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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5696 of 2009 (O/M)
Date of decision : 1.5.2017

Budho Devi and others ..... Appellant (s)

Versus

Union of India ..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

Mr. P.C. Goyal, Advocate, for respondent.

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

-.- -.-

KULDIP SINGH J.

This is first appeal against the judgment dated 25.11.2008, passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh, vide which the claim application filed by the applicants-appellants was dismissed.

The brief facts are that Satpal Kumar (now deceased) was working as a Sweeper in Municipal Committee, Panipat. On 24.12.2004, after finishing his duty, Satpal Kumar reached at Railway Station Panipat, at about 5:45 PM to go back to his home at Karnal. He was having a valid monthly season ticket No. 33180344 from Karnal to Panipat, valid from 9.12.2004 to 8.1.2005, issued by the Railway Authorities, Panipat. He was standing at platform No. 3 at Panipat railway station. There was heavy rush at the platform. It is stated that the platform was slippery at the corner. He accidentally fell down on the main line No. 3. In the meanwhile,

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Shatabdi Express train coming from Delhi side and going towards Ambala, run over the deceased. He received multiple injuries and died at the spot.

In the reply, it was stated that as per the railway records, a person was run over by train No. 2013 Shatabdi Express, while he was crossing the railway track. The train was stopped for two minutes due to the said incident though there was no scheduled stoppage of Shatabdi Express at Panipat railway station. The deceased was not a bonafide passenger. It was denied that Satpal Kumar fell down from the platform at railway station.

From the pleadings, following issues were framed :-

1. Whether the deceased was a bonafide passenger, as alleged ?
2. Whether the deceased died in an untoward incident within the meaning of Section 123 (C) read with Section 124-A of the Railways Act, as alleged ?
3. Whether the applicants are the only dependant of the deceased ?
4 Relief.

The applicants-appellants produced one Bachu Singh (AW1), a railway vendor at Panipat railway station. Bachu Singh stated that on the day of incident, he was at platform No. 4. A passenger train No. 303 from Delhi to Ambala Cantt. was standing at platform No. 3. Shatabdi Express train was passing through platform No. 4. One lady was going to be hit by the said train, but was saved by a person (deceased), who himself got injured and died at the spot. Later on, he was identified as Satpal. The reference was also made to the statement earlier made by said Bachu Singh (witness) to Government Railway Police, wherein he stated that a woman was crossing the railway line, when suddently, Shatabdi Express train came from Delhi side and deceased Satpal tried to save the said woman from

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train and in the process, he himself died, but the woman was saved. Then, reference is made to another statement wherein except the fact that the witness has stated that he was at platform No. 4, rest of the statement was same. The DRM report also indicates that the deceased tried to save a woman and in the process, he himself died. According to the railways, it was his own mistake. The Tribunal held that the deceased was not a bonafide passenger and he did not die in an untoward incident involing railways. Consequently, the claim application was dismissed.

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

In this case, Bachu Singh, a tea vendor, who was standing at platform No. 4, is a stamped witness. He has no relations with the deceased or his family. Bachu Singh has stated that one lady was trying to cross the railway line and the deceased Satpal had tried to save the woman and in the process, he was able to save the woman but he himself died when he was hit by Shatabdi Express train. The DRM report also shows that the deceased had tried to save a woman and during this process, he himself was hit by the Shatabdi Express train, though in the claim application, the applicants had claimed that he slipped from the railway platform. But, the facts emerging from the statement of Bachu Singh (AW-1) and the report of DRM indicate that the deceased, who was working as a Sweeper in Municipal Committee, Panipat, was present at platform No. to 3 to go back to his home town Karnal. One woman tried to cross the railway line. The deceased apparently took risk to save the life of a woman. In this process, he was able to save the said woman, but was himself hit by the Shatabdi Express train, which had no scheduled halt at Panipat. As a result of the said accident, he

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died at the spot.

Now, the law point arising for consideration is as to whether in such circumstances, it can be concluded that the deceased died in an untoward incident within the meaning of Section 123 (C) of the Railways Act, 1989 and whether he was the bonafide passenger ?

Section 124A of the Railways Act, 1989, is reproduced as under:-

> "[Section 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 entitled 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 the 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 -

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(i) a railway servant on duty ; an

(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 explanation shows that a person, who has purchased a valid ticket, is a passenger within the meaning of the said section.

The definition of untoward incident given in Section 123 (c) of the Railways Act, 1989, is reproduced as under :-

"123(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."

Now, the question would arise whether the untoward incident is to be given an interpretation that only in case of a person falls from the train is to be included in the definition of untoward incident ?

I am of the view that when a person has purchased a valid journey ticket and is waiting for the train, he is deemed to be a bonafide passenger. If something happens while he was at the railway platform while waiting for the train, the said act is to be covered within the definition of untoward incident. For example, if a person at platform met with an

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incident, which is attributed to the railways and dies, such incident is to be treated as untoward incident. In this case, the deceased was a humble man and was working as a Sweeper in Municipal Committee, Panipat. He had no relations with the said woman, who was trying to cross the railway line. The deceased was present at platform No. 3. When he saw that the life of the said woman was in danger, he acted bravely to save the life of the said woman. He was able to save the life of the said woman, but lost his own life. It can be mis-calculation on the part of the deceased as he might have thought that he will be able to save the said woman and will be able to save himself also. However, on account of the fact that the Shatabdi Express train was not to stop at Panipat railway station and might be at high speed, the calculation of the deceased proved to be incorrect. Therefore, the deceased Satpal laid down his life to save the life of another human being. Therefore, I am of the view that such incident is to be covered under the definition of untoward incident. Since the deceased was waiting for the train and was having valid monthly season ticket, he is deemed to be a bonafide passenger within the meaning of explanation to Section 124A of the Railways Act, 1989.

In Union of India Versus Ahalya Prusti and another, 2010 (1) AICJ 653, when a man was crossing the railway track in a hasty manner and was fatally injured, he was held entitled for compensation by the Single Bench of Orissa High Court, holding that it is an untoward incident. Similarly when the over bridge was not provided and the deceased was compelled to cross the railway track and died, the Division Bench of Delhi Court in Rakesh Saini and others Versus Union of India and another, 2004 AIR (Delhi) 107 held that the applicants are entitled to compensation.

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It being so, the findings of the Tribunal on issues No. 1 and 2 are reversed and these stand decided in favour of the applicants-appellants.

As a result of the foregoing discussion, the present appeal is allowed. The impugned judgment dated 25.11.2008 is set aside. Respondent is ordered to pay Rs. 4,00,000/- as compensation to the applicants-appellants in equal shares with interest at the rate of 9% per annum from the date of filing the claim application i.e. 19.10.2005 till the date of payment. It is further directed that if applicant-appellant No. 3-Monu is still minor, the share of his compensation shall be deposited in the FDR through his grandmother (applicant-appellant No. 1) and shall be disbursed to him on becoming major.

(KULDIP SINGH)
JUDGE

1.5.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes