

Hemlata & Ors vs.union of India

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Court : Delhi

Decided On : Sep-12-2017

Appellant : Hemlata & Ors

Respondent : Union of India

Advocate for Def. : Mr. Ms.Rashmi Joydeep Mazumdar, Mr. Rohit Dutta

Advocate for Pet/Ap. : Ms. Kavita Tyagi

Judgement :

\$~14 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

12. h September, 2017 FAO4922012 HEMLATA & ORS Appellants Through: Ms. Kavita Tyagi, Advocate for Mr.Navneet Goyal, Advocate versus UNION OF INDIA Respondent Through: Mr. Ms.Rashmi Joydeep Mazumdar, Lead Counsel Northern Railways along with Malhotra, Mr.Himanshu Kaushik, Mr.Debojyoti Bhattacharya, Mr. Rohit Dutta, Ms.Momota Bhattacharya, Mr.Kamlesh Kumar, Advocates C. CORAM: HON'BLE MR. JUSTICE J.R. MIDHA JUDGMENT (ORAL) 1. The appellants have challenged the impugned order dated 31st August, 2012 whereby their application for compensation has been dismissed by the Railway Claims Tribunal.

2. The appellants are the widow, minor son and parents of late Kamal Singh and they filed an application for compensation before the Railway Claims Tribunal claiming compensation on the ground that Kamal Singh fell down between

platform No.3 and 5 of Old Delhi Railway Station on 13th January, 2011 at 5.00 P.M. According to the appellants, Kamal Singh and Dharam Pal Singh were travelling from Ghaziabad to Delhi in EMU train on 13th January, 2010 and when the train entered Old Delhi Railway Station, Kamal Singh fell down due to huge rush and jerk which resulted in fatal injuries. Kamal Singh lost his bag containing the railway ticket, money and other articles.

3. Learned counsel for the appellants urged at the time of the hearing that the untoward incident has been admitted by the respondent in their official records as well as the evidence filed before the learned Tribunal.

4. The record of the Claims Tribunal has been perused. In the affidavit by way of evidence, Jai Narain, Deputy Station Superintendent, Delhi Junction has admitted that on 13th January, 2011 at about 5.00 P.M. Constable Sanjeev Kumar informed him that a person fell down from some train near the signal from Shahdara side at platforms

whereupon memo was given to GRP and RPF and message was sent for railway doctor as well as CAT ambulance on phone. The incident is registered in the Station Master diary as well as the untoward incident report. The railway doctor attended to the injured person. In the meantime, CAT ambulance reached at 5:25 P.M. and took the injured person to LNJP Hospital at 5:30 P.M. The joint report was prepared by GRP, RPF and Deputy Station Superintendent. All the aforesaid reports placed on record along with the affidavit clearly record the untoward incident in question.

5. The legal position with respect to the untoward incident inside the railway station is well settled. Section 124-A of the Railways Act is based on the principle of no fault liability and the compensation cannot be denied to the appellant on the ground that the deceased was negligent and it is wholly irrelevant as to who was at fault. Section 123(c) of the Railways Act defines untoward incident to include the accidental falling of any passenger from a train carrying passengers. The word passenger has been defined under Section 2 (29) of the Railways Act as a person travelling with a valid pass or ticket. The Explanation to Section 124A clarifies that the word passenger includes a railway

servant on duty; and a person who has purchased a valid ticket for travelling by a train or a valid platform ticket and becomes a victim of an untoward incident. As such, there are three categories of persons who are defined as passengers: - (i) a person with a valid ticket to travel; (ii) a person who holds a railway pass to travel and (iii) a person who holds a platform ticket. In each of the categories, so long as a person is in railway premises or a train, he is taken as a passenger. His or her presence in the railway premises or a train is taken as authorized. It is for this reason that there are decisions which extend meaning of the term passenger to a person who comes to a platform and gets into a wrong train [Gaurav Kapoor v Union of India, III (2014) ACC639(Del)]. or a person who purchases a passenger train ticket and gets into an express train [Santoshi v Union of India, 2014 SCC Online Del 6510 (Del)]; person travelling atop a train and not inside a passenger compartment [Raj Pal Goel v. Union of India, 2014 ACJ2315 or a person breaking journey without an endorsement and getting into another train in continuation of the journey to the destination station [Dwarika Mahto v. Union of India, 2013 ACJ768. In all these situations, it is possible to feed meaning and logic to the decisions only if we recognise that primacy always is the lawful authority to enter the railway premises when the incident of travel itself becomes secondary. FAO4922012 Page 3 of 15 6. In Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC527 a lady fell down while trying to enter the train and was run over by the train. Railways contended that the deceased was negligent and there was no fault of Railways. The Supreme Court held that Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. The relevant portion of the judgment is reproduced hereunder:-

"10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an accidental falling of a passenger from a train carrying passengers. Hence, it is an untoward incident as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression accidental falling of a passenger from a train carrying passengers, the first being

that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred 12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation xxx xxx xxx FAO4922012 Page 4 of 15 14. In our opinion, if we adopt a restrictive meaning to the expression accidental falling of a passenger from a train carrying passengers in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression accidental falling of a passenger from a train carrying passengers includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression. xxx xxx xxx 17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault. xxx xxx xxx 52. In view of the above, we are of the opinion that the submission of learned counsel for the appellant that there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected. (Emphasis Supplied) 7. In *Jameela v. Union of India*, (2010) 12 SCC443 a passenger travelling by Awadh Express with a valid ticket fell down near

Magarwara Railway Station which resulted in his death. Railways contended that the deceased was negligent in standing at the door near Magarwara Railway Station where the train does not stop. The Railway Claims Tribunal allowed the claim which was set aside by the High Court in appeal on the ground that the deceased was negligent. The Supreme Court held that the negligence of the deceased will not have any effect on the liability to pay compensation under Section 124A. The relevant portion of the judgment is as under: 7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways 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 to the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways 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 under Section 124-A of the Act. xxx xxx xxx 10. It is not denied by the Railways 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 124-A as clarified by the Explanation. It is now to be seen, that under Section 124- A 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 Railways 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 Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways 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 FAO4922012 Page 6 of 15 mentioned in clause (c) to the proviso to Section 124-A. 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 Railways must fail even after assuming everything in its favour. (Emphasis Supplied) 8. In *Harvinder Kaur v. Union of India*, 2012 ACJ854 a passenger died due to accidental slip from the train on account of heavy rush of passengers and sudden jerk of the train. Railways contended that the passenger fell down because he attempted to get down from a moving train at an unscheduled stoppage. This Court, relying on *Jameela* (supra), held that even the case of a passenger, who might have been negligently standing on the footboard, was covered by the definition of untoward incident and was entitled to compensation.

9. In *Union of India Owning Southern Railway v. The Addl. Registrar, Railways Claims Tribunal*, (2012) 5 Mad LJ562 the passenger travelled in Chennai-Mangalore Express from Chennai to Karur. The train had an unscheduled halt at Veeravakiyam Railway Station. After some time, the train started moving. The deceased fell down from the moving train and died on the spot. The Madras High Court, following *Prabhakaran Vijaya Kumar* (supra) and *Jameela* (supra), held that the dependants of the deceased were entitled for compensation. Relevant portion is reproduced hereunder: - 27. Thus, from the above analysis of Sections 2 (29), 123, 123(c), 123(2) & 124-A of the Railways Act, 1989, if a bona fide passenger dies or sustain injuries, it will be an untoward incident, and irrespective of his negligence or contributory negligence, the Railway is liable to pay compensation to the victims or the Dependants of the deceased as FAO4922012 Page 7 of 15 prescribed under the Act. So, it introduced principle of no fault liability. It is also Rule of strict liability. xxx xxx xxx decision 31. The deceased was a bonafide Railway passenger. He fell down from the moving train from the compartment and died. There is no evidence from the Railways that he had attempted suicide,

inflicted injury due to his own criminal act or he was drunk or he is an insane nor there was any natural cause or he suffered diseases. The Railways has not established that his death falls under any one of the clauses from (a) to (e) of proviso to Section 124-A of the Act. In view of the Apex Court's *Vijayakumar(supra)* and *Jameela (supra)* the stand of the Railways that he died due to negligence (of course, it was not established) is of no avail to Railways because the case before us is an untoward incident and Sections 123 and 124-A incorporates the Rule of Strict Liability or in other words, no fault liability. So, in such circumstances, the negligence pleaded by the Railways, even, if proved is to be ignored. The principles laid down by the Hon'ble Apex Court in *Prabhakaran Vijayakumar (supra)* and *Jameela (supra)* squarely applies to the facts of this case. Since respondents 2 and 3 are dependants of the deceased, they are eligible for compensation. in *Prabhakaran (Emphasis Supplied)* 10. Following the above judgments, this Court is satisfied that Kamal Singh suffered an untoward incident on 13th January, 2011 at Old Delhi Railway Station and the appellants are entitled to compensation.

11. The next question which arises for consideration is whether the appellants are entitled to compensation according to the Railway Accident and Untoward Incidents (Compensation) Rules, 1990 or according to the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016.

12. The Railway Accident and Untoward Incidents (Compensation) Rules, 1990 has been amended by Railway Accidents and Untoward FAO4922012 Page 8 of 15 Incidents (Compensation) Amendment Rules, 2016 w.e.f. 01st January, 2017. By the said amendment, the compensation in all the categories have been doubled as compared to Railway Accident and Untoward Incidents (Compensation) Rules, 1990.

13. In *Rathi Menon v. Union of India*, (2001) 3 SCC714 *Rathi Menon*, a Commerce graduate of 22 years, secured a job in Bangalore and was called for an interview at Trichur. On her way back to Bangalore on 3rd September, 1999, she boarded the Island Express (bound for Bangalore) at 8.00 P.M. from Palakkad Railway Station. After the train started moving and when it collected momentum, her ill-luck

prompted her to have a face wash for which she moved to the wash basin situated next to the door of the train. While washing her face the train jerked violently at a turning and in that impact she was thrown off the running train during the night. Her spinal cord was ruptured and she turned a paraplegic and remained immovable forever. After she fell down, the wheels of the train ran over her right arm severing it from the shoulder point forever. The train, not knowing what it did to one of its lawful and innocent passengers, continued its running leaving the paraplegic on the track itself on that dreadful night. It was physiologically impossible for the young lady to move her leg from the position where she fell. Her right leg happened to remain on the rail-track, and unless a Good Samaritan had passed by that track during the night she had to remain there unmoved. As none like that came, the poor female human being remained on the track bleeding and unattended by anyone. Alas, within half an hour another train came along the same track which, without knowing that a badly mauled human being was lying ahead, ran over her right leg causing a sudden amputation of that leg also. Thus, within the FAO4922012 Page 9 of 15 span of less than an hour, she became a one-handed and one-legged paraplegic. All those disasters happened during the night of 3rd September, 1996. While she remained on the track unattended by any one, she happened to be spotted by an engine driver who was shunting a railway engine. He got her removed from that scene to the district hospital, and then to a Medical College Hospital where she had to undergo a long period of hospitalization and remained immovable forever.

14. The Railway Claim Tribunal awarded Rs.6 lakh along with interest @ 15% per annum which was challenged before the Kerala High Court on the ground that the Claims Tribunal awarded compensation beyond the amount prescribed in the Railway Accident and Untoward incidents (Compensation) Rules 1990. The Division Bench of the High Court allowed the appeal and reduced the compensation amount. The Supreme Court reversed the judgment of the Division Bench of the High Court and restored the order of the Claims Tribunal. The Supreme Court held that the compensation amount has to be determined according to the Rules prescribed at the time of making the order for payment of the compensation. Relevant portion of the said judgment is reproduced hereunder: As the above facts are not disputed by 12. the Railway Administration the

appellant was relieved of the burden to prove those facts averred in her claim petition. Thus, the only question which remained for the Claims Tribunal to decide was regarding the amount of compensation payable to her. Now the only question remaining is whether the High Court was so helpless that learned Judges could not confirm the amount awarded to her by the Claims Tribunal. xxx 16. The liability of the Railway Administration in such a case would be to pay compensation, but the extent of such compensation is as may be prescribed which means prescribed by the rules made under xxx xxx FAO4922012 Page 10 of 15 the Act. Section 129 of the Act empowered the Central Government to make such rules.

17. The Railway Accident Compensation Rules 1990 (for short the Rules) were made by the Central Government in exercise of the powers conferred on it by Section 129 of the Act. Rule 3(1) says that the amount of compensation payable in respect of death or injuries shall be as specified in the Schedule. The Rules as well as the Schedule were amended with effect from 1.11.1997. After the amendment Rule 3(2) reads thus: 3.(2) The amount of compensation payable for an injury not specified in Part II or Part III of the Schedule but which in the opinion of the claims Tribunal, is such as to deprive a person of all capacity to do work, shall be Rupees four lakhs. 18. Item No.2 of Part III of the Schedule relates to amputation below shoulder with stump less than 8 from tip of acromion for which an amount of Rs.3.20 lakhs is shown as the compensation.

19. Item 20 in Part III of the Schedule relates to amputation below knee with stump exceeding three and a half inch but not exceeding five inches, for which an amount of Rupees two lakhs is shown as compensation. Before the said amendment of the Rules and the Schedule which 20. came into effect on 1.11.1997 the above amounts were respectively two lakhs (instead of rupees four lakhs) and 1.40 lakhs (instead of 3.20 lakhs) and one lakh (instead of two lakhs). Such amounts were revised by the Central Government in 1990. The revision of the rates was made after 8 years and thus the new rates were incorporated by amending the Schedule. xxx xxx xxx 23. The collocation of the words as may be prescribed in Section 124-A of the Act is to be understood as to mean as may be prescribed from time to time. The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired

by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. This delegation to the Central Government indicates that it was difficult for Parliament to fix the amount because compensation amount is a varying phenomenon and the Government would be in a far advantageous position to ascertain what would be the just and reasonable compensation in respect of a myriad different kinds of injuries by taking into account very many factors. What the legislature wanted was that the victim of the accident must be paid compensation and the amount must represent a reality which means the amount should be a fair and reasonable compensation. The Government has the better wherewithals to ascertain and fix such amount. It is for the said reason that Parliament left it to the Government to discharge that function. Sections 124 and 124-A of the Act speak the same language that the Railway Administration shall be liable to pay compensation. As pointed above, it is the liability of the Railway Administration to pay compensation to such extent as may be prescribed. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant. xxx xxx xxx 25. The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable compensation to the victims as a speedier measure. If a person files a suit the amount of compensation will depend upon what the court considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination. 15. The Supreme Court further held that where the appeals are pending before the High Court, the scale of compensation shall depend on the date on which the High Court delivers the judgment. Relevant portion of the judgment is reproduced hereunder: 29. The unjust consequence resulting from the interpretation which the Division Bench placed can be demonstrated in another plane also. If a person who sustained injury in a railway accident or in an untoward incident was disabled from making an application immediately and he makes the application a few years hence, is he to get the compensation in terms of the money value which prevailed on the date of the accident?. Suppose a Tribunal wrongly dismissed a

claim after a few years of filing the application and the claimant approaches the High Court in appeal. As it happens quite often now, some High Courts could take up such an appeal only after the lapse of many years and if the appeal is decided in favour of the claimant after so many years, what a pity if the amount awarded is only in terms of the figure indicated on the date of the accident.

30. From all these, we are of the definite opinion that the Claims Tribunal must consider what the Rules prescribed at the time of making the order for payment of the compensation. (Emphasis Supplied) 16. The Supreme Court explained the rationale for granting compensation as per prescribed Rules at the time of making order as under: 24... when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value. xxx xxx xxx 27Rupee value is not an unchanging unit in the monetary system. Students of economic history know that currency value remained static before the Second World War. But the post World War II witnessed the new phenomenon of vast fluctuations in money value of currency notes in circulation in each nation. When the U.S. Dollar has registered a steep upward rise, currencies in many other countries made downward slip. What was the value of one Hundred rupees twenty years ago is vastly different from what it is today. This substantial change has caused its impact on the cost of living also. 28 what you were to pay ten years ago to one person cannot be the same if it is paid today in the same figure of currency notes. It is for the purpose of meeting the reality that Central Government changed the figures. 17. The Andhra Pradesh High Court and Division Bench of Calcutta High (Emphasis Supplied) FAO4922012 Page 13 of 15 Court, following Rathi Menon (supra), have applied the amended schedule as on the date of adjudication in Union of India v. Aggala Dilleswara Rao, 2006 ACJ1470 Pramath Kumar Jena v. Union of India, AIR2012 Ori 32 and Radha Yadav v. Union of India, 2017 SCC OnLine Cal 420 respectively.

18. It is well settled that the appeal is the continuation of the claim petition and the power of the Appellate Court is co-extensive with that of the Claims Tribunal. Reference may be made to Sardar Tajender Singh Gambhir v. Sardar Gurpreet Singh, 2014 (10) SCC702 19. Applying the principles laid down by the Supreme Court in Rathi Menon (supra), this Court holds that the appellants are entitled to

compensation of Rs.8 lakh according to the Schedule to Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016 (as on the date of this judgment).

20. The appeal is allowed, impugned order is set aside and a compensation of Rs.8 lakh along with interest @ 12% per annum from the date of filing of the claim petition filed before Railway Claims Tribunal is awarded to the appellants.

21. The respondent is directed to deposit the aforesaid amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Hemlata within a period of four weeks.

22. Learned counsel for the appellants submits that the appellants are poor persons and not assessed to Income Tax and they shall furnish Form No.15G to counsel for the respondent so that no TDS is deducted from the compensation amount.

23. The appellants shall remain present in Court on the next date of FAO4922012 Page 14 of 15 hearing along with passbook of their savings bank accounts near the place of their residence as well as PAN Cards and Aadhaar Cards.

24. List for disbursement of the compensation amount on 16th October, 2017.

25. Copy of this judgment be given dasti to counsel for the parties under the signature of the Court Master. SEPTEMBER12 2017 dk J.R. MIDHA, J.

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