IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : RAILWAY CLAIMS TRIBUNAL ACT, 1987

FAO No. 421/2012

DATE OF DECISION : 8th January, 2014

BIMLA DEVI & ANR. .....Appellants
Through: Mr. Raj Kumar Rajput, Advocate.

VERSUS

UNION OF INDIA ..... Respondent
Through: Mr. Amit Dubey, Mr. Ravi Tyagi and Mr. Satyam Pandey, Advocates.

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

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment dated 12.4.2012 passed by the Railway Claims Tribunal dismissing the claim petition of the appellants.

2. The facts of the case as pleaded by the appellants are that the deceased husband of the appellant no.1 late Sh. Gita Ram died on 17.1.2011 on account of an untoward incident as per Sections 123(c) and 124(A) of the Railways Act, 1989, and thus compensation ought to be awarded to the appellants who are the widow and children of late Sh. Gita Ram.

3. There is no dispute in the present case that the appellant was a bonafide passenger because he had a monthly seasoned ticket. The issue is/was as to whether appellant died on account of his own criminal negligence or self-inflicted injuries as he was trying to get down from a running train which had slowed down near the Sadar Bazar station, (where the deceased had his office) and which station was not the scheduled station of the superfast Gorakhdham Express in which the deceased was travelling.

4. Whereas the appellants claim that the deceased died on account of a fall from the train because of a jerk and therefore railways are bound by the principle of strict liability as per the judgment of the Supreme Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC 527, the railways have disputed the claim on the ground that deceased when he was trying to get down from a super fast train at Sadar Bazar station cannot be said to have died as a result of untoward incident but on account of his own criminal negligence or self-inflicted injury. Admittedly, the facts are that the deceased Sh. Gita Ram was an employee of Municipal Corporation of Delhi (MCD) and was residing at Rohtak in Haryana. Deceased Gita Ram was working in the office of MCD at Sadar Bazar. The train in which the deceased was travelling namely Gorakhdham Express did not have a scheduled stop at Sadar Bazar station.

5. I may note that the appellants themselves filed before the Railway Claims Tribunal as Ex.AW1/5 and Ex. AW1/6 the statements of independent witnesses recorded by the Railway Authorities and the Police Authorities immediately after the accident and which statements showed that when the train was slowing down at Sadar Bazar station, the deceased tried to get down from the running train and in this act he slipped and got cut by the same train in which he was travelling and therefore died.

6. In my opinion, there is no reason to disbelieve the statements of the witnesses given to the police as also the Railway Authorities, and which documents were filed by the appellants themselves before the Railway Claims Tribunal. There is a ring of truth in the statements made by these independent/impartial witnesses before the concerned authorities because it is perfectly possible that since the deceased was having his office at Sadar Bazar therefore he was trying to get down from the moving super fast train which did not have a scheduled stop at Sadar Bazar. The act of trying to get down from a moving train was done because in the opinion of the deceased, he must have thought that the train had slowed and it was safe enough to get down from such a moving train which decision unfortunately turned out to be a deadly decision of criminal negligence or self-inflicted injury. In my opinion, therefore, there is no error in the impugned judgment holding that the deceased died not on account of any untoward incident but on account of his own negligence or his self-inflicted injury and consequently as per Section 123(c) and Section 124 (A) of the Railways Act there would be no liability of the Railways.

7. Reliance placed by the learned counsel for the appellant upon the judgment in the case of Prabhakaran Vijaya Kumar (supra) is misconceived for the reason that no doubt the law under Section 123(c) read with Section 124(A) is of a strict liability, and therefore accidental falling of a passenger from a train and even if it is with negligence imposes a liability on the Railways, but, that cannot mean compensation would have to be awarded even if the deceased died on account of his criminal negligence or self-inflicted injuries. In the facts of the case before the Supreme Court in the case of Prabhakaran Vijaya Kumar (supra) the deceased had died while trying to board in a train which had stopped at Varkala railway station and which was so deposed to by PW-2 in that case and which testimony of PW-2 was believed by the Supreme Court by stating that there is no reason why PW-2 would have wanted to give false evidence or that he was an interested witness. The Supreme Court was not dealing with the case where a person was trying to get down from a moving train, and the Supreme Court has not held in Prabhakaran Vijaya Kumar's case (supra) that trying to get down from a moving train is not criminal negligence or death resulting therefrom is not a self-inflicted injury.

8. Supreme Court in another judgment in the case of Jameela and Ors. Vs. Union of India (2010) 12 SCC 443 has made reference to the provisions of Sections 123(c) and 124 (A) and while observing that the liability is a strict liability, however, it has also been observed that where the death is on account of criminal negligence or self-inflicted injury, there is no liability of the Railways. Supreme Court has even in this judgment drawn a difference between negligence or criminal negligence because even if there is negligence of the deceased in view of strict liability damages can be awarded, however, where the negligence amounts to a self-inflicted injury or criminal negligence of the deceased then in such cases Railways are justified in disputing the claim of the dependants of the deceased. Paras 6,7,8,9,10, 11 and 12 of the judgment in the case of Jameela (supra) are relevant and the same read as under:-

"6. Before the High Court, reliance was placed on behalf of the Railway on the proviso to Section 124A of the Act which provides that no compensation will be payable under that section by the railway administration if the passenger died or suffered injury due to (a) suicide or attempted suicide by him, (b) self-inflicted injury or (c) his own criminal act. A reference was also made to Section 154 of the Act which provides that if any person does any act in a rash and negligent manner, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the

safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. It was further contended on behalf of the Railway that the deceased M. Hafeez who was travelling in a negligent manner was standing at the door from where he fell down near the Magarwara Railway Station, where the train does not stop. (It needs to be pointed out that this contention could only be based on speculation, as admittedly there was no eyewitness to the accident). The High Court accepted the contentions raised on behalf of the Railway and allowed the appeal observing as follows:
"On the basis of the law & facts indicated by the learned Counsel for the parties, we find that in the present case the victim is to be blamed for the incident being negligent and therefore this case is not covered by the definition of the untoward incident. However, so far as the compensation is concerned the case of the claimant is covered by the provision of Section 124A as because of his own negligence the deceased had fallen down from the train which caused his death. Further in the light of the fact that the deceased acted in a negligent manner without any precaution of safety by station going at the open door of the running train which resulted into his death." (Emphasis added)

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.

8. Chapter XIII of the Railways Act, 1989 deals with the Liability of Railway Administration for Death and Injury to Passengers due to Accidents. Section 123, the first section of the Chapter, has the definition clauses. Clause (c) defines "untoward incident" which insofar as relevant for the present is as under:
"123 (c) untoward incident means-
(1) (i) –(iii)

(2) the accidental falling of any passenger from a train carrying passengers."

9. Section 124A of the Act provides as follows:

"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."(Emphasis added)

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." (emphasis added)

9. A reading of the aforesaid paras shows that in the facts of the said case falling down of a passenger from a train even when standing near the door on account of his own negligence was held to come under strict liability, however, where a person dies on account of his self-inflicted injuries or criminal negligence on account of attempting to get down from a running super fast train cannot mean that there is only negligence so as to invoke the principle of strict liability in favour of the appellants. Whereas falling from a train on account of negligence will not enable railways to avoid the rules of strict liability, but, where the person tries to get down from a moving train as a result of which he slips and falls and dies, then, in such a case, the deceased can be said to have died on account of criminal negligence or self-inflicted injuries and therefore it is not a case only of negligence for holding the railways liable on the principle of strict liability.

10. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

Sd/-

JANUARY 08, 2014 VALMIKI J. MEHTA, J.