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(2017) AAC 2455 : (2018) ACJ 393 : (2017) 171 AIC 936 : (2017) 6 All LJ 401 :
(2017) 120 ALR 672 : (2017) 2 TAC 544

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

MANGLU PRASAD — Appellant

Vs.

UNION OF INDIA — Respondent

(Before : Shri Narayan Shukla and Anant Kumar, JJ.)

First Appeal From Order No. 812 of 2016

Decided on : 02-09-2016

- Railways Act, 1989 - Section 123(2), Section 124, Section 124A

A. Railways Act, 1989 — Section 123(c), 124, 124-A — Untoward Incident — Definition and Compensation — Scope of liability of railway administration — Deceased, a valid ticket holder, waiting for a train near railway track — Alleged death due to air pressure from a passing train causing him to fall — Claim for compensation under "untoward incident" — Tribunal dismissed claim stating deceased was neither traveling in nor boarding the train — High Court affirms that this specific incident does not fall under the definition of "untoward incident" as per Section 123(c)(2) which specifically refers to "accidental falling of any passenger from a train carrying passengers" — The deceased was not on a train, nor attempting to board one; he was waiting on the trackside — Hence, the railway is not liable for compensation under Section 124 or 124-A. (Paras 1, 6, 7, 8, 9, 10)

Counsel for Appearing Parties

Nizam Ahmad and Janardan Prasad, Advocates, for the Appellants; None, for the Respondent

Cases Referred

- Union of India Vs. Ahalya Prusti, (2010) 4 T.A.C. 687 Ori.
- Union of India Vs. Prabhakaran Vijaya Kumar, (2008) 2 T.A.C. 777 SC
- Union of India Vs. Sunil Kumar Ghosh, (1984) A.C.J. 719 SC

Final Result : Dismissed

JUDGMENT

Shri Narayan Shukla and Anant Kumar, JJ. - The appellants have claimed to be parents of the deceased Sanjay who died in accident. The learned counsel for the appellant has submitted that the deceased was a valid ticket holder and while he was waiting for boarding on train at the side of railway track, due to air pressure of the running train i.e. Gwalior Mail the deceased fell down on the track of the train and received injuries. On account of which he succumbed to death. Such an accident is covered under the definition "untoward incident" as defined in Section 123 (c). Therefore, the respondents are liable to compensate his death to the claimants, it has been submitted that Railway Claim Tribunal has failed to appreciate the facts of the case correctly and has dismissed the Appellants claim on the ground that since neither the deceased was travelling in train nor was boarding on train when the accident took place, therefore, such accident is not covered under the definition "untoward incident" as has been defined in Section 123 (2).

2. Learned Counsel for the appellant has also relied upon the following decision in support of the appellants claim.

3. In **Union of India v. Ahalya Prusti and another 2010 (4) T.A.C. 687 (Ori.)** the word "accident to train" "all other accident to train" scope of the word had been considered and it was held that the Supreme Court by interpreting under Section 124 in the judgment in **Union of India v. Sunil Kumar Ghosh, 1984 A.C.J. 719 (S.C.)** held that "if a passenger tumbles inside the compartment or stepping train or part of the train. It may be doubtless, an accident to the passenger but not to the train, what was contemplated under Section 124 was only all "other accident to a train" ad not accident to the passenger".

4. In this case no negligence on the part of the deceased was found as the railways could not prove it, in conclusion it was held that by virtue of amendment of Section 123 (c) and Section 124-A, it is only accident to the train but also an untoward incident in which somebody got affected, the latter would be entitled to compensation.

5. In **Union of India v. Prabhakaran Vijaya Kumar and others 2008 (2) T.A.C. 777(S.C.)** the Supreme Court has discussed the definition of "untoward incident" in Section 123 (c) as well as Section 124-A of the Railways Act. In this case also the deceased fell on to the railway tract and was run over by Train No. 6349 Parasuram Express. The eyewitness of the case had deposed that he saw one girl running towards the train and trying to enter the train and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. The Tribunal

had held that this was not an 'untoward incident' within the meaning of the expression in Section 123(c) of the Railways Act, 1989 as it was not an accidental falling of a passenger from a train carrying passengers. The Supreme Court held 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.

6. In view of the aforesaid submissions we have examined the order impugned passed by the Learned Tribunal as well as the other records available before us. At this stage the appellants have placed the statement of one eyewitness Ram Darshan who had stated that when the deceased was waiting for train on the side track, one another train had passed away and on account of air pressure of the said train he lost the balance of his body consequently he fell down and received severe injuries which resulted to his death. Thus, it is obvious that it was not a case of accident to be covered under the definition of "untoward incident". Section 123 (c) has defined the word "untoward incident" as under:-

"123(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 or robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson,

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

Section 124 deals with the provisions of Extent of liability which reads as under:-

"124. Extent of liability- When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers of the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident."

Section 124(A) deals with the Compensation on account of untoward incident which are

also reproduced as under:-

"124.A. 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 instantly;
- (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."

7. After examination of nature of incident we found that the incident in question would not cover under the term of "untoward incident" as has been referred in Section 124 and 124 A to fasten the liability of railway for payment of compensation.

8. The facts of the present case are all together different to the facts of the cases discussed above. As in the present case neither the deceased was boarded on train nor had been trying to board of train at the time of incident rather he was waiting for a train which was yet to reach on the station, in the meanwhile one another train Gwalior Chapra Mail had passed away from the side track and due to the air pressure of the said train the deceased has lost the balance of his body, consequently he fell down and received severe injuries and ultimately died.

9. In view of the aforesaid discussions, we found that the Railway Claim Tribunal has rightly discussed the facts of the present case, in view of the definition "untoward incident"

as has been defined in Section 123 (c) as well as the provisions of Section 124-A and has rightly arrived at conclusion that the incident in question was not covered under the definition of "untoward incident".

10. In the result the appeal stands dismissed.