

(2014) 03 DEL CK 0150
Delhi High Court
Case No: FAO No. 45 of 2013

Sudha Choudhary

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: March 5, 2014

Acts Referred:

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

Citation: (2014) 3 ACC 281 : (2015) ACJ 1832

Hon'ble Judges: Valmiki J. Mehta, J

Bench: Single Bench

Advocate: D.K. Sharma, Advocate for the Appellant; Vibhu Shankar, Advocate for the Respondent

Final Decision: Allowed

Judgement

Valmiki J Mehta, J.

This first appeal is filed u/s 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment dated 30.10.2012 which has dismissed the claim petition filed by the applicants/appellants who are the dependents of the deceased Sh. Parveen Chaudhary who died on account of an untoward incident of a fall from the train at the Tughlakabad railway station while travelling from Okhla to Faridabad in an EMU train on a valid monthly station ticket bearing No. 56186820 having validity from 12.4.2010 to 11.5.2010. I may note that earlier the Tribunal had passed a judgment on 15.7.2011 dismissing the claim petition but a learned Single Judge of this Court had remanded the matter in FAO No. 414/2011 vide order dated 13.4.2012 for a fresh look at the evidence on record. The Tribunal through the same Member has now again passed the judgment dated 30.10.2012 dismissing the claim petition, and which is impugned in this appeal.

2. The following are the admitted facts:

(i) There was a valid monthly station ticket of the deceased Sh. Parveen Choudhary and therefore the deceased was a bona fide passenger and if it is established that Sh. Praveen Choudhary died on account of an "untoward incident" as per the meaning of the expression u/s 123(c) of the Railways Act, 1989, claim petition will have to be allowed.

(ii) The deceased was found dead on the tracks. His body in a cut-up state was found at the Tughlakabad railway station which is between Okhla and Faridabad.

(iii) The deceased is not a vagabond or a labourer, etc. who would be loitering near the tracks because the place of accident i.e. Tughlakabad railway station is not near either to the residence of the deceased or the office of the deceased. The deceased was working as an Executive with the finance company, namely Megna Finkick Finance Company, Okhla, Delhi.

(iv) One Sh. Shams Pervez colleague of the deceased Praveen Chaudhary had recorded his statement on the same date of the accident and soon after the accident vide DD entry No. 15A that he was travelling with the deceased and the deceased had fallen down from the train which resulted in his death. Sh. Shams Pervez was thus an important witness whose statement in the DD and depositions before the Tribunal cannot be easily ignored.

(v) The Tribunal has totally ignored the statement of a completely neutral witness, namely Sh. Mahender Singh, who was a Constable in the Railway Protection Force, and who on the very date of the incident i.e. 21.4.2010, recorded his statement that the deceased as per his enquiries was travelling in the EMU train and had fallen from the train.

3. A reading of the aforesaid facts leaves no manner of doubt that the deceased was a bona fide passenger who fell from the train and this was deposed to by Sh. Mahender Singh as per his statement Ex. AW1/9 and by Sham Parvez vide document Ex. AW1/7 which is the DD No. 15A dated 21.4.2010 and his deposition as AW2.

4. Let me now turn to the conclusions of the Tribunal as per which it has been held that there is no "untoward incident" and possibly that the deceased must have been crossing the tracks when he died.

5. The first conclusion which is arrived at by the Tribunal is on the basis of the difference being found in the timings of the trains and the accident, showing a difference of about half an hour as per the statement of Sh. Shams Pervez and the timings of the train in question. The second conclusion is that the statement of Sh. Shams Pervez could not be believed because not only he was a colleague of the deceased, but that he did not endeavour to pull the chain at the time of accident. The third conclusion is that once the body is found on the adjoining tracks in a cut up position the deceased would have died not on account of fall from the train but because of being run over while crossing the tracks.

6. All the conclusions of the Tribunal with utmost respect are totally illegal and perverse. Firstly, there is no reason to disbelieve the eye witness Sh. Shams Pervez merely because he was an office colleague of the deceased. I fail to understand how merely because Sh. Shams Pervez is in the same office, he for that reason only would be an interested witness. There is no reason an office colleague would be an interested witness because surely he is not to get any share of the compensation. The second reason for disbelieving the statement of Sh. Shams Pervez is that he did not pull the chain after the accident. This conclusion of the Tribunal is also incorrect because Sh. Shams Pervez clearly deposed in his cross-examination that on account of the huge rush in the bogie he could not reach the chain to stop the train and he thereafter get down at the next station and went back to the spot as also informed his office. All I can say with regard to the observations of the Tribunal to disbelieve Sh. Shams Pervez because he did not pull the chain is that sometimes it should be remembered that what are the over-crowded conditions in the EMU trains which ply in national capital regions and the Tribunal should understand that there is no vacant space to take even a step towards the chain for stopping the train. Therefore, I reject the conclusion of the Tribunal that the statement of Sh. Shams Pervez, and which was recorded as AW2, should be disbelieved.

7. So far as the aspect of difference in train timings by reference to the specific trains which passed at Tughlakabad railway station, I would like to note that it is not possible in a case to be perfect either with respect to the exact sequence of events or with respect to exact train timings which causes the death. Exactitude cannot be demanded with respect to timings of the accident and timings of the trains. The fact of the matter is that there is a death. The fact of the matter further is that death is on the railway premises i.e. on tracks. The further fact of the matter is that there was no reason for the deceased to be at the Tughlakabad railway station unless he was travelling by the train inasmuch as the place of the death is neither near the residence nor the office of the deceased Sh. Parveen Choudhary. Still further, fact of the matter is that the deceased was an employed person working as an Executive with the company and not a loiterer much less at the Tughlakabad railway station. Therefore depositions showing the timings of the accident have to be read in a contextual manner and not with exactitude of a golden scale. Timings depending would be only relevant in certain facts to show that death is on account of trespassing the tracks, however, the facts of the present case show that there was no crossing of the tracks but the deceased died on account of a fall from the train. I therefore set aside the conclusions of the Tribunal which holds that difference of about half an hour in train timings establishes that the deceased was not travelling in the train. At the first blush, a very analytical discussion of the Tribunal may have some appeal however we are dealing with the real situations and real human beings and not computer perfected software programmes which would be perfect in all respects. Therefore, mere inconsistency of timings with respect to the accident of about half an hour cannot take away the conclusion as per the other facts of the

case that there was an untoward incident of the deceased Sh. Parveen Choudhary falling from the train.

8. I also cannot agree with the conclusion of the Tribunal reached suo moto without any evidence that the train in question would only be travelling at 15 KM or so per hour and more so because the track would join the main line after some distance, inasmuch as, jerking of trains even at a normal run on a normal track and that too of an EMU train/local train which suddenly takes up speed is a very normal and a regular feature. All I can say is that any traveller in a train knows the huge jerks which are suddenly caused in the EMU trains even on normal tracks. Therefore, I also set aside the conclusion of the Tribunal that there was no reason why train would not have given the jerk resulting in falling from the train.

9. The final conclusion of the Tribunal is that since the cut up body of the deceased Sh. Parveen Choudhary was lying on the adjoining track it would not be possible for the deceased to have fallen from a train and in such a case his body would not be discovered in cut up position in the adjoining tracks. Once again this conclusion, in my opinion, is totally misconceived because the issue of a cut up body lying on tracks, whether the same is on account of fall from the train, or a person being run over by a train depends upon the facts of each case. In the present case, as already discussed above, deceased was travelling on the train and this has been adequately proved through the statements of his colleague Sh. Shams Pervez and the RPF Constable Mahender Singh. No doubt a question arises is that how is the body of the deceased found lying in a cut up position in the adjoining railway tracks. To this, I would like to state that adjoining to the tracks there are many equipments and poles of the railways. If a passenger falls from the train in which he is travelling, it is always possible that his legs get entangled at the steps at the door from which he falls, and on account of the accident including his coming partly under the same train as also thereafter hit by other equipments/poles adjoining the tracks, the body can surely in some cases be found in a cut up position in the adjoining tracks. No one can exactly prepare a trajectory of a body falling from a train, getting entangled on the steps, hitting other railway equipment and the final place where the body is found. All this is dependent on the facts of each case. Therefore, I am of the opinion that the Tribunal has erred in holding that merely because the body in a cut up position was lying in the adjoining tracks, the deceased was not a bona fide passenger and that he did not fall down from the train.

10. The facts of the case show that the deceased was a bona fide passenger, was travelling on the train and fell from the train i.e. an untoward incident happened as per Section 123(c) and Section 124A of the Railways Act, 1989.

11. At this stage, one is reminded of the ratios of the two judgments of the Supreme Court which laid down the law so far as Sections 123(c) and 124A of the Railways Act, 1989 are concerned. These are the judgments of [Jameela and Others Vs. Union of India \(UOI\)](#), and [Union of India \(UOI\) Vs. Prabhakaran Vijaya Kumar and Others, .](#)

The Supreme Court in these judgments has laid down the ratio that even if a person is guilty of negligence, yet, compensation has to be awarded inasmuch as unless there is a criminal negligence or self inflicting injuries, the Railways would be liable to pay compensation. Supreme Court in these judgments has taken note of the conditions of travelling in the Indian Railways and the crowd of passengers in the same. Supreme Court has accordingly held that standing at the door of a train is negligence but such negligence does not prevent liability from being imposed upon the Railways in terms of Sections 123(c) and 124A of the Act. The facts of the present case clearly have established that the deceased died on account of a fall from the train when he was standing at the door of a crowded train and he died on account of the untoward incident and hence the respondent/Railways would be liable to pay the statutory compensation. In view of the above, appeal is allowed. Impugned judgment of the Tribunal dated 30.10.2012 is set aside. The appellants/applicants will be entitled to statutory compensation of Rs. 4 lacs in equal proportion.

Appellants/applicants will also be entitled to pendente lite and future interest @ 7 1/2 % per annum simple till payment. Parties are left to bear their own costs.