

\$~24

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 23rd May, 2017

+ **FAO 105/2017 and CM Appln.8204/2017**

UNION OF INDIA

..... Appellant

Through: **Mr. Himanshu Kaushik,**
Advocate for Ms. Rashmi
Malhotra, Panel Counsel for
Railways

versus

SHYAM JI PANDEY & ANR.

..... Respondents

Through: **Mr. Anshuman Bal, Advocate**
for respondents no.1 and 2
along with respondents no.1
and 2 in person

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellant has challenged the impugned judgment dated 12th September, 2016 whereby the Railway Claims Tribunal awarded compensation of Rs.4 lakh along with interest @ 9% per annum to the respondents.
2. On 16th August, 2014, Balram boarded train No.14625 from Shakur Basti. Balram fell down near Sampla Railway Station which resulted in fatal injuries. The respondents are parents of Balram and they filed an application for compensation before the Railway Claims Tribunal.

3. Learned counsel for the appellant urged at the time of the hearing that the deceased was not a *bona fide* passenger and the deceased was negligent in de-boarding from a running train.

4. The Railway Claims Tribunal held the deceased to be a *bona fide* passenger by accepting the respondents' contention that the deceased had travelled for quite a distance and lost the ticket. The Railway Claims Tribunal applied the principles laid down in ***Pratima Bhagat v. Union of India***, OA (Ilu) 218/2014 dated 08th August, 2016 to hold the accident to be an untoward incident. The relevant portion of ***Pratima Bhagat*** (supra) is reproduced as under:-

“2. Whether the death of the deceased was on account of any untoward incident, as alleged in the claim application?

a) While the applicants' contention was that after getting into the train, due to heavy rush and intense jostling amongst passengers, he accidentally fell down from the moving train, the contention of the Railways is that he was attempting to get into the train even when the train was moving and he tripped and fell by his own criminal negligence.

b) The fall from the train is defined as an untoward incident and there are some legal approaches which are time and again brought before the Tribunal to make a distinction between ordinary negligence and criminal negligence. The attempt in defence at all times is that when there is a fall from a moving train while a person is attempting to board in a moving train, it must be construed as criminal negligence. This is, on certain occasions, used interchangeably as self-inflicted injury. We propose to enter into a serious examination of this contention by an extensive discourse and anchor our findings through the decisions of the Hon'ble Apex Court that hold in our view that in a scheme of strict liability, the interpretation shall be to favour the injured victims, the claimants and their representatives. There have been several decisions of the various High Courts, barring sporadic exceptions, which have

held that a passenger who was guilty of criminal negligence invites a self inflicted injury, which will not qualify for the expression death or injury by untoward incident and the railway administration shall be exonerated. Even if a claim were to be allowed, since courts have held that criminal negligence was not established, as though, if it had been so established, the claim could have been dismissed. In our view, there is a sure fallacy in reasoning contained in the judgments and making a wrong inference from the SC judgments as a proposition of law which the latter does not so lay down. There are two areas of interpretation of the provisions of law relating to railways claims that require a re-appraisal.

c) Criminal negligence is understood as including ‘a rash act or grossly negligent act’. This defence is taken usually in the following cases: (i) a passenger attempting to board or de-board from a running train in a scheduled or unscheduled stop; (ii) boarding or de-boarding from the off- side, that is the other said of the platform; (iii) travelling on the roof of the train and (iv) leaning outside the door or the window and getting hit by the electrical pole. In every one of these situations, the assumed underlying strength in the plea is that the passenger is doing some act which is against express instructions of passenger safety, contained in the Act, Rules or circulars and to that extent the act is criminal or unauthorized and the claimant or the legal representative cannot take advantage of his own wrong. Examining minutely for legal principle embedded in the argument, a person who has contributed to the accident by his own negligence has no right to claim damages against a party who is not guilty of negligence. An extension of the argument, which is additional limb to the first one, is that the passenger did not remain seated in the place assigned but doing a reckless act with knowledge of its possible outcome of death or injury and hence self inflicted.

d) This is faulty for the following reasons: (1) The definition of untoward incident in Sec. 123 (c)(2), which shall be a ground for a valid claim for compensation, states: “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 department 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.” (underlining mine). The first underlined portion relieves a claimant for having to establish the tort law principle of ‘duty of care’ for pursuing a successful claim of damages. The entitlement is irrespective of whether the railways had been negligent or not. The second underlined portion recognises the principle underlying the law of damages generally and carves out through this provision an exception ‘Any other law’ is the common law of liability for damages for civil wrongs and therefore the assertion that the right is notwithstanding any other law.

e) The Act not only addresses the right of the claimant but also states the corollary of the corresponding liability of the Railways by an independent succeeding section 124A under the section heading, “Extent of liability”: “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 department 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 of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident..” (underlining mine). The underlined portion contains, for the sake of emphasis non-obstante clause in two places, where even one clause would have been sufficient. The implication is what is plainly understood in law as strict liability norm that will disallow the railways to plead for exoneration of liability.

f) Explaining the concept of strict liability ingrained in Railways Act and while interpreting the same provisions, the Supreme court in *Union of India v Prabhakaran Vijaya kumar*

(2008) 9 SCC 527 said:

24. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide 'Torts by Michael Jones, 4th Edn. p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads" (see Fleming on 'Torts' 6th Edn p. 302).

25. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

26. The basis of the doctrine of strict liability is two fold (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide 'Torts' by Michael Jones 4th Edn p. 267).

g) The manner of how the provisions have to be interpreted with a slant for the poor people was explained in the same judgment by the Supreme Court:

"In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from

getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

h) The same judgment identifies a more liberal approach to the concept of strict liability, as laid down in *Rylands v Fletcher*, was made in liability jurisprudence in India:

"M.C. Mehta v. Union of India AIR 1987 SC 1086 has gone much further than *Rylands v. Fletcher* (supra) in imposing strict liability. The Court (had) observed "if the enterprise is permitted to carry on any hazardous or inherently dangerous activity for its profit the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads".

i) The Supreme Court in yet another judgment in *Jameela and others v Union of India*, 2010ACJ2453, AIR2010SC3705 was explaining an example of strict liability in these words:

"The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in Clause (c) to the proviso to Section 124A. A criminal act envisaged under Clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.

j) This brings us to examine the content of s 124A proviso which brings 5 exceptions to when the act of the deceased or injured that will disqualify for securing compensation on account of untoward incident. To our purpose, the discussion

will pin around 'self inflicted injury', and 'his own criminal act' that disentitle the claimant from getting compensation. The act of boarding or de-boarding a moving train is misconceived in several judgments and alternatively used as criminal negligence or self inflicted injury. While criminal negligence itself cannot be a disabling act to claim damages, as per the above discussion, it cannot also be treated as self inflicted. The act of self infliction imports, in legal sense, a requirement of an intention to cause harm to oneself. A reckless act that results in the consequence of injury is still not synonymous with an acted intended to suffer injury. At worst, a reckless act voluntarily undertaken might involve knowledge to result in injury.

k) Equally, the 'criminal act' requires an intent as Jamela explains. Criminal negligence does not involve a criminal intent. All penal laws maintain a distinction between knowledge and intention. Criminal negligence is an act done with knowledge that the act complained of is so reckless that it is most likely to cause harm to another. In civil law, knowledge of a reckless act manifests as negligence. It is an example for want of due care or omission of duty to/of the person wronged. If the person who claims damages is himself guilty of negligence, it will be taken as a case of contributory negligence and the principle of *volenti non fit injuria* will operate. It is to prevent the scope of defeating the entitlement for claim for damages, s 123(c)(2) is drafted the way it is done. The manner of how the entitlement operates has already been explained in para I to V above. Doing a 'criminal act' ought not to be taken as including a person who was guilty of criminal negligence. The legislature would not have used a generic expression as 'criminal act' in the context of exception to railways' liability, when it could have used the term 'criminal negligence', if it was to be intended to operate as such. On the other hand, the criminal act that the exception talks about must be seen in the context of the criminal acts mentioned in the same section for defining 'untoward incident' itself. They are the incidents to which the claimant himself could be a victim of: (i) the commission of 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 decoity; or (iii) the indulging in rioting, shoot-out or arson within the specified places in the Railway property. A passenger who is a victim of any of the criminal acts cannot himself indulge in any of these acts and if he suffers death or injury in the course of such action, there ought to be no scope for claiming compensation.

l) If criminal negligence cannot be equated to self infliction or criminal act, the exoneration of railways does not arise for boarding or de-boarding from a moving train. An untoward incident, as per the definition under s 123(2) is “the accidental falling of any passenger from a train carrying passengers.” It will be an oxymoron to suggest that a person was carefully falling from a train. It is invariably an unintended act, even if negligent that could be the cause for falling from a train. It shall be immaterial if the passenger was either boarding or de-boarding, whether train was moving or stationary. For the same reason, it will be irrelevant if the passenger was boarding from the side of platform or on the other side, which is normally referred in several judgments as ‘off side’. It will be a travesty of logic if we must be expecting a careful conduct in an untoward incident. It will again be introducing an additional exception if we must add criminal negligence as constituting a situation of relieving liability of railways.

m) Even under the Motor Vehicles Act, apart from s 140 (that allows for minimum absolute liability) and s 163A (that casts strict liability on the owner/insurer to benefit certain class of persons whose annual income is less than Rs.40000), s 166 enacts a tort law liability requires proof of negligence of the owner of the motor vehicle that caused injury or death for validating a claim. But the courts have always adopted liberal construction to uphold claims even of persons who travelled atop a bus, kept part of the body outside bus or were attempting to climb down or get in to a moving bus. In a law providing strict liability for railway accidents there is simply no justification for exonerating the railway administration for alleged criminal negligence.

n) The role of a Tribunal is to decide every application as

expeditiously as possible and by application of principles of natural justice. If there are judgments of High Courts which adopt a view that run counter to the decisions of the Supreme Court, they shall be taken as having been rendered per incuriam. All the decisions holding criminal negligence as synonymous with self inflicted injury and outlining the instances mentioned above as constituting grounds of defence for Railway administration to defeat the claims are per incuriam and not binding.

o) In the light of the above discussion, we conclude that the accident was a result of an untoward incident even if it were to taken that the deceased was attempting to board a moving train. We, therefore, hold the issue in favour of the applicants.”

(Emphasis supplied)

5. This Court agrees with the findings of the Railway Claims Tribunal that the deceased was a *bona fide* passenger and he suffered fatal injuries in an untoward incident and therefore, the respondents are entitled to the compensation.

6. The appeal is dismissed. The pending application is also dismissed.

7. The appellant has deposited Rs.4,67,752/- towards the award amount with UCO Bank, Delhi High Court Branch and Rs.15,000/- towards the litigation expenses with the Registrar General of this Court in terms of order dated 28th February, 2017.

8. Respondent no.2 has produced the passbook of her savings bank account No.20381606744 with State Bank of India, ADB Bahraich, 90, Hospital Road, Bahraich Branch, Uttar Pradesh [IFSC Code: SBIN0005977, MICR : 271002002].

9. UCO Bank, Delhi High Court Branch is directed to keep Rs.4 lakh in 50 FDRs of Rs.8,000/- each for the period 1 month to 50

months respectively in the name of respondent no.2, Indu Devi @ Indu Pandey with cumulative interest.

10. The maturity amounts of the FDRs along with interest shall be credited in the savings bank account of respondent no.2 with State Bank of India, Bahraich Branch, Uttar Pradesh.

11. All the original FDRs shall be retained by the UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to respondents no.2.

12. No cheque book or debit card be issued to respondent no.2 without permission of this Court. However, in case, the debit card and/or cheque book have already been issued, the State Bank of India, Bahraich Branch, Uttar Pradesh shall cancel the debit card and/or cheque book.

13. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

14. The balance amount, after keeping Rs.4 lakh in 50 FDRs, be released to respondent No.2 by transferring the same to savings bank account of respondent no.2 with State Bank of India, Bahraich Branch, Uttar Pradesh.

15. Respondent No.2 is at liberty to approach this Court for release of further amount in case of any financial exigency.

16. With respect to the legal expenses of Rs.15,000/- deposited by the appellant with the Registrar General of this Court, respondents no.1 and 2 present in Court submit that they have not yet paid the legal fees to their counsel and therefore, Rs.15,000/- be released to their

counsel, Mr. Anshuman Bal, Advocate. The Registrar General shall release the legal expenses of Rs.15,000/- to Mr. Anshuman Bal, learned counsel for respondents no.1 and 2.

17. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

MAY 23, 2017
dk

J.R. MIDHA, J.

