

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2012

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

C.M.A.No.1717 of 2009

The Union of India owning
Southern Railway,
Rep. by its General Manager,
Chennai-600 003.

...

Appellant

Vs.

1.The Addl. Registrar,
Railway Claims Tribunal,
Chennai Bench,
Mechanicols Road,
Chetpet,
Chennai - 31.

2.P.Periyasamy

3.P.Lakshmi

...

Respondents

PRAYER: Appeal against the order dated 22.04.2009 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.2008/1994.

For Appellant : Mr.T.S.Rajamohan

For Respondents 2 & 3 : Mr.T.Rajamohan

J U D G M E N T

This appeal has been directed by the Southern Railway as against the order of the Railway Claims Tribunal, Chennai Bench, ordering a compensation of Rs.4,00,000/- to respondents 2 and 3, who are parents of one Bakkiyaraj, who died in a train accident.

2. On 24.08.2007, Bakkiyaraj, then 24 years old, travelled in Train No.6607 Chennai-Mangalore Express from Chennai to Karur. The train had an unscheduled halt at Veeravakiyam Railway Station. After some time, the train started moving. He fell down from the moving train and died on the spot. According to his parents, in the train, as there was much crowd, he was standing near the entrance of the compartment, abruptly, the train started from Veeravakiyam Railway Station, due to the jerking and jolting of the train, the door of the compartment, which was kept open, dashed on his head, he slipped and fell down from the moving train and died.

3. The Railways filed reply statement disputing that the deceased was a bonafide passenger and it had also disputed the manner of the accident pleaded.

4. The Railway Tribunal framed 5 issues, namely, (1) Was the deceased a bonafide passenger in the train? (2) Was there an 'untoward incident' involving the deceased? (3) Whether the applicants are the only dependents of the deceased? (4) Whether the applicants are entitled to any compensation? if so, the quantum for each? (5) To what relief, if any?

5. Before the Tribunal, the second respondent, who is the father of the deceased deposed as A.W.1. And through him Exs.A1 to A8 have been marked. Railways marked Exs.R1 and R2. But, it did not let in any oral evidence.

6. Appreciating the evidence, the Tribunal concluded that on 24.08.2007, in Chennai-Mangalore Express, the deceased travelled as a bonafide passenger, he suffered accidental death, which is an 'untoward incident' as per Section 123 (c) (2) and Section 124-A of the Railways Act, 1989, respondents 2 and 3 as his dependents are entitled to the maximum compensation of Rs.4,00,000/-.

7. According to Mr.T.S.Rajamohan, learned counsel for the Southern Railways, there is no proper evidence as to the manner of accident, Exs.R1 and R2 were not properly considered, thus, the finding of the Tribunal is unsustainable.

8. However, Mr.T.Rajamohan, learned counsel for respondents 2 and 3 contended that Ex.A7 establishes that the deceased travelled in the train as a bonafide passenger. The earliest records, the evidence collected by the police and the police Final Report corroborates the claim of respondents 2 and 3. The onus is upon the Railways to establish its contrary version. However, there was no convincing and acceptable evidence from the Railways. In the circumstances, the Tribunal has rightly held that the claimants are eligible for compensation. Further, the case comes under Section 123(c)(2) r/w 124-A of the Railways Act,1989. It incorporates 'Rule of Strict Liability'. In such circumstances, question of finding the fault lies on whom is irrelevant. In such circumstances, the Railway is bound to pay them compensation. In support of his submissions the learned counsel for respondents 2 and 3 also cited UNION OF INDIA Vs. PRABHAKARAN VIJAYA KUMAR AND OTHERS [2008(4) MLJ 323(SC)] and JAMEELA & OTHERS Vs. UNION OF INDIA [AIR 2010 SUPREME COURT 3705].

9. I have given my anxious consideration to the arguments of both sides, perused the evidence on record, the impugned order and went through the decisions cited.

10. The Railways Act, 1989 is a complete code dealing with various matters connected with the running of trains, Railway Administration, claiming of compensation for death or other casualties in a train accident. Chapter XIII of the Act deals with the railway "accident" and 'untoward incident' and liability of Railway Administration for death and injury to Railway passengers due to accidents.

11. It is relevant here to note [Sections 2\(29\), 123, 124-A](#) of the Railways Act,1989. They runs as under:-

[Section 2\(29\)](#) 'Passenger' means a person travelling with a valid pass or ticket.

123. Definitions.-

(a) "accident" means an accident of the nature described in [section 124](#);

(b)

(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.

(emphasis supplied by me) [Section 124-A](#):- Compensation on account of untoward incidents:-

124A. 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 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.

12. [Section 2\(29\)](#) of the Act defines passenger to mean a person travelling with a valid pass or ticket. [Section 123\(c\)](#) of the Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers.

13. The onus is upon the Railways to establish that the deceased or injured is not a bonafide Railway passenger (see *AGAM SHANTHAMMA Vs. UNION OF INDIA* (2004 ACJ 713 AP) and *P.RAMASAMY Vs. UNION OF INDIA* (2004 ACJ 231 AP)).

14. By way of a proviso certain category of death of Railway passenger are excluded from the operation of [Section 124-A](#) of the Act. They are mentioned in clause (a) to (e) of the proviso to [Section 124-A](#) (supra). These 5 cases are excluded categories. They will not be 'untoward incidents'. Railways is exonerated from payment of compensation to those involved in these excluded categories. But, the onus is upon the Railways to bring the case under any one of the said clauses.

15. In *UNION OF INDIA Vs. PRABHAKARAN VIJAYAKUMAR AND OTHERS* [2008 (4) MLJ 323 (SC)], the Hon'ble Supreme Court analysed the nature of liability introduced in [Section 124-A](#) of the Act and held as under:-

"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."

16. The said 'Rule of Strict Liability' was laid down in England by Lord Justice BLACKBURN in RYLANDS V. FLETCHER [1866 LRI EX 265]. In the House of Lords, it was approved by Lord Justice CAIRNS (1868 LR 3 HL 330).

17. The basis of the doctrine of 'Strict Liability' is twofold: (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate, and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity being in the best position to spread the loss via insurance and higher prices for its products (see Torts by Michael Jones, 4th Edn., p. 267).

18. Thus, in cases where the 'Rule of Strict Liability' applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

19. In America, the said Rule was adapted and expressed in the following words one who carried on an ultra-hazardous activity is liable to another whose person, land or chattels the actor should recognise as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultra-hazardous, although the utmost care is exercised to prevent the harm(see Restatement of the Law of Torts, Vol. 3, p. 41).

20. In France, the liability of the State is without fault, and the 'Principle of Strict Liability' applies (see C.J. Hanson "Government Liability in Tort in the English and French Legal Systems").

21. In India, the landmark Constitution Bench decision of the Supreme Court in [M.C. Mehta v. Union of India](#) [AIR 1987 SC 1086] has gone much further than Rylands v. Fletcher (supra) in imposing strict liability. The Court observed "if the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads.

22. In UNION OF INDIA Vs. PRABHAKARAN VIJAYAKUMAR AND OTHERS [(2008) 4 MLJ 323 (SC)], the Hon'ble Apex Court held as under:-

"46. In various social welfare statutes the principle of strict liability has been provided to give insurance to people against death and injuries, irrespective of fault.

47. Thus, Section 3 of the Workmen's Compensation Act, 1923 provides for compensation for injuries arising out of and in the course of employment, and this compensation is not for negligence on the part of the employer but is a sort of insurance to workmen against certain risks of accidents.

48. Similarly, Section 124-A of the Railways Act, 1989, Sections 140 and 163-A of the Motor Vehicles Act, 1988, the Public Liability Insurance Act, 1991, etc. incorporate the principle of strict liability."

23. In PRABHAKARAN VIJAYAKUMAR (supra) it was claimed before the Railway Claims Tribunal that the lady passenger had fallen from the moving Parasuram Express at the Varkala Railway Station and her dead body was found on the railway platform. However, the Tribunal accepting the contention of the Railways that the deceased while attempting to board the running train fell down, sustained injuries and died and it will not be an 'untoward incident' under Section 123(c) of the Railways Act, 1989. On appeal, the Kerala High Court took the view that the deceased sustained injuries in her anxiety to get into the moving train, so, she comes within the expression 'accidental falling of passenger from a train carrying passengers' which is 'untoward incident' under Section 123(c).

On appeal by the Railways, the Hon'ble Supreme Court held 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."

The Hon'ble Apex Court finally held as under:-

"25. Thus, in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault."

24. In JAMEELA AND OTHERS Vs. UNION OF INDIA (AIR 2010 SC 3705) the dependents of one M.HAFEEZ claimed compensation before the Railway Claim Tribunal, Lucknow Bench alleging that the deceased was travelling from Ahmedabad to Lucknow by Awadh Express with a valid ticket fell down from the train, near the Magarwara Railway Station and died in an untoward incident. The Railways contended that there was no negligence on its part. The Tribunal rejected it and awarded compensation to the claimants.

On appeal, the Lucknow Bench of the Allahabad High Court accepted the contention of the Railways that the deceased was travelling in a negligent manner standing near the door from where he fell down near the Railway Station and thus allowed the Appeal observing as under:

On the basis of the law and 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 untoward incident. However, so far as the compensation is concerned the case of the claimant is covered by the provision of [Section 124-A](#) 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. On claimants appeal, the Hon'ble Supreme Court after referring to [Sections 123\(c\)](#) and [124-A](#) of the Railways Act, 1989, held as under:-

" 7. 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).

8. 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.

9. 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.

The Hon'ble Apex Court concluded:

"..... 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."

25. Recently, in *VARKEY AND ANOTHER Vs. UNION OF INDIA* (2012 ACJ 810), the deceased, a bonafide passenger travelled in Island Express, from Kottayam to Bangalore, with a reserved ticket and when the train was nearing Madukarai Railway Station, accidentally, fell down from the train and died of head injury. The Railways contended that the deceased travelling standing near the door way keeping the door opened and fell down due to his own careless and negligent act, so, no compensation is payable under [Section 124-A](#) of the Railways Act, 1989. A Division Bench of the Kerala High Court held that there was no evidence to show that the act of the deceased was suicide or self-inflicted injury and when the act of the deceased does not come within any of the categories in clauses (a) to (e) of the proviso to [Section 124-A](#) of the Railways Act, the death of the deceased would come within the ambit of accidental falling of a passenger from a train carrying passenger defined as an untoward incident.

26. Recently, in HARVINDER KAUR AND OTHERS Vs. UNION OF INDIA (2012 ACJ 854), the claimants claimed that the deceased died due to accidental slip from the train on account of heavy rush of passengers and sudden jerk of the train. However, the Railways contended that he fell down because he attempted to get down from a moving train at an unscheduled stoppage. But, there was no evidence let in by the Railways. In the circumstances, the Delhi High Court relying on JAMEELA (supra) held that even the case of a passenger, who might have been standing on the footboard, may be negligently, is covered by the definition of 'untoward incident', as per the decision of the Hon'ble Supreme Court in JAMEELA (supra), thus, the dependants of the deceased are entitled to the maximum compensation of Rs.4 lakhs.

27. Thus, from the above analysis of [Sections 2 \(29\), 123, 123\(c\), 123\(2\) and 124-A of the Railways Act, 1989](#), if a bonafide 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 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'. The Railways can exonerate itself from paying compensation if the incident falls under any one of clauses (a) to (e) in proviso to [Section 124-A](#). The onus to bring the case under any one of the said exclusion clause is upon the Railways.

28. In the case before us, on 24.08.2007, the deceased Bakkiyaraj travelled in Mangalore Express. Ex.A7 is the railway ticket possessed by him. He travelled from Chennai Egmore to Karur. The Railway did not dispute the genuineness of Ex.A7. Nor let in any contra evidence. Thus, the deceased had travelled in the train as a bonafide passenger. So, he comes within [Section 2\(29\)](#) of the Railways Act, 1989.

29. According to AW-1, the father of the deceased that due to crowd in the compartment his son travelled standing near the entrance to the Compartment, when the train suddenly moved from an unscheduled halt at Veeravakiyam Railway Station, due to jerking and jolting, his son had fallen down since the door of the compartment has been kept open. Ex.R1 message from the Railway Staff at the said Railway Station is that on 25.08.2007, at about that time, a male aged about 30 years was killed in a train accident. Ex.R2 DRM's Report also confirms the said death in the train accident.

30. As to the above train accident, the Inspector of Police, Railway Police Station, Trichy, registered a case of suspicious death under [Section 174 Cr.P.C.](#) (see Ex.A1 F.I.R.).

The Inspector took up his investigation. Ex.A.2 is the Inquest Report. The police examined five witnesses and came to the conclusion that on 24.08.2007, at the Veeravakiyam Railway Station, at about 6.45 p.m., the Chennai-Managlore Express train made an unscheduled halt and the train moved suddenly, there was much crowd in the train and a person standing near the entrance to the compartment due to the jerking and jolting fell down due to the slip of the hand grip and he was ran over by the wheels of the train and he died on the spot. Concluding the investigation, the police filed Ex.A.4 Final Report. It also contains similar information.

31. In Ex.R.2, DRM's Report it is stated that the death was due to his gross negligence and the Railway is not responsible for this incident. There was no iota of evidence to that effect from the Railways. 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.

32. Now, we will pass on to the question of quantum of compensation. The railway accident took place on 24.08.2007. The deceased died on the spot. On 22.04.2009, the Claims Tribunal awarded them Rs.4,00,000/-.

33. As per [Section 124](#) of the Railways Act, 1989, the extent of liability of the Railway Administration to pay compensation in case of death, personal injuries and property damage arising out of train accident is as may be prescribed. [Section 129](#) empowers the Central Government to make Rules for payment of compensation in case of death and personal injuries. [Section 127](#) exclusively deal with rates of compensation for injury and

loss of goods. In pursuance of its said power, the Central Government framed "the Railway Accidents and Untoward Incidents (Compensation Rules), 1990" repealing the previous Railway Accidents (Compensation Rules), 1989. Previously, Rs.2 lakhs has been prescribed as maximum compensation. With effect from 01.11.1997 this has been hiked to Rs.4,00,000/-. In the schedule to the said 1990 Rules, payment of compensation has been classified into, Part-I, Part-II and Part-III, which are for grant of compensation for death, permanent disability and other kinds of injuries respectively, for cases under Part-I and Part-II, the maximum compensation prescribed is Rs.4,00,000/-. As per Rule 4, in no case, the compensation shall exceed Rs.4,00,000/-. In RATHI MENON Vs. UNION OF INDIA [2001 ACJ 721 (SC)] and in PARAMESWARAN PILLAI Vs. UNION OF INDIA [2002 ACJ 841 (SC)], it was held that in no case the compensation shall exceed the said Rs.4,00,000/-.

34. [Section 128\(1\)](#) does not prevent claiming of compensation for railway accident under other Acts before other Forums. It also does not prevent claiming of compensation under Tort Law before a Civil Court. But, it prevents double compensation from both the Forums.

35. When we compare the rate of compensation prescribed in the said Railway Rules for loss of life, permanent disabilities and personal injuries with other enactments dealing with grant of compensation such as Motor Accident Claims Tribunal, Commissioner under [Workmen Compensation Act](#), or even the Civil Courts under Tort Law, **the compensation prescribed under the Railway Rules is far less.**

36. Under various heads, such as for loss of dependency; loss of love and affection; mental agony; medical expenses; cremation expenses; nutritious food expenses; loss of estate; loss of cosmetics; loss of consortium; pain and suffering etc., compensation has been granted by the Motor Accident Claims Tribunals to the road accident victims. Depending upon the age of the deceased, size of the family, compensation is calculated choosing appropriate multiplier and even loss of future prospects in case the deceased held a stable job also has been granted by the Motor Accident Claims Tribunal (see SMT.SARALA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (2) TN MAC 1 (SC)]). Now, even to persons employed in unorganised sectors or private jobs compensation for loss of future prospects has been granted by the Motor Accident Claims Tribunal (see SANTOSH DEVI Vs. NATIONAL INSURANCE CO. LTD. AND OTHERS [2012 ACJ 1428]).

37. However, in the Railway Rules, whatever might be the extent of pecuniary and non-pecuniary losses occasioned to the family of the deceased or victims of the railway accident, maximum Rs.4,00,000/- alone has been granted.

38. The basic principle for grant of compensation to the victims is that they should get just compensation. Even [Section 127\(2\)](#) of the Railways Act says that award of compensation must be reasonable. Compensation must be commensurate with the loss occasioned to the victims. But, presently, under the 1990 Railway Rules, whatever might be the nature, extent and loss to the victims Rs.4,00,000/- alone that too it was fixed on 01.11.1997 has been prescribed under the said Railway Rules. It does not appear to be a fair, reasonable and just compensation and it is also not based on relevant aspects.

39. In the case before us, considering the young age and income of the deceased, respondents 2 and 3 are entitled to more than Rs.4,00,000/- as compensation. But, in view of [Section 124](#) and Rule 4 of the 1990 Railway Rules, both the Railway Claims Tribunal and this Court has no power to grant them more than Rs.4,00,000/-.

40. As per [Section 129](#) of the Railways Act, the Central Government has got the power to prescribe the rate. It has the power to spelt out the principles to be adopted by the Railway Claims Tribunal, which will enable the Railway Tribunal to take into account all relevant factors and determine a fair, reasonable and just compensation to the victims of train accident.

41. At any rate, the outer limit of Rs.4,00,000/- is quite inadequate and it is high time that it has to be revised by the Central Government and in exercise of its Rule making power under [Section 129](#) it can empower the Railway Claims Tribunal to award a fair, reasonable and just compensation analogous to the principles adopted by the Motor Accident Claims Tribunal, Commissioner under Workman Compensation Act, etc.

42. In the result, this Civil Miscellaneous Appeal is dismissed. The order of the Railway Claims Tribunal, Chennai Bench is upheld. As the amount deposited is now lying for a considerable time, respondents 2 and 3 are permitted to withdraw the entire balance. No costs.

rrg/smn To

1.The Addl. Registrar, Railway Claims Tribunal, Chennai Bench, Mechanicols Road, Chetpet, Chennai - 31.

2.The General Manager, Railway Head Quarters, Southern Railway, Chennai 3