

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

+ **FAO No. 16/2016**

% **19th July, 2017**

ABHINANDAN Appellant

Through: Mr.D.Sabharwal, Advocate

versus

UNION OF INDIA Respondent

Through: Ms.Perna Mehta, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is filed by the applicant before the Railway Claims Tribunal against the impugned judgment dated 23.11.2015 by which the Railway Claims Tribunal has dismissed the claim petition filed by the appellant/applicant.

2. The facts pleaded by the appellant/applicant are that he on 16.10.2014 had come to Gurgaon Railway Station for going to Delhi for some personal work. It was pleaded that when the

appellant/applicant was trying to board train no.12457 then as he put his foot on the foot board, train had started and on account of overcrowding in the bogie, he fell down from the train. It is pleaded that he was taken to the Gurgaon General Hospital and as a result of the injury, he has suffered amputation in both his legs. It is further pleaded that the appellant/applicant was a *bonafide* passenger travelling on a valid ticket which was lost on the spot at the time of accident.

3. Respondent/Railways contested the petition. It was pleaded that the appellant/applicant was not a *bonafide* passenger and that he had died as a result of self-inflicted injuries. It was pleaded by the respondent/railways that there was no untoward incident as defined under the Railways Act, 1989.

4. At the outset, before I turn to the findings and conclusions of the Railway Claims Tribunal, let me reproduce the relevant provisions of Section 123 and 124A of the Railways Act, which reads as under:-

“123. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “accident” means an accident of the nature described in section 124;

(b) “dependant” means any of the following relatives of a deceased passenger, namely:—

- (i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;
- (ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;
- (iii) a minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger;
- (iv) the paternal grandparent wholly dependent on the deceased passenger.

(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.

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 purposes 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”

5. (i) A reading of the aforesaid provisions shows that if there is an untoward incident i.e accident with respect to *bonafide* passenger falling from a train, then on account of the accident, the injured person or the legal heirs of the deceased passenger are entitled to compensation.

(ii) As per Proviso (d) to Section 124A of the Railways Act, if a person suffers from injury on account of state of intoxication then such a person is not entitled to compensation.

6. The law which has been laid down by the Supreme Court with regard to the meaning of an untoward incident and negligence of the *bonafide* passenger is as per the decisions of the Supreme Court in the cases of *Union of India v Prabhakaran Vijay Kumar & Others (2008) 9 SCC 527* and *Jameela & Others vs. Union of India (2010) 12 SCC 443*. The ratios of these judgments is that a *bonafide* passenger even if guilty of negligence is not disentitled to compensation, but once negligence becomes criminal negligence or self-inflicted injury, then such a person or a legal heirs of the *bonafide*

deceased passenger are not entitled to compensation. In view of this legal position, let us examine the facts of this case and conclusions arrived at by the Railway Claims Tribunal.

7. (i) It is seen that Railway Claims Tribunal while dismissing the claim petition has relied upon the contradiction in the statements made by the appellant/applicant as regards the purchase of ticket. Railway Claims Tribunal also finds that in the medical report the appellant/applicant was observed to be under the influence of alcohol. Therefore, it has been held that the appellant/applicant cannot be granted compensation in view of the Proviso (d) of Section 124A of the Railways Act and also because the appellant/applicant was not a *bonafide* passenger.

(ii) Railway Claims Tribunal has referred to the contradictions found as per the statements of the appellant/applicant given during the investigation as per which he said that he was a resident of Delhi and had travelled to Gurgaon to meet his brother-in-law, where the accident took place, and that to and fro ticket was purchased at Delhi on 15.10.2014, however, in the cross-examination of the appellant/applicant before the Railway Claims Tribunal it was stated

by the appellant/applicant that he had purchased the ticket for travelling from Gurgaon to Delhi at Gurgaon Station at around 8 p.m.

8.(i) This Court has examined the record. As per the statement made by the appellant/applicant during investigation it is found that the appellant/applicant did in fact state that he was a resident of Delhi and had travelled from Delhi to Gurgaon and had purchased to and fro ticket from Delhi itself. Obviously, this statement is in clear conflict with the statement made by the appellant/applicant during his cross-examination conducted before the Railway Claims Tribunal on 27.08.2015 and as per which statement the appellant/applicant claimed that he had purchased the ticket at Gurgaon at 8 p.m. The Railway Claims Tribunal has therefore rightly arrived at a conclusion with respect to lack of credibility of the appellant/applicant on account of the conflicting statements of the appellant/applicant with respect to the purchase of the ticket.

(ii) I may note that the admitted position in this case is that the journey ticket has not been filed and proved by the appellant because the case of the appellant/applicant is that the journey ticket was lost in the accident. Therefore, once the journey ticket is not filed and

proved, and which was required to show that the appellant/applicant was a *bonafide* passenger in terms of Section 123(c) of the Railways Act, and there are found to exist contradictions with respect to purchase of the ticket as noted by the Railway Claims Tribunal, then in my opinion the Railway Claims Tribunal was justified in holding that the appellant/applicant was not a *bonafide* passenger.

9. In fact, I may note that there is a further contradiction in the statements made by the appellant/applicant at different points of time and which the Railway Claims Tribunal has missed out. This clear-cut contradiction, and therefore, the lack of credibility of the appellant/applicant, becomes clear from the fact that in his statement given immediately after the accident to the police on 17.10.2014 the appellant/applicant stated that he was a resident of Gurgaon and he was travelling to Delhi for some personal work and which is the same case as pleaded in the claim petition, however, as per the statement given during the course of investigation of the accident, the appellant/applicant stated that he was a resident of Delhi but had gone to Gurgaon to meet his brother-in-law and was travelling back from Gurgaon to Delhi in the evening after meeting his brother-in-law.

Clearly, therefore, appellant/applicant is resorting to lies and a person such as the appellant/applicant, therefore, cannot be believed as being a *bonafide* passenger.

10. The Railway Claims Tribunal has also dismissed the claim petition by referring to the medical report Ex.A-5 and which showed that smell of alcohol was present in the breath of the appellant/applicant. Accordingly, the Railway Claims Tribunal has held that once the accident happened on account of state of intoxication of the appellant/applicant, no compensation can be granted and which would be in view of Proviso (d) of Section 124A of the Railways Act. I agree with this conclusion of the Railway Claims Tribunal because the medical report Ex.A-5 does show that smell of alcohol was present in the breath of the appellant/applicant.

11. Learned counsel for the appellant/applicant sought to argue that even if smell of alcohol is found in the breath of the appellant/applicant, it cannot be said to be intoxication, however the argument needs to be rejected because intoxication is not required under the Railways Act to be of a particular degree i.e only a particular type of intoxication is included under Proviso (d) of Section

124A of the Railways Act. The object of the different sub-sections mentioned in the Proviso of Section 124A of the Railways Act is to provide for situations where the accident is caused on account of self-inflicted injury, and in which circumstances on account of the injury effectively being self-inflicted, the accident is not covered under the term 'untoward incident' as provided under the Railways Act. Once the intake of alcohol is such that it is found in the smell of the breath, then surely faculties of the passengers are bound to be affected, and thereby the injuries caused by the accident are self-inflicted injuries. Accordingly, in my opinion the Railway Claims Tribunal was justified for arriving at a conclusion that on account of smell of alcohol present in the breath of the appellant/applicant, hence, on account of intoxication, there is a self-inflicted injury, and that consequently there is no untoward incident as per Sections 123 (c) and Proviso (d) of Section 124A of the Railways Act.

12. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

JULY 19, 2017
rb

VALMIKI J. MEHTA, J