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**(2014) 01 DEL CK 0125**

**Delhi High Court**

**Case No:** FAO No. 386 of 2010

Lilawati and Others

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** Jan. 28, 2014

**Acts Referred:**

- Railway Claims Tribunal Act, 1987 - Section 23
- Railways Act, 1989 - Section 123 123(c) 124A 124-A 154

**Hon'ble Judges:** Valmiki J Mehta, J

**Bench:** Single Bench

**Advocate:** Yogesh Swaroop and Mr. B.K. Roy, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Valmiki J Mehta, J.

By this first appeal u/s 23 of the Railway Claims Tribunal Act, 1987, the applicants/appellants impugn the judgment dated 1.7.2010 of the Railway Claims Tribunal whereby the claim petition has been dismissed. The admitted case of the applicants is that the deceased Sh. Guru Prasad, and who was the husband of the applicant-appellant no. 1, had purchased a train ticket from Dalmu to New Delhi for travelling by 4517 Unchahar Express. It is further pleaded that the deceased Guru Prasad could not get down at the New Delhi Railway Station and therefore, when train reached Holambi Kalan Railway Station, due to sudden jerk, he fell down from the running train and died at the spot.

2. Liability of the Railways arises as per Section 123(c) read with Section 124-A of the Railways Act, 1989, if the death has taken place on account of an "untoward incident". Liability of the Railways is no doubt a strict liability, however, there is no liability if the accident takes place on account of self-inflicted injury or criminal negligence in view of the judgment of the Supreme Court in the case of [Jameela and Others Vs. Union of India \(UOI\)](#). The relevant paras of this judgment are paras 6, 7, 8, 9, 10, 11 and 12 and which

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)

6. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation u/s 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 u/s 124A of the Act.

7. 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.

8. 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 u/s 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)

3. In the present case, Tribunal has found as a matter of fact that the subject train stopped, not for a few minutes, but for 20 minutes at the New Delhi Railway Station. Therefore, the Tribunal in my opinion has rightly concluded that it could not be that deceased could not have got down at the New Delhi Railway Station if he wanted to. The Tribunal further has found as a matter of fact that deceased died near Holambi Kalan Railway Station and not at the Holambi Kalan Railway Station i.e. the deceased probably tried to get down from a running train.

4. Accordingly, the deceased was not a bonafide passenger having a ticket for travel onwards from New Delhi Railway Station and therefore being not a bona fide passenger at the time of the accident, the appellants/applicants would not be entitled to compensation. Also, as per the facts since the deceased would really have died on account of trying to get down from a running train, and that too not at a Railway Station, the deceased died on account of self-inflicted injuries taking the case out of the expression "untoward incident" as found under Sections 123(c) and 124A of the Railways Act. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.