

Anu Vs. Union of India

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Court : Kerala

Decided On : Oct-29-2013

Judge : Honourable Mr.Justice K.M.Joseph

Appellant : Anu

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.M.JOSEPH & THE HONOURABLE MR. JUSTICE A.HARIPRASAD THURSDAY, THE 29^H DAY OF OCTOBER 2013 25TH ASWINA, 1935 MFA.No. 193 of 2011 (F) ----- AGAINST THE

JUDGMENT

IN OA.(IIU)ERS/2010/0050 OF RAILWAY CLAIMS TRIBUNAL, ERNAKULAM BENCH DATED 28-07-2011. APPELLANT(S)/APPLICANT:: ----- ANU, AGED 19 YEARS, S/O ALBERT, ANU NIVAS, KURUMANDAL, NEAR RAILWAY STATION, PARAVOOR, KOLLAM DISTRICT. BY ADV. SRI.D.KISHORE. RESPONDENT /RESPONDENT: ----- UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI - 600 018. BY ADV. SRI.V.E.ABDUL GAFOOR, SC. THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17-10-2013, THE COURT ON 29-10-2013 DELIVERED THE FOLLOWING: amk K.M.JOSEPH & A.HARIPRASAD, JJ.

Dated this the 29th day of October, 2013.

JUDGMENT

Hariprasad, J.

Appeal under Section 23 of the Railway Claims Tribunal Act 1987.

2. The appellant filed a claim petition for compensation before the Railway Claims Tribunal, Ernakulam,(shortly stated, the Tribunal) which was dismissed by the Tribunal after considering the rival contentions. Brief facts, relevant for our purpose, are as follows: On 4/8/2010 the appellant boarded Thiruvananthapuram bound passenger train, bearing number 363, from Kollam Railway Station. The train started at about 15.30 hours. When the train was negotiating a sharp curve at SNP Junction, the door of the compartment slammed against the face of the appellant unexpectedly and as a result, he was thrown out of the train. In that process, the appellant could catch hold of the handle bar attached to the door and he could manage to hang from the same. But, his right leg was trapped under the wheels of the train causing extensive damage. The train was stopped as co-passengers pulled the chain. The appellant was removed to a hospital and he M.F.A.No.193/2011 2 underwent prolonged treatment. Medical records produced would show that he sustained fractures on tibia and medial malleolus and also fracture of first metatarsal on the right leg. It is also seen that he had to undergo below knee amputation of right leg. Appellant contends that he is physically disabled due to the accident. According to him, the accident was solely due to the jerk of the train,for which the Railway is liable to compensate.' 3. Per contra, the respondent contended that the appellant was not a bona fide passenger. Though the appellant sustained injuries on 4/8/2010, it was solely on account of the rash and negligent act of attempting to trespass into the train after it was set in motion. Respondent contended that the appellant tried to enter a moving train from the side of a railway gate at Kollam and in that process he fell down, and suffered injuries. He had not taken any passenger ticket before trying to board the train. Act of the appellant was highly imprudent, improper and completely reckless. Hence, the appellant is not entitled to get any compensation.

4. The Tribunal raised the following issues for consideration; "1. Whether the applicant proves that he was a bonafide passenger for his journey with a valid ticket in train No.363 Kollam-Trivandrum Passenger from Kollam to Paravoor non 4/8/2010 2. Whether the applicant proves that he met with an accident U/s. 123(c) of the Railways Act M.F.A.No.193/2011 3 3. Whether the respondent proves that they are exempted from payment of compensation vide Section 124A of the Railways Act 4. Order?" After considering the evidence adduced before the Tribunal, it found that the appellant was not a bonafide passenger. It was also found that the appellant attempted to board the moving train near a railway gate, which is about 600 meters away from the railway station and that too without a ticket. Hence, the Tribunal found that the appellant suffered self inflicted injury and is not entitled to claim compensation.

5. We heard the learned counsel for the appellant and the respondent. We carefully perused the records.

6. Learned counsel for the appellant contended that the findings of the Tribunal are factually and legally unsustainable. It is also contended by the appellant that the findings of the Tribunal, that the appellant sustained self inflicted injury and therefore is not entitled to claim compensation, are totally illegal. It is also the contention of the appellant that the Tribunal placed undue reliance on the evidence of RWs 1 and 2 for rejecting the claim of the appellant. Again it was contended by the appellant that the Tribunal, without any reason, discarded the testimony of PW2.

7. Learned Counsel for the respondent would contend that the M.F.A.No.193/2011 4 Tribunal rightly placed reliance on the documentary evidence which were prepared contemporaneous to the accident and also the the disinterested the oral evidence adduced on the side of the respondent.

8. This being a first appeal, we shall consider the evidence in detail to see whether there is any error in the appreciation of evidence at the hands of the Tribunal.

9. Exts.A3 to A6 are the documents relied on by the appellant to show the nature and extent of injuries suffered by him in the accident. Exts.A5 and A6 discharge

summary cards issued from SP Fort Hospital show that the appellant sustained multiple fractures on right leg and finally he suffered an amputation of right leg at below knee level. Ext.A7 Medical Bills show that the appellant had expended huge sums for treatment. Ext.A8 disability certificate shows that the appellant suffers 60% permanent disability on account of the amputation.

10. Learned counsel for the appellant contended that the Tribunal thoroughly went wrong in not believing the testimony of PWs 1 and 2 and mistakenly relied on the testimony of RWs 1 and 2.

11. PW1 is the appellant himself. In his chief examination in the form of a proof affidavit, he pleaded that on 4/8/2010 he M.F.A.No.193/2011 5 boarded Kollam - Thiruvananthapuram passenger train, after getting a ticket to Paravoor. The train was crowded with passengers and, therefore, he could not find a seat. He went to wash his face and at that time the train was passing through a sharp curve at SNP Junction. All of a sudden, the door slammed on his face and as a result of which, he was pushed out of the train. However, he could manage to have a grip on the handle bar. In the force of the throw, he was literally hanging on the handle bar. His right leg was caught under the wheel and he sustained injuries. On seeing this, the co-passengers stopped the train by pulling the chain. According to the averments in the chief affidavit, the accident was on account of the slamming of the door against his face.

12. PW2 is said to be a friend of the appellant. According to PW2, he, along with the appellant, was traveling from Kollam to Paravoor in the train. PW2 could manage to share a seat with a friend of him and the appellant was standing as the train was crammed with passengers. The appellant, after washing his face, turned round and requested PW2 to lend a handkerchief. At that time the train was passing through a curve at SNP Junction. Suddenly the door hit him and he was thrown out. He could catch hold of the handle bar attached to the door. In that process, he sustained injuries. This is the version of PW2. It is interesting to M.F.A.No.193/2011 6 note that the appellant in his proof affidavit has not mentioned about the presence of PW2 along with him at the time of occurrence. There is no mention in the affidavit filed by the appellant that he purchased ticket

for his friend(PW2) also. Only at the time of cross examination, the presence of PW2 was brought in by PW1 for the first time. According to the appellant, he lost the railway ticket because his pants was torn and he lost not only the ticket, but also his purse. Learned counsel for the respondent invited our attention to the version of PW1 in cross examination that the door had slammed on the back of his head, whereas he stated in the affidavit that it slammed on his face. Even if we ignore this contradiction, there are other major discrepancies in the evidence relied on by the appellant to establish his case.

13. PW2 was subjected to cross examination. The case of the respondent, that the appellant attempted to board a moving train from a point close to a railway gate and far away from the platform, is put to PW2. But, he denied the same. The case developed by PW2 in cross examination, that the appellant might have come to Kollam for purchasing some articles, is not seen mentioned in the affidavit of PW1. As against this oral evidence, testimony of RWs 1 and 2 are available in the records. RW1 is a police constable attached to the RPF office, Kollam. According to the testimony of M.F.A.No.193/2011 7 RW1, he was on duty in the station on 4/8/2010. His duty was from 16.00 hours to 24.00 hours on that date. He reached the railway station at 15.35 hours. He saw the train stopped consequent to ICC pulling and he was asked to proceed to the site. He saw the appellant lying under the wheels of the train. The site was about 350 Mtrs. away from the edge of the platform. RW2, the guard, informed him that the injured was trying to get into the moving train and he slipped down. The injured was removed to hospital. RW1 specifically stated that as the injured was almost unconscious, RW1 along with others searched his pants' pocket to find out materials revealing his identity, but it was found that the pocket was empty. This aspect in the testimony of RW1 remained untouched in cross examination. During cross examination, RW1 stated that the train had to be moved forward for taking the appellant out of the wheels. The suggestion put to RW1 in cross- examination that the appellant might have lost his ticket and other belongings in the incident, is denied by him.

14. To support the testimony of RW1, RW2 was examined. He was the passenger guard on duty in that train on the date of occurrence. It is his definite case that on 4/8/2010, he was working as guard in the passenger train. The train started at

15.38 hours with a delay of three minutes. RW2 deposed that immediately M.F.A.No.193/2011 8 after Kollam Station, there is a curve and there is a permanent speed restriction in force. RW2 was carefully watching the train negotiating the curve. At that time, he saw a person coming across the track and reaching near the left side of the train. Suddenly he tried to get into the train from the yard. RW2 was sure that he would fall as the train was moving. It is the version of RW2 that he applied the brake provided in the guard's room and the train was stopped. By this time, the trespasser had fallen down and sustained injuries. RW2 rushed to the place of occurrence and tried to lift him. RW2 found that the appellant(injured) was caught under the wheels of the train. The engine driver also came to the site. On seeing the condition of the appellant, the driver went back and pulled the train a little forward, so that the appellant could be taken out. By that time, lot of people converged at the place of occurrence. The appellant was removed to a hospital. RW2 immediately sent up information to his superiors regarding the accident. He proved Exts.R1 to R4. He was subjected to searching cross examination. Despite strict cross examination, he adhered to the version that the appellant was a trespasser, who tried to enter the train from the side of a railway gate about 600 meters away from the platform. In the cross examination of RW2, the correction made in Ext.R2 was brought to his notice, which he M.F.A.No.193/2011 9 explained that the coach number alone was corrected. Learned counsel for the appellant contended that this correction was made by RW2 to fortify the contention of the Railway that RW2 had witnessed the accident. This contention of the appellant is denied by RW2. It is not tenable for the reason that there is no case for the appellant that either RW1 or RW2 was inimical to him. Testimony of RW2 is in agreement with the documents produced on the side of the respondent to show that the accident was not as stated by the appellant.

15. Ext.R2 is the report submitted by RW1 to his superior immediately after the accident. In Ext.R2, it is clearly mentioned that one person tried to trespass into the 3rd boggie from the rear on the left side of the passenger train and he sustained injuries while attempting to board a moving train. It is further mentioned in Ext.R2 that RW1 applied brake and stopped the train. On these material aspects in Ext.R2, there is no correction or interpolation. There is no effective challenge made against Ext.R2 report submitted by RW2. Ext.R3 is the copy of the

log of the train. It is mentioned therein that one person trespassed into the track and attempted to enter the train and he sustained injuries. This document is also made on the date of the occurrence and immediately after the accident. Ext.R4 is the CTR wherein also the M.F.A.No.193/2011 10 same version of the respondent is seen mentioned. This also is a document made immediately after the accident. There is no cogent reason to disbelieve all these documents. It cannot be comprehended that these documents were prepared by the railways only to defeat the claim of the appellant. Therefore, oral evidence on the side of the respondent coupled with the documentary evidence would clearly establish that the appellant attempted to board a moving train at a place away from the platform and in that process he sustained injuries. Furthermore, he had no passenger ticket in his possession. Hence, the finding of the Tribunal that the appellant is not a bonafide passenger is legally sustainable.

16. Section 123(c) of the Railways Act, 1989(in short 'the Act') defines "untoward incident" in the following words: "(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 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 M.F.A.No.193/2011 11 precincts of a railway station ; or (2). the accidental falling of any passenger from a train carrying passengers . " 17. Section 124A of the Act deals with payment of compensation on account of an untoward incident. It says that in the course of working a railway if an untoward incident occurs, then whether or not there has been any wrongful act or neglect or default on the part of the railway administration, the passenger, who has been injured or the dependent of a passenger who has been killed, is entitled to maintain an action and recover damages in respect thereof from the railway administration.

18. The term "passenger" is defined in the Explanation to Section 124A in the following words: "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. " 19. It is evident that the appellant will not fall under the definition of passenger in Section 124A of the Act. Therefore, the finding of the Tribunal that the appellant is not entitled to get compensation is liable to be confirmed.

20. Learned counsel for the appellant placed reliance on the M.F.A.No.193/2011 12 decision in Union of India v. Prabhakaran Vijaya Kumar {2008 (2) KLT700SC)} to contend that the appellant is entitled to get compensation. In that case, the Supreme Court held that the expression "accidental falling of a passenger from a train carrying passengers" includes accidents when a bona fide passenger tries to enter into a railway train and falls down during the process. This decision is not applicable to the facts of this case as the appellant cannot be termed as a 'passenger' as defined in Section 124A of the Act.

21. Learned counsel for the appellant placed reliance on the decision of the Supreme Court in Jameela v. Union of India {2010 (3) KLT882(SC)} and the decision of this Court in Varkey v. Union of India {2011 (1) KLT204. In Jameela's case (cited supra) the Apex Court held that standing at open doors of compartment of a running train may be a negligent act, but without anything else, it is not a criminal act. That proposition of law has no application to the facts of this case. It is revealed by evidence that the appellant sustained injuries while attempting to board a moving train far away from the platform and that too without a passenger ticket. Varkey's case (cited supra) deals with altogether different points and the ratio therein has no application to the present case. All the decisions relied on by the learned M.F.A.No.193/2011 13 counsel for the appellant are clearly distinguishable on facts. Considering the entire evidence and the legal principles, we are of the view that the Tribunal declined compensation to the appellant for legally sustainable reasons. We, therefore, find that the appeal is devoid of merit and is liable to be dismissed. In the result, the appeal is dismissed. There is no order as to costs. Sd/- K.M.JOSEPH, JUDGE. Sd/- dpk A.HARIPRASAD, JUDGE. /True copy/ P.S to Judge.