

(23) In view of the aforesaid discussion, I have no hesitation in answering question (a) in the affirmative. Accordingly, I hold that since no general power of attorney was ever executed by Smt. Karmi in favour of defendant Mehar Singh, therefore, defendants Nos. 4 and 5 did not get any title under the sale deed dated 29th January, 1974 at all. Similarly, since the aforesaid issue was not at all adverted to by the learned first appellate Court and even otherwise document Ex. P2 was brushed aside by the learned first appellate Court merely on the basis of the conjectures and also because of the fact that the learned first appellate Court had dealt with the entire case in the wrong perspective, the aforesaid questions (b) and (c) are also answered in the affirmative.

(24) As a net result of the entire discussion, the present appeal is allowed. The judgment and decree of the learned first appellate Court are set aside and that of the learned trial Court are restored. Consequently, the suit of the plaintiffs is decreed with no order as to costs.

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**R.N.R.**

*Before Satish Kumar Mittal, J*

USHA RANI & OTHERS,—Appellants

versus

UNION OF INDIA & ANOTHER,—Respondents

*F.A.O. No. 2558 of 1996*

19th November, 2003

*Railways Act, 1989—Ss. 123, 124 & 124-A—Death by accidental fall from the door of train while travelling—Tribunal rejecting claim for compensation—Deceased having a valid ticket of the day of accident—An independent witness also establishing the fact of death—Finding of Tribunal that the deceased died due to his own negligence is wholly without any basis—S. 124—A extends liability of Railways for payment of compensation to dependants of a deceased who dies on account of an 'untoward incident' in the course of working a Railway—Accidental fall from train covered by 'untoward incident' as defined in S. 123(c)/(ii)—Claim made by dependants of deceased fully covered by the provisions of S. 124-A—Appeal allowed.*

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*Held*, that merely on the basis of the fact that body of the deceased was lying on the railway line of main line (U.P.), it cannot be presumed that he was run over and killed by an unknown train, when he was crossing the railway tracks. The finding recorded by the Tribunal to this effect is wholly without any basis and evidence and the same is liable to be set aside. In this view of the matter, I hold that the deceased died due to fall from the door of Mathura-Delhi train due to jerk of the train.

(Para 8)

*Further held*, that according to sub-clause (ii) of Clause (c) of Section 123, the accidental falling of any passenger from a train carrying passengers is governed by 'untoward incident'. Thus, the incident in question when the died by accidental fall from the door of the train while travelling in the same with a valid ticket is covered by the aforesaid definition of 'untoward incident'. Therefore, the claim made by the appellants being dependants of the deceased is fully covered by the provisions of Section 124-A of the Railways Act, as the deceased, who was a valid passenger died in the railway untoward incident which occurred in the working of the railway and the railway administration is, therefore, liable to pay compensation to the appellants.

(Para 14)

N.M. Popli, Advocate, for the appellants.

Jagdish Marwaha, Advocate, for the respondents.

### JUDGEMENT

**SATISH KUMAR MITTAL, J.**

(1) The appellants, who are the dependents of deceased Ramesh Chander Aggarwal, have filed this appeal under Section 23 of the Railways Claims Tribunal Act, 1987 (hereinafter referred to as 'the RCT Act') against the order dated 17th April, 1996 passed by the Railway Claims Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal'),—*vide* which the claim petition filed by the appellants for compensation on account of the death of the aforesaid Ramesh Chander Aggarwal in a train accident, was dismissed.

(2) The brief facts of the case are that the aforesaid Ramesh Chander Aggarwal was working as Assistant Engineer in the Rajasthan State Electricity Board, Jaipur. On 22nd March, 1995, he left his house at Jaipur for going to Hodal and then from Hodel to Faridabad for some urgent work. On the fateful day i.e. on 23rd March, 1995, he died in a train accident at the Hodal Railway Station when he was going from Hodal to Faridabad. At that time, he was having a Second Class ticket from Hodal to Faridabad. The police informed the appellants about his death at Hodal Railway Station. On subsequent enquiry by appellant No. 1, widow of the deceased, it was revealed that on the fateful day, the deceased was standing on the door of compartment of Mathura-Delhi passenger train and due to the jerk of the train, he fell down on the other side of the track and died. Appellant No. 1, after collecting some papers like Post Mortem Report, Inquest Report, Death Certificate etc. filed the instant claim petition before the Tribunal under Section 16 of the R.C.T. Act. This claim petition was filed by the widow of the deceased i.e. appellant No. 1, for herself and on behalf of three minor children of the deceased, who are appellants No. 2 to 4 in this appeal.

(3) Pursuant to the notice issued, the respondents appeared and filed the written statement contesting the claim of the appellants. It was alleged that the deceased was run over by an unknown train on main line (Up) and his body was lying near starter signal. He was not a passenger, much less the *bona fide* passenger, and he had trespassed into railway property, therefore, the alleged accident does not fall within the ambit of Section 124 and 124-A of the Railway Act, 1989 (hereinafter referred to as the Railways Act). It was denied that the deceased was travelling by the Mathura-Delhi passenger train, as such, the Tribunal was having no jurisdiction to adjudicate upon the matter and the claim petition was sought to be dismissed.

(4) On the pleadings of the parties, the following issues were framed by the Tribunal :—

1. Whether Sh. Ramesh Chand Aggarwal—the deceased was a *bona fide* passenger of Mathura-Delhi passenger train ? OPA
2. Whether the deceased expired due to train accident within the meaning of Section 124/124-A of the Railways Act ? OPA

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3. If both the above issues are proved, whether the applicant is entitled to recover the amount as claimed in the claim application from the respondents ? OPA

4. Relief.

(5) On issue No. 1, it was held that at the time of his death, the deceased was having a valid ticket from Hodel to Faridabad, therefore, it was held that he was a *bona fide* passenger. On issue No. 2, the version given by the appellants that on 23rd May, 1995 the deceased had boarded the Mathura-Delhi passenger train and was proceeding towards Delhi and due to a jerk of the train, he fell down towards the Up Main Line was not believed, and it was held that the deceased was run over by a passing unknown train, when he was crossing the railway tracks. It was further found that there was no provision of railway over-bridge at the railway station Hodal. In these circumstances, if a passenger wants to go to another platform, he has to cross the tracks with due precaution and by avoiding all risks. Therefore, it was held that the deceased himself was negligent. On the basis of the aforesaid findings, it was held that the accident in question does not fall either under Section 124 or 124-A of the Railway Act. Therefore, the appellants were held to be not entitled for any compensation.

(6) Learned counsel for the appellants submitted that the findings recorded by the learned Tribunal on issue No. 2 regarding the manner in which the deceased died is wholly perverse and contrary to the evidence available on the record. Learned counsel submitted that it has been established on record by the affidavit of Indiver, son of Shri Babu Ram, resident of Palwar, that on 23rd March, 1995, the deceased was travelling in Mathura-Delhi passenger train who while standing in the door fell down from the said train due to the jerk and died. He further submitted that it was held on issue No. 1 that the deceased was having a valid ticket from Hodal to Faridabad. This fact also supports the version given by the aforesaid witness that at the time of the accident, the deceased was travelling in the Mathura-Delhi train and fell down from the door of the said train due to jerk of the train. He further submitted that the finding recorded by the learned Tribunal that the deceased was run over by an unknown train, when he was crossing the railway tracks, is wholly without any basis, as there is no such evidence available on the record, but the said finding

has been recorded only on the basis of the inference drawn from the fact that the body of the deceased was found on the main line (Up) near starter signal. Learned counsel for the appellants further submitted that the accident in question clearly falls under Sections 124 and 124-A of the Railways Act and the railway administration is liable to pay compensation to the appellants.

(7) On the other hand, learned counsel for the respondents submitted that there is no infirmity or illegality in the finding recorded by the Tribunal and in view of the said finding, the claim petition of the appellants was rightly dismissed.

(8) I have heard the arguments of learned counsel for both the parties and have perused record of the case. In my opinion, the finding recorded by the Tribunal on issue No. 2 to the effect that the deceased was run over by an unknown train, when he was crossing the railway tracks and died due to his own negligence is wholly without any basis and based on conjectures and the same is liable to be set aside. It has not been disputed that on 23rd March, 1995 deceased Ram Chander died in a railway accident at Hodel railway station. It has also been held by the Tribunal that on the fateful day the deceased was having a valid ticket of the same day from Hodal to Faridabad of Mathura-Delhi passenger train. The appellants gave the version that on the fateful day, the deceased was travelling in Delhi-Mathura train and when he was standing in the door, he fell down towards the main line (Up) due to the jerk of the railway and died. The said version was given on the basis of statement of one independent witness, namely Indiver, son of Shri Babu Ram, resident of Hodel, who was also travelling in the said train on the fateful day. The said witness was cross-examined by the respondents. I do not find any reason to disbelieve the said witness only on the ground that he narrated the aforesaid incident to the widow of the deceased when subsequently she went to Hodal to enquire about the death of her husband. One thing is clear that on the fateful day, the deceased was having a valid ticket of the same day from Hodal to Faridabad of Mathura-Delhi passenger train. This fact itself establishes that the version given by the said independent witness is true. On the other hand, the respondents are alleging that the deceased was run over by some unknown train while he was crossing the railway tracks. This they alleged only on the basis of the fact that his body was found on

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the railway line of main line (Up). No eye witness has been examined by the respondents to the effect that the deceased was hit by an unknown train and he died due to that accident. Therefore, merely on the basis of the fact that body of the deceased was lying on the railway line of main line (Up), it cannot be presumed that he was run over and killed by an unknown train, when he was crossing the railway tracks. In my opinion, the finding recorded by the Tribunal to this effect is wholly without any basis and evidence and the same is liable to be set aside. In this view of the matter, I hold that the deceased died due to fall from the door of Mathura-Delhi train due to jerk of the train.

(9) Now the question for determination in the instant appeal is as to whether the death of the deceased in the aforesaid manner is covered by Sections 124 and 124-A of the Railways Act or not. Sections 123 to 129 contained in Chapter XIII of the Railways Act deal with the liability of Railway Administration for death and injury to passengers due to railway accidents. Section 13 of the RCT provides for jurisdiction, powers and authority of the Claims Tribunal, established under the said Act, to grant compensation to the dependants of the deceased from the railway accidents. Under this Section, the Claims Tribunal has the jurisdiction to award compensation payable by the Railway Administration under Section 124 of the Railways Act equivalent to Section 82-A of the old Act i.e. Railways Act (9 of 1890) and the liability arising under Section 124-A of the Railways Act has also been described in this Section. Clause (a) of Section 123 of the Railways Act defines the word accident means an accident of the nature described in section 124. Section 124 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 or 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

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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.

(10) Under this section, the Railway Administration is only liable to pay compensation to the dependants of the deceased or to the injured when the alleged incident occurs in the course of working a railway, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers. The Hon'ble Supreme Court in **Union of India and others versus Sunil Kumar Ghosh (1)**, has interpreted Section 82-A of the old Act i.e. Railways Act (9 of 1890) which was equivalent to Section 124 of the Railways Act and held that under this Section only that accident was covered which was an accident to the train or a part of the train due to either (i) collision, or (ii) derailment, or (iii) other accident to a train and not an accident to a passenger. In the said case, the Railway Administration was held not liable to pay compensation to a passenger who fell out of the train while it was being shunted and sustained injuries. Similarly, by following the said decision the Bombay High Court in **Ratnakar Tanbaji Itankar versus Union of India (2)**, held that an accident in which the passenger fell out of the bogie of a train and died on being caught between the platform and running train is not covered under Section 124 of the Railways Act. In view of the aforesaid position of law, the accident in question in the instant case is also not covered under the provision of Section 124 of the Railways Act.

(11) Now it has to be examined as to whether the claim of the appellants in the instant case is covered under Section 124-A of the Railways Act or not. Section 124-A is reads as under :—

**124-A. Compensation on account of untoward incidents.**—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 killed to maintain an action and recover damages in respect thereof, the Railway

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(1) 1984 ACJ 719

(2) AIR 1994 Bombay 132

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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.

(12) This Section was introduced by the Parliament by Railway (Amendment) Act (28 of 1994). This section provides for awarding compensation to victims of untoward incident' which occurs in the course of working of a railway. This section was inserted in the Railways Act by the Parliament as many incidents, which though took place during the course of working of railways, much frequently happen during the railway journeys, were not covered by the ambit of Section 124. Therefore, in its wisdom the Parliament added Section 124-A of the Railways Act to provide relief to the innocent victims of the railway accidents. Prior to the inception of the aforesaid Section, the expression 'untoward incident' was alien to the Railways Act. By the Railways (Amendment) Act (28 of 1994), two changes were made. Clause (c) was added in Section 123 of the Railways Act which defines "untoward incident" and secondly Section 124-A was inserted to extend the liability of the railway administration, which provides for payment of compensation to a passenger who has been injured or the dependant of a passenger who has been killed, when such a passenger receives injuries or dies on account of an untoward incident in the course of working a railway. But the proviso to this Section provides that no



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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.

(13) Clause (c) of Section 123 defines the “untoward incident” as under :—

- (1) (i) the commission of a terrorist act within the meaning of sub-section (i) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 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.

(14) According to sub-clause (2) of the aforesaid clause, the accidental falling of any passenger from a train carrying passengers is governed by ‘untoward incident’. Thus, the incident in question when the deceased died by accidental fall from the door of the train while travelling in the same with a valid ticket is covered by the aforesaid definition of ‘untoward incident’. Therefore, in my opinion, the claim made by the appellants being dependants of the deceased is fully covered by the provision of section 124-A of the Railways Act, as the deceased, who was a valid passenger died in the railway untoward incident which occurred in the working of the railway and the railway administration is, therefore, liable to pay compensation to the appellants.

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(15) Now the question arises about the quantum of compensation payable by the respondents to the appellants. Undisputedly, the deceased was working as Assistant Engineer in the Rajasthan State Electricity Board and at the time of his death, he was drawing salary of Rs. 6,200/- per month and was 35 years of age. Keeping in view the aforesaid monthly salary and the size of the family which the deceased was maintaining, the dependency of the appellants cannot be assessed less than Rs. 50,000/- per year. If a multiplier of 16 is applied, then the figure comes to Rs. 8 lacs. But under the provisions of the Railways Act, the liability of the railway administration is limited. Section 124-A provides that "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, or injury to, a passenger as a result of such untoward incident." Thus, the liability of the railway administration in such case would be to pay compensation to the extent as may be prescribed by rules made under the Railways Act. Section 129 empowers the Central Government to frame rules in this regard. In exercise of such power, the Central Government has framed the rules known as The Railway Accidents (Compensation) Rules, 1990. Rule 3(1) of these Rules provides for an amount of compensation payable in respect of death or injuries as specified in the Schedule. Initially, in the said Schedule the liability on account of death was only Rs. 2 lakhs, but the said Schedule has now been amended with effect from 1st November, 1997 and the amount of compensation in case of death has been increased from Rs. 2 lakhs to Rs. 4 lakhs. Thus, in view of this amended Schedule, the appellants are entitled for compensation of Rs. 4 lakhs.

(16) In view of the aforesaid discussion, the appeal filed by the appellants is allowed; the order dated 17th April, 1996 passed by the Tribunal is set aside; the claim petition filed by the appellants is accepted and they are held entitled to receive compensation of Rs. 4 lakhs from the respondents with interest @ 9% per annum from the date of filing the claim petition. The respondents are directed to pay the aforesaid amount of compensation to the appellants within a period of three months from the date of receipt of a certified copy of this judgment.

(17) No order as to costs

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**R.N.R.**