

In the High Court of Punjab and Haryana at Chandigarh

FAO- 5160 of 2008 (O&M)

Date of Decision:13.9.2019

Gyasu and another

---Appellants

vs.

Divisional Railway Manager and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Dinesh Saini, Advocate
for Mr. Pritam Saini, Advocate
for the appellants

Mr. Amit Kumar, Advocate
for the respondents

Rekha Mittal, J.

Challenge in the present appeal has been directed against order dated 7.8.2008 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”) whereby application filed by Gyasu and another for grant of compensation on account of death of their mother Smt. Juveda in the alleged untoward incident that took place on 6.8.2005, has been dismissed.

The case set up by the claimants is that Smt. Juveda was coming from Talheri Railway Station, District Sharanpur to Kalanaur, District Yamuna Nagar at about 5-00 p.m. The train reached railway station, Kalanaur. She got entangled in periphery of the train and received head injury, hemorrhage and multiple grievous injuries and died at the spot. The

deceased was stated to be travelling on second class ticket at the time of untoward incident.

The respondents filed the written statement raising preliminary objections that petition is not maintainable as deceased was not a bona fide passenger of the train in question under Section 2(29) of the Railways Act, 1989 (in short “the Act”). There is nothing on record to show that there was any untoward incident as defined under Section 123(c) of the Act. All material averments of the application were denied with a prayer for dismissal of application with cost.

The Tribunal framed the following issues for determination:-

1. Whether the deceased was a bonafide passenger, as alleged.
2. Whether the incident in question is covered within the ambit of Section 123(c) read with Section 124(A) of the Railways Act?
3. Whether the applicants are the sole dependent of the deceased?
4. Relief

The parties were permitted to adduce evidence and the same finds reference in the impugned award. The Tribunal upheld plea of the claimants that they are dependents of the deceased while answering issue No. 3. However, while deciding issues No. 1 and 2 jointly, the Tribunal held that though it is accepted that deceased was bonafide passenger but the claimants have failed to establish that deceased died due to untoward incident. Further held that respondent had stated that deceased after de-boarding passenger train on wrong side of platform moved to cross the Dn

line and was hit and run over by goods train which run through Kalanaur on Dn line at the same time. The Tribunal refused to rely on inquest report Ex. A1, SHO's report Ex. A2 and final report of police Ex. A4. On the contrary, it relied upon report of driver of goods train Ex. R2 and in view of its observations recorded on internal page 10 of the award, held that the incident is not covered under Section 123(c) of the Act, provisions of Section 124-A of the Act are not applicable in the case and accordingly issue No. 2 was answered against the appellants and in favour of respondents.

Counsel for the appellants would argue that Tribunal has accepted plea of the claimants that deceased was a bona fide passenger of the railways and the appellants are entitle to get compensation as they are dependents of the deceased. It is further argued that respondents did not raise any such defence that deceased did not sustain injuries in an untoward incident defined under Section 123(c) of the Act or the case falls within the exceptions carved out in Section 124-A of the Act on the basis whereof the respondents can escape liability to pay compensation. It is further argued that provisions of the Act are benevolent social legislation and the same are to be construed liberally and not by giving literal or strict interpretation. It is further argued that Section 124-A lays down strict liability or no fault liability in cases of railway accidents and if a case comes within the purview of Section 124-A, it is absolutely irrelevant as to who was at fault. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Union of India vs. Prabhakaran Vijaya Kumar and others 2008(3) RCR(Civil) 577**. Further reference has been made to

judgment of this Court **Budho Devi and others vs. Union of India 2017(3) RCR (Civil) 640** and judgment of the Madras High Court **Union of India Owning Southern Railways, Chennai vs. A. Logambal and others 2014 (16) RCR (Civil) 762.**

Counsel for the respondents, on the contrary, has supported findings of the Tribunal on issue No. 2. It is argued that as the deceased de-boarded the train on wrong side of platform and walked to cross Dn line on which a goods train (run through) passed, the deceased is to be attributed criminal negligence under Section 124-A (c) of the Act, therefore, the appellants cannot be allowed to take advantage of criminal act of the deceased by claiming compensation from the respondents. For this purpose, reference has been made to judgment of the Delhi High Court **Shyam Narayan and others vs. Union of India FAO No. 562 of 2016 decided on 31.5.2017.**

I have heard counsel for the parties, perused the paper book and records.

Counsel for the appellants has rightly pointed out that the Tribunal has accepted plea of the claimants with regard to their entitlement to get compensation as they fall within the definition of 'dependant' under the Act and the deceased was a bona fide passenger of the railways.

The precise controversy in the present case is, whether the case has rightly been covered under clause (c) of Section 124-A of the Act.

A relevant extract from Section 124-A, germane to the present controversy, reads thus:-

“Compensation on account of untoward incidents.—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) xxxx

(b)xxx

(c) his own criminal act;”

Counsel for the respondents has not disputed that no defence plea was raised by the respondents that the instant case is not covered within the four corners of 'untoward incident' defined under Section 123(c) of the Act or the same falls within any of the exceptions provided under Section 124-A of the Act. In the given circumstances, any such plea sought to be raised by the respondents either during the course of evidence or at the time of arguments is beyond pleadings and result of an afterthought. As has been held by Hon'ble the Supreme Court in **Prabhakaran Vijaya Kumar and others' case (supra)**, Section 124-A of the Act lays down strict or no fault liability in case of railway accidents. The deceased could de-board on

alleged wrong side of the platform only if there was an excess to de-board the train from the other side. Even if the deceased was negligent in de-boarding the train from wrong side or got entangled in railway accident while crossing the track, it is difficult to accept contention of the respondents that she died or suffered injuries due to her own criminal act. The judgment passed by the Delhi High Court attributing criminal negligence to the passenger is rendered in view of its peculiar facts and circumstances as the deceased tried to board a train that had crossed half of the platform and had picked up a speed of around 20 kms. per hour and the deceased could not board the train but instead collided with the train and died as a result of incident. In view of the above, findings of the Tribunal on issue No. 2 suffer from a gross error and liable to be set aside. As a consequence, the claimants shall be entitle to compensation of Rs. 4 lakh with interest @ 9% per annum from the date of incident till realization.

In view of what has been discussed hereinbefore, the appeal is allowed. The application for grant of compensation is allowed, in the terms indicated hereinbefore, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

13.9.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No