

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

+ **FAO No.562/2016**

% **31st May, 2017**

SHYAM NARAYAN & ORS. Appellants
Through: Mr. Raj Kumar Rajput,
Advocate.

versus

UNION OF INDIA Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is filed by the appellants who were the applicants before the Railway Claims Tribunal. By this first appeal appellants/applicants impugn the judgment of the Railway Claims Tribunal dated 10.5.2016 dismissing their claim petition. While the Railway Claims Tribunal has held that the deceased Sh. Manoj was a *bonafide* passenger, and also that the deceased died on account of fall from the train, however, it has been held that the deceased died on account of his own criminal negligence and hence the appellants/applicants were not entitled to compensation.

2. The facts of the case are that the deceased Sh. Manoj along with one Smt. Bindu was going from Kharawar to Daya Basti on 1.9.2014 in a Passenger Train no. 64912. It is pleaded that the deceased had boarded the train, when due to heavy rush and jerk in the train, he fell down from the moving train and received fatal injuries. The subject claim petition was therefore filed seeking statutory compensation of Rs. 4 lacs.

3. The Railway Claims Tribunal has held in para 10 of the impugned judgment that the deceased died on account of his own criminal negligence because the deceased had tried to board the train when the train had picked up speed and was travelling at about 20 kms per hour, and the train had crossed half of the platform. The deceased had come running from the side of the ASM's office and tried to board the moving train. The deceased however could not board the train and instead collided with the train. This has been specifically deposed by Sh. Satish Kumar who was the guard of the train, and who deposed as RW-1. This statement of the guard Sh. Satish Kumar as RW-1 of the deceased trying to board the moving train which had left half of the platform and having a speed of 20 kms per hour remained unchallenged in the cross-examination. Accordingly, the Railway Claims Tribunal in terms of this finding dismissed the claim petition.

4. The issue of an untoward incident and entitlement to compensation on account of an untoward incident with respect to the train accident is a subject matter of Section 123(c) and Section 124-A of the Railways Act, 1989. While interpreting these Sections it has been held by the Supreme Court in the case of *Union of India Vs. Prabhakaran Vijaya Kumar and Others (2008) 9 SCC 527* and *Jameela and Others Vs. Union of India (2010) 12 SCC 443* that even if a *bonafide* passenger is guilty of negligence yet compensation has to be awarded keeping in mind the conditions of the trains in this country. However the Supreme Court has in these very judgments has also clarified that if the *bonafide* passenger is guilty of criminal negligence, i.e self-inflicted injuries due to criminal negligence, then no compensation can be awarded under the Railways Act. In *Jameela's* case (*supra*) Supreme Court has made the following observations:-

“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 124A of the Act, because the deceased had died by falling down from the train because of his *own negligence*. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a *negligent* manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway 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 124A of the Act.

XXXXX

XXXXX

XXXXX

10. It is not denied by the Railway 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 124A as clarified by the Explanation. It is now to be seen, that under Section 124A 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 Railway 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 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."

5. In *Prabhakaran's* case (*supra*) the Supreme Court has again extensively examined the issue of liability with respect to an untoward incident and while holding that the provisions must be read liberally, however again has clarified that in case there are self-inflicted injuries on account of criminal negligence then compensation cannot be granted. The relevant observations of the Supreme Court in *Prabhakaran's* case (*supra*) are contained in paras 10 to 12, 14 to 17 and 52 and which paras read as under:-

"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 vide *Kunal Singh v. Union of India* (SCC para 9), *B.D. Shetty v. Ceat Ltd.* (SCC para 12) , *Transport Corp. of India v. ESI Corp.*.

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 vide *Alembic Chemical Works Co. Ltd. v. The Workmen* (AIR para 7), *Jeewanlal Ltd. v. Appellate Authority* (AIR para 11), *Lalappa Lingappa and Ors. v. Laxmi Vishnu Textile Mills Ltd.* (AIR para 12), *S.M. Nilajkar v. Telecom Distt. Manager* (SCC para 12).

XXXXX

XXXXX

XXXXX

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 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.

15. Section 2(29) of the Railways Act defines “passenger” to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines “untoward incident” to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act with which we are concerned states:

“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 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 purpose 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.

16. The accident in which Smt. Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

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.

XXXXX

XXXXX

XXXXX

52. In view of the above, we are of the opinion that the submission of learned Counsel for the appellant 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.”

6. (i) Learned counsel for the appellants/applicants by placing reliance on the facts of *Prabhakaran’s* case (*supra*) argued that in *Prabhakaran’s* case (*supra*) also compensation was granted on account of the death of the passenger falling down from a train who was trying to board a running train, and therefore, it is argued that even in the present case it should be held that there is an untoward incident

within the meaning of Section 123(c) and Section 124-A of the Railways Act.

(ii) I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self inflicted injury, *bonafide* passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity.

(iii) Thus it depends upon the facts of each case whether the negligence has crossed the threshold to become an act involving criminal negligence i.e whether boarding a running train is only a negligence or criminal negligence depends on the facts of a particular case. Once the facts of the present case are examined and it is found that the present case is not a case where the deceased was boarding a train which had just started and the deceased could not board the same

on account of rush existing at the gate or that the speed of the train was just minimal and it had just started and on account of unlocked door etc that the deceased fell down from the running train. In the facts of the present case, it is seen that the train had in fact crossed half of the platform and had picked up a speed of around 20 kms per hour and therefore, the deceased could not board the train but instead collided with the train and died as a result of the accident. Hence the facts of the present case take the case out of ordinary negligence and throws the case within the first proviso to Section 124-A of the Railways Act.

7. Dismissed.

MAY 31, 2017/ib

VALMIKI J. MEHTA, J