing Kesri Railway Station, due to heavy rush in the train and a sudden jerk, he fell down from the train and struck with a pole and later on succumbed to injuries.

The railway on the other hand led evidence to show that in fact the deceased was leaning out of the door and in this process he fell down

and struck against a pole of over bridge. The railway had taken the stand that it amounts to self inflicted injury and own criminal act. Therefore, the railway is not liable to pay compensation, on account of death of Munna Lal, to his legal heirs.

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

Untoward incident has been defined under Section 123(c) of the Railways Act, 1989, which 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.”

Clause (2) shall cover the case of accidental falling of any passenger from a train/carrying passengers.

Under Section 124-A of the Railways Act, railway is not liable in case of self inflicted injury or his own criminal act.

Now, the question would arise as to whether leaning out from the door of the train near the railway station amounts to self inflicted injury or own criminal act?

I find reply in negative. Undoubtedly, a compartment in which there was stated to be huge rush, the deceased was standing near the door. According to the railway, he was leaning out from the door. In this process, due to heavy rush and due to sudden jerk, he fell down from the train and struck against a pole of over bridge and consequently, he received injuries and later on, succumbed to injuries.

I am of the view that it is not a criminal act. Further, it does not amount to self inflicted injury. Self inflicted injury involves the voluntariness of the injury. It is not a case that the deceased was knowing that there was a pole on the over bridge and he voluntarily struck his head against that pole. The train was moving and deceased leaned out and suddenly his head struck against the pole of over bridge. Had there been no pole, the head of the deceased would not struck against the pole. Therefore, it is purely a case of untoward incident and not a case of self inflicted injury or own criminal act as defined under Section 124-A of the Railways Act.

Therefore, in my view the Railway Claims Tribunal erred in declining the compensation to the appellants. In case of ***“Jameela and others v Union of India”***, 2010 ACJ 2453, Hon'ble the Apex Court took the view that standing at the open door of moving train may not be negligent or rash act. Therefore, the railway was held liable to pay compensation. This kind of negligence is not uncommon in the Indian trains. It could be foolish act of deceased which costed him his life, but certainly it cannot be called his/her own criminal act or self inflicted injury.

Accordingly, the impugned judgment dated 20.09.2013 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh is set aside

and the present appeal is allowed. The respondent is directed to pay ₹4,00,000/- as compensation to the appellant along with interest @ 9% per annum starting from three months after the date of accident till its payment.

(KULDIP SINGH)
JUDGE

August 08, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes