

(2015) 4 ACC 146 : (2016) ACJ 455 : (2015) 2 AnWR 812 : (2015) 1 GLR 899

Gujarat High Court

Case No: First Appeal No. 4639 of 2009

Kalluprasad
Krushnanand Dube and
Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Dec. 22, 2014

Acts Referred:

Railways Act, 1989 - Section 123 123(c) 123(c)(2) 124 124A#Terrorist and Disruptive Activities
(Prevention) Act, 1987 - Section 3

Citation: (2015) 4 ACC 146 : (2016) ACJ 455 : (2015) 2 AnWR 812 : (2015) 1 GLR 899

Hon'ble Judges: N.V. Anjaria, J

Bench: Single Bench

Advocate: P.J. Mehta, Advocate for the Appellant; Ravi Karnavat, Advocate for the
Respondent;

Final Decision: Dismissed

Judgement

N.V. Anjaria, J.

1. Whether a passenger traveling on the roof of the train, when died having suffered
electrocution while getting down from the roof, could claim

compensation from the Railway Authorities under Sec. 124A of the Railways Act, 1989?
Was it an ""untoward incident"" contemplated in the

Section? These are the main questions surfacing in this First Appeal preferred under Sec.
23 of the Railway Claims Tribunal Act, 1987, seeking to

challenge judgment and order dated 27-10-2009 passed by the Railway Claims Tribunal,
Ahmedabad Bench, Ahmedabad. The claim application

being Case No. OA 0100052 was filed under Sec. 125 of the Railways Act by the claimants-the parents of the deceased minor named Vivek,

asking for compensation of Rs. 4 lacs. The same came to be dismissed by the Tribunal as per its impugned judgment and order.

2. Sifting relevant, excluding unnecessary details, in the claim application, it was the case of the claimants that the deceased was traveling from

Bhusaval to Surat in a Train No. 76-Up. He had purchased the ticket of second class from Bhusaval Railway Station. It was stated that there was

a heavy rush in the bogie and no vacant seat was available. It was contended that the Railways Authorities did not provide additional bogie on

account of which the passengers were compelled to sit on the roof of the train. The deceased who climbed up the roof of the train, accidentally

dashed with the electric wire while trying to get down near Udhna Railway Station. Having suffered burn injuries on the whole body, he was

admitted to hospital, where he succumbed to the injuries on 19-5-1998 at about 22-45 hours. The Railway filed its written statement denying the

case and contending inter alia that the incident described was not an "untoward incident" as defined in Sec. 123(c)(2) of the Railways Act and that

the deceased was not a bona fide passenger. It was contended that no liability would arise for the Railway Authorities to pay the compensation.

2.1. The Claims Tribunal framed the following issues; (i) Whether the deceased was a bona fide passenger of the train in question? (ii) Whether

any untoward incident as alleged in the claim application took place within the meaning of Sec. 123 and Sec. 124A of the Indian Railways Act,

1989? (iii) To what amount of compensation, are the applicants entitled to? (iv) Whether the applicants are the only dependent of the deceased?

(v) Any other relief? As stated above, the Claims Tribunal dismissed the application.

3. Learned Advocate Mr. P.J. Mehta for the appellants-claimants submitted that the deceased had a valid ticket purchased by him and on that

basis, he had boarded the train. It was submitted that it was not his fault that he could not get a seat in the bogie, and therefore, sat on the roof of

the train. It was further contended that it was the duty of the Railways Authorities to provide an additional bogie; the authorities were joined to

issue warning if the passengers were not to be allowed to travel by sitting on the roof, it was contended. It was also contended that where there

was non-availability of traveling space and accommodation was not provided, due to which the deceased passenger was compelled to travel on

the roof, were the circumstances created by the authorities themselves.

3.1. It was further submitted by learned Advocate for the appellants that Sec. 124A of the Railways Act imposes a strict liability in respect of

compensation for death of a passenger in an untoward incident and that such liability arises in law irrespective of negligence on part of the

Railways. It was contended that unless a warning is issued by the Railway Authorities concerned, which was not issued in this case, Sec. 156 of

the Act could not be applied. It was contended that the evidence led by the railway authorities did not establish that any efforts made for climbing

down the passenger traveling on the roof of the bogie of 76-Up Bhusaval-Surat Railway Passenger by Station Supdt. Udhna, Railway Police

Force as well as Railway Guard on the day of incident. It was submitted that in view of Sec. 51 of the Railways Act, it was obligatory on part of

the authorities to provide accommodation to the passengers who were issued tickets.

3.2. Learned Advocate relied on following decisions in support of his submissions, (i) Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and

Others,

, (ii) Union of India (UOI) Vs. Ashokbhai Govindbhai Patni,

, (iii) Pushpaben Jitendrakumar Shah and Others Vs. Union of India (UOI) and Others,

, (iv) Union of India (UOI) Vs. Krishan Lal and Others,

, (v) Ashrani Das v. Union of India, 2010 ACJ 2777 (Calcutta) , and (vi) Balagoni Siva Prasad Vs. Union of India (UOI),

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3.3. Learned Advocate Mr. Ravi Karnavat for the respondent-Railway Authorities submitted that the deceased was traveling on the roof. He

contended that when the deceased was outside the train and on the roof of the bogie, he incurred risk on his own and he was not a bona fide

passenger. It was submitted that the deceased, by traveling on the roof of the train, indulged into criminal act within the meaning of Sec. 156 of the

Act, and hence, the concept of liability or provisions of Sec. 124A would not apply. Learned Advocate took the Court through the relevant

evidence and the applicable statutory provisions.

4. Having noted the facts of the case and the rival contentions, advertng to the relevant provisions under the Railways Act, 1989, Sec. 124 of the

Act provides for extent of liability of Railways, stating that when in the course of working of a Railway, an accident occurs including collision or

derailment of trains or any other accident, the passengers suffering injuries or damage, would be entitled to compensation and the Railway

Authorities shall be liable to pay compensation to such extent as may be prescribed, whether or not there was any wrongful act or negligence on

part of the Railway Authorities. Section 124A which is applicable in the facts of the present case deals with compensation on account of untoward

incident and provides for strict liability of the railways as in Sec. 124.

4.1. Section 124A reads as under:

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 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.

4.2. The above provisions occurs in Chapter 13 of the Railways Act under heading "Liability of Railway Administration for Death and Injury to

Passengers Due to Accidents". Section 123A defines accident to mean an accident of the nature described in Sec. 124. Again what is relevant is

the definition of "untoward incident" found in Sec. 123(c), in particular sub-sec. (2) thereof. The definition reads as under,

123(c) untoward incident means-

(1) (i) the commission of a terrorist act within the meaning of sub-sec. (1) of Sec. 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 or a railway station; or

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

4.3. The evidence before the Tribunal when carefully read was consistent and clear. The fact that the deceased had been traveling on the roof was

established. The inquest panchnama (Exh. C-5) recorded that the deceased person on 12-5-1998 at Udhna Railway Station 76-Up Bhusaval

while traveling on the roof. When he was getting down at Udhna Railway Station, he suffered burns due to current of electric wire and was

admitted to hospital. Panchnama of the place (Exh. C-6) also revealed that a person traveling on the roof of Train No. 76-Up accidentally

received shock of electric wire. Panchnama of physical condition (Exh. C-7) was recorded in which clinchingly (when asked about the incident),

the deceased himself stated that he was injured that he was traveling on the roof of Bhusaval Passenger Train and during that time at Udhna

Railway Station, when he was getting down and tried to stand up, received current of electric wire accidentally. Therefore, the factum of the said

passenger traveling on the roof was proved on clear evidence. It was further established that the said passenger traveling on the roof suffered

injuries due to burning by shock of electric wire while he was climbing down from the roof of the train.

4.4. Now, Sec. 156 of the Act says that a passenger traveling on the roof, steps on engine of a train commits an offence. Section 156 is

reproduced hereunder:

156. Traveling on roof, step or engine of a train:- If any passenger or any other person, after being warned by a railway servant to desists, persists

in traveling on the roof, step or foot-board or any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with

both and may be removed from the railway by any railway servant.

5. Posing at this stage, proceeding to deal with the decisions relied on by learned Advocate for the appellants, in Pushpaben Jitendrakumar Shah

and Others Vs. Union of India (UOI) and Others,

] this Court applied Sec. 124A in the context of facts where the several passengers were standing on corridors, between the compartments and a

passenger being unable to withstand jostling, was pushed out of the compartment of running train, fell down and sustained fatal injuries. The Court

negated the defence that in such situation of falling, the Railways could not be attributed to any negligence. Those facts were materially different

from those in the present case. The passenger there was traveling inside the train, and thereupon, due to overcrowding was pushed by force to fell

down, dying resultantly. The said situation could not be compared to one obtained in this case.

5.1. In Prabhakararn Vijaya Kumar, [2008 (3) GLR 2400 (SC)] the case before the Supreme Court was that a lady trying to enter the train fell

down on the railway track and died after she was run over by the train. The Supreme Court on such facts held that falling down of a bona fide

passenger from the train while trying to board it, was an event covered under the definition ""untoward incident"" and ""accidental falling of an

passenger from a train carrying passengers"". It held that therefore, the passenger was not actually inside the train while falling down inconsequential.

5.2. In Union of India (UOI) Vs. Ashokbhai Govindbhai Patni,

] the facts before this Court were similar. The compensation was held awardable to a passenger who fell down while trying to board the train due

to jerk of train and push by passengers resulting into crush injury on his foot. So also was set of facts in decision by Delhi High Court in Union of

India (UOI) Vs. Krishan Lal and Others,

] where a female passenger was trying to board the bogie which was overcrowded, and fell down. It was held that the passenger was a bona fide

passenger and was entitled to compensation. Again in Ashrani Das, [2010 ACJ 2777 (Cal.)] the Calcutta High Court had before it a case where

passenger died due to accidental slip on account of overcrowding in train. In *Balagoni Siva Prasad Vs. Union of India (UOI)*,

], the Andhra Pradesh High Court held that it will not make any difference whether the injured was actually inside the train when he fell down or

whether he was only trying to get into the train when he fell down, in either case, it would amount to accidental fall of a passenger from a train

carrying passenger, and hence, an "untoward incident" within the meaning of Sec. 123(c). In that case, the passenger was trying to board a running

train fell down and sustained injuries.

5.3. It would be noticed that the facts in all the above cases where the Court held the incident of falling down of a passenger was an untoward

incident, and consequently, strict liability under Sec. 124A for compensation was attracted, the passenger was trying to get into the bogie or trying

to board the train to enter inside or the passenger fell down from inside the bogie because of force or push due to overcrowding.

6. A decisive difference occurs for the purpose of applying concept of untoward incident and entailing liability of the railways to a compensation in

a case where a passenger was attempting by getting into the train, but fell down and suffered injuries or died, and on the other hand, a passenger

who is not inside the train, nor is attempting to get into the train, but who has been traveling on the roof of the bogie and gets himself injured while

getting down from the roof.

6.1. The point is clinched when Sec. 124A is interpreted conjointly with Sec. 156. The First Proviso of Sec. 124A inter alia says that no

compensation shall be payable if the passenger dies or suffers injuries due to, as per clause (c), his own criminal act. Section 156 is clear to

provide traveling on roof by passenger to be a criminal act. Therefore, a passenger traveling on the roof commits a criminal act by virtue of his

conduct and would not be entitled to seek compensation even if he suffers injuries or dies.

6.2. Such passenger may have purchased a valid ticket, but when he travels on the roof for whatever reasons, in respect of injury or death, he may

suffer, the railways cannot be held liable to compensate. An interpretational view is entirely possible that a person who sits on the roof and travels,

cannot be termed as "passenger" within the scope of explanation to the First Proviso to Sec. 124A, inasmuch as the requirement to be a passenger

is not only just purchase of a valid ticket, but "traveling by a train carrying passengers". A person who sits on the roof of the bogie or train and

travels is not same as "traveling by a train carrying passengers". To be inside the train or conducting oneself to board inside the train, is essential to

fall within the ambit of the phrase "traveling by a train" as per the explanation, or to fall within "a train carrying passengers" within Sec. 123(c)(2). In

order to be a bona fide passenger, the passenger must travel within the space or portion provided by the railways for the purpose of passenger to

travel. Roof of bogie is not such space provided. Once, the passenger is found not entitled to compensation on account of untoward incident under

Sec. 124A, he would also stand excluded from the definition of "passenger" mentioned in Sec. 2(29) of the Act.

6.3. Section 123(c)(2) inter alia defines untoward incident to mean the accidental falling of a passenger from a train carrying passengers in the

context of accrual of liability under Sec. 124A. Falling of a passenger traveling on the roof could not be said to be "accidental falling of a

passenger" and more particularly, it could not be said to be "from a train carrying passengers". When a passenger is inside the train and falls down,

or that a passenger falls down while trying to board into the bogie or train and falls down, the concept of strict liability under Sec. 124A applies.

An accidental falling in course of a criminal conduct or while doing a criminal act cannot come within the definition of "untoward incident" in Sec.

123(c)(2) for the purposes of Sec. 124A. A passenger traveling on the roof would be outside the purview and his falling down is not an "untoward

incident".

7. In the facts of the present case, as already noted, the fact was clearly established that the deceased was traveling on the roof of the bogie of 76-

Up Bhusaval to Surat Railway Passenger. While getting down from the roof of the train at Udhna Railway Station, he came into contact with live

electric wire, suffered burned injuries due to electrocution and succumbed to injuries later. On the facts of the case, there was no liability for

railways to pay compensation under Sec. 124A of the Act. For the foregoing reasons and discussion, judgment and order of the Railways Claim

Tribunal impugned in the present Appeal is eminently proper and legal, warranting no interference. The same is upheld. The present First Appeal is

dismissed.