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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18th December, 2017

+ FAO 332/2010

MANGAL SINGH

..... Appellant

Through: Mr. Zakir Hussain, Adv.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Joydeep Mazumdar, Mr. Debjyoti
Bhattacharya, Ms. Momota C.
Bhattacharya and Mr. Kamlesh
Kumar, Advs. for Northern Railway.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

CM No.33811/2017 & 33812/2017

The delay in seeking substitution is condoned and the legal representatives of deceased appellant are substituted in place of the appellant. Both the applications are disposed of.

FAO 332/2010

1. The appellant has challenged the order dated 05th May, 2010 whereby the application for compensation was dismissed.
2. On 07th November, 2008 at about 11:30 A.M, Mangal Singh fell down from the general compartment of Kerala Express on platform No.2 of New

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By:AMULYA

Delhi Railway Station and was run over by the train which resulted in amputation of both the legs. The injured filed an application for compensation before the Claims Tribunal. The police registered DD No.40B dated 07th November, 2008 at P.S. New Delhi Railway Station. The injured was taken to Ram Manohar Lohiya Hospital and the MLC was placed on record. The Claims Tribunal dismissed the claim on the ground that the ticket was not found with the injured at the time of the accident.

3. Learned counsel for the appellant urged at the time of hearing that the bag of the injured containing the other articles was lost during the accident.

4. The legal position with respect to the untoward incident inside the railway station is well settled. Section 124-A of the Railways Act is based on the principle of no fault liability and the compensation cannot be denied to the appellant on the ground that the deceased was negligent and it is wholly irrelevant as to who was at fault. Section 123(c) of the Railways Act defines '*untoward incident*' to include the accidental falling of any passenger from a train carrying passengers. The word '*passenger*' has been defined under Section 2 (29) of the Railways Act as a person travelling with a valid pass or ticket. The Explanation to Section 124A clarifies that the word '*passenger*' includes a railway servant on duty; and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket and becomes a victim of an untoward incident. As such, there are three categories of persons who are defined as passengers: - (i) a person with a valid ticket to travel; (ii) a person who holds a railway pass to travel and (iii) a person who holds a platform ticket. In each of the categories, so long as a person is in railway premises or a train, he is taken as a passenger. His or her presence in the railway premises or a train is taken as authorized. It is for

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this reason that there are decisions which extend meaning of the term “passenger” to a person who comes to a platform and gets into a wrong train [*Gaurav Kapoor v Union of India*, III (2014) ACC 639 (Del)] or a person who purchases a passenger train ticket and gets into an express train [*Santoshi v Union of India*, 2014 SCC Online Del 6510 (Del)]; person travelling atop a train and not inside a passenger compartment [*Raj Pal Goel v. Union of India*, 2014 ACJ 2315] or a person breaking journey without an endorsement and getting into another train in continuation of the journey to the destination station [*Dwarika Mahto v. Union of India*, 2013 ACJ 768]. In all these situations, it is possible to feed meaning and logic to the decisions only if we recognize that primacy always is the lawful authority to enter the railway premises when the incident of travel itself becomes secondary.

5. In *Union of India v. Prabhakaran Vijaya Kumar*, (2008) 9 SCC 527, a lady fell down while trying to enter the train and was run over by the train. Railways contended that the deceased was negligent and there was no fault of Railways. The Supreme Court held that Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. The relevant portion of the judgment is reproduced hereunder:-

“10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an “accidental falling of a passenger from a train carrying passengers”. Hence, it is an “untoward incident” as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression "accidental falling of a passenger from a train carrying passengers", the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred.....

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.....

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14. 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 travelling 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 travelling with

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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.

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17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault.

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52. In view of the above, we are of the opinion that the submission of learned counsel for the appellant that there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected."

(Emphasis Supplied)

6. In *Jameela v. Union of India*, (2010) 12 SCC 443, a passenger travelling by Awadh Express with a valid ticket fell down near Magarwara Railway Station which resulted in his death. Railways contended that the deceased was negligent in standing at the door near Magarwara Railway Station where the train does not stop. The Railway Claims Tribunal allowed the claim which was set aside by the High Court in appeal on the ground that the deceased was negligent. The Supreme Court held that the negligence of the deceased will not have any effect on the liability to pay compensation under Section 124A. The relevant portion of the judgment is as under:

"7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways that the deceased M. Hafeez was standing at the open door of

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the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness to the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section 124-A of the Act.

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10. It is not denied by the Railways that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a "passenger" for the purpose of Section 124-A as clarified by the Explanation. It is now to be seen, that under Section 124-A the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the Railway Administration. But the proviso to the section says that the Railway Administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).

11. Coming back to the case in hand, it is not the case of the Railways that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways 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 124-A. 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 Railways must fail even after assuming everything in its favour.

(Emphasis Supplied)

7. In *Harvinder Kaur v. Union of India*, 2012 ACJ 854, a passenger died due to accidental slip from the train on account of heavy rush of passengers and sudden jerk of the train. Railways contended that the passenger fell down because he attempted to get down from a moving train at an unscheduled stoppage. This Court, relying on *Jameela* (supra), held that even the case of a passenger, who might have been negligently standing on the footboard, was covered by the definition of 'untoward incident' and was entitled to compensation.

8. In *Union of India Owing Southern Railway v. The Addl. Registrar, Railways Claims Tribunal*, (2012) 5 Mad LJ 562, the passenger travelled in Chennai-Mangalore Express from Chennai to Karur. The train had an unscheduled halt at Veeravakiyam Railway Station. After some time, the train started moving. The deceased fell down from the moving train and died on the spot. The Madras High Court, following *Prabhakaran Vijaya Kumar* (supra) and *Jameela* (supra), held that the dependants of the deceased were entitled for compensation. Relevant portion is reproduced hereunder: -

"27. Thus, from the above analysis of Sections 2 (29), 123, 123(c), 123(2) & 124-A of the Railways Act, 1989, if a bona fide passenger dies or sustain injuries, it will be an 'untoward incident', and irrespective of his negligence or contributory negligence, the Railway is liable to pay

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compensation to the victims or the Dependants of the deceased as prescribed under the Act. So, it introduced principle of 'no fault liability'. It is also 'Rule of strict liability'."

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31. *The deceased was a bonafide Railway passenger. He fell down from the moving train from the compartment and died. There is no evidence from the Railways that he had attempted suicide, inflicted injury due to his own criminal act or he was drunk or he is an insane nor there was any natural cause or he suffered diseases. The Railways has not established that his death falls under any one of the clauses from (a) to (e) of proviso to Section 124-A of the Act. In view of the Apex Court's decision in Prabhakaran Vijayakumar (supra) and Jameela (supra) the stand of the Railways that he died due to negligence (of course, it was not established) is of no avail to Railways because the case before us is an 'untoward incident' and Sections 123 and 124-A incorporates the Rule of Strict Liability or in other words, no fault liability. So, in such circumstances, the negligence pleaded by the Railways, even, if proved is to be ignored. The principles laid down by the Hon'ble Apex Court in Prabhakaran Vijayakumar (supra) and Jameela (supra) squarely applies to the facts of this case. Since respondents 2 and 3 are dependants of the deceased, they are eligible for compensation."*

(Emphasis Supplied)

9. The Claims Tribunal has dismissed the award on the basis that ticket for some other journey was recovered from the injured. This Court is of the view that the appellant's contention of having lost the ticket during the accident cannot be discarded merely on the basis of recovery of some other ticket from injured.

10. Learned counsel for the appellant submits that the appellant's case

falls in Category 3 of the Schedule of Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016 which is reproduced hereunder:-

“(3) For double amputation through leg or thigh or amputation leg or thigh on one side and loss of other foot. - Rs.8,00,000/-”

11. This Court is of the view that the appellant's case falls in category 3 of the Schedule of Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016 and he is entitled to compensation of Rs.8,00,000/-.

12. The appeal is allowed and the award of Rs.8,00,000/- along with interest @ 9% per annum w.e.f. 02nd February, 2009 is passed in favour of the appellant.

13. The respondent is directed to deposit the decretal amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of A/c Mangal Singh within four weeks.

14. List for disbursement of the compensation amount on 24th January, 2018.

15. The appellant shall remain present in Court on the next date of hearing along with passbook of his savings bank account near the place of his residence with PAN card as well as Aadhaar card.

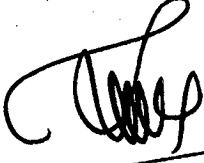
16. The concerned bank is directed not to issue any cheque book or debit card to the appellant and if the same have already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbook that no cheque book or debit card shall be issued to the appellant without the permission of this Court. The appellant shall produce the copy of

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this order before the concerned bank whereupon the bank shall make an endorsement on the passbook. However, the concerned bank shall permit the appellant to withdraw money from his savings bank account by means of a withdrawal form. The appellant shall produce the original passbook with the necessary endorsement on the next date of hearing.

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

DECEMBER 18, 2017
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J.R. MIDHA, J.