

M.P.George vs Union of India

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Court : Kerala

Decided On : Nov-21-2023

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MFA (RCT)/22/2012

Appellant : M.P.George

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
TUESDAY, THE 21ST DAY OF NOVEMBER 2023 / 30TH KARTHIKA,
MFA (RCT) NO. 22 OF 2012 OA (Ilu)ERS/2011/0023 OF RAILWAY
CLAIMS TRIBUNAL, ERNAKULAM APPELLANT/APPLICANT:
M.P.GEORGE AGED 51 YEARS, S/O. PAULOSE, MEPRATHUMALIL
HOUSE, VENGOLA.P.O., PERUMBAVOOR, ERNAKULAM DISTRICT-
683554. BY ADVS. SRI.MARTIN G.THOTTAN SRI.T.ABY JACOB
RESPONDENT/RESPONDENT: UNION OF INDIA REPRESENTED BY
THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI-600003.
BY ADVS. SMT.LIZAMMA AUGUSTINE, SC, RAILWAYS
SMT.REZIYA.P.A.SC RAILWAYS SRI.K.SHRI HARI RAO, SC,

RAILWAYS THIS MFA (RCT) HAVING BEEN FINALLY HEARD ON ON 14.11.2023, THE COURT ON 21.11.2023 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 21st day of November, 2023 This is an appeal filed under Section 23 of Railway Claims Tribunal Act by the Petitioner in O.A(IIu)ERS/2011/0023 on the file of Railway Claims Tribunal, Ernakulam Bench against the order dated 18.10.2011.

2. Appellant preferred the above claim before the Railway Claims Tribunal

claiming compensation consequent upon the injuries sustained to him as a result of the accidental fall while he was boarding Guruvayoor-Chennai Express Train, on 5.10.2009. He along with one of his friends, reached Aluva Station with a second class reserved ticket, valid for travel from Aluva to Nagarcoil. While he was boarding the train, the train started moving and he slipped his hand and fell down inside the train and sustained fracture to the knee. The matter was informed to the Ticket Examiner as well as to the Station Master and he was

admitted in Specialist Hospital. He filed the above application claiming compensation on the ground that he sustained injuries as a result of 'untoward incident' as defined under Section 123 (c) of the Railways Act, 1989.

3. The Tribunal found that the appellant was not involved in an untoward

incident and accordingly the Tribunal dismissed the application. Aggrieved by the above order of the Tribunal, the appellant preferred this appeal raising various contentions.

4. According to the appellant, it is a clear case of untoward incident as defined under Section 123(c) of the Railways Act and that the Tribunal has miserably failed to appreciate the available evident in the proper perspective.

5. The points that arise for consideration are as follows:

1) Whether the appellant sustained injuries in an untoward incident as defined under Section 123(c) of Railways Act? 2) Whether the impugned order passed by the Railway Claims Tribunal in O.A(Ilu)ERS/2011/0023 dated 18.10.2011 calls for any interference in the light of the grounds raised in the appeal?

6. Heard both sides.

7. Points 1 and 2: In the impugned order, the Tribunal found that the appellant has a valid

ticket for the journey from Aluva to Nagarcoil dated 10.3.2009 in train No.6128 Guruvayoor-Chennai Express Train. Exhibit A1 is the computer (e) ticket for the journey for the appellant and his friend K.Y. Yacob. In the DRM report, it is specifically stated that injured is a bona fide passenger, accident occurred due to his carelessness while entering the train. In answer to issue No1, the Tribunal

specifically found that the appellant was a bona fide passenger, for his journey with a valid ticket in train No.6128 Guruvayoor-Chennai Express, from Aluva to Nagarcoil Jn. on 5.10.2009.

8. Even after finding that the appellant is a bona fide passenger, the

Tribunal rejected the application stating various reasons. According to the appellant, when he reached the Aluva station, the train started moving and when he tried to board the train, he fell inside the compartment and he sustained injuries. Exhibit A2 is the discharge certificate. Exhibit A3 is the Medical Certificate issued from the Specialist Hospital. From Exhibit A2 discharge summary, it can be seen that the appellant was admitted in Specialist Hospital on 6.10.2009 and discharged on 20.10.2009 with alleged history of fall in the train on

5.10.2009. He was referred to Specialist Hospital, Ernakulam from the Government Hospital, Ernakulam after noticing comminuted fracture patella (Left) on diagnosis. Exhibit A3 Medical Certificate dated 13.10.2009 states that appellant was admitted in the said hospital on 6.10.2009 with comminuted fracture patella (L) he was operated with Tension Band Wiring on 6.10.2009. He is still undergoing treatment in the hospital. He is advised rest for two months from 6.10.2009.

9. Exhibit R1 is the DRMs report prepared by the investigating officer (Divisional Office) Southern Railway, after investigating the incident. The said

report also states that the appellant reserved a railway ticket for the journey on 5.10.2009. On 5.10.2009 at about 22.30 hrs, while he was stepping into the S-2 coach of the above train at Aluva Station, he slipped and fell down inside the compartment and sustained fracture on his left knee. When the train reached the Ernakulam South Station he was taken to General Hospital Ernakulam with a memo of Station Master for treatment. After careful examination Doctor advised emergency surgery on his left knee. Since the Doctors were on strike on 6.10.2009, he was taken to Specialist Hospital, Ernakulam for surgery. He was discharged after surgery and treatment. The report concluded by stating that enquiry reveals that the injured is a bona fide passenger, the accident occurred due to his carelessness while entering the train.

10. In spite of Exhibits A1 to A3 and R1 as evidence on record, the

Tribunal raised suspicion about the nature of injuries sustained by the appellant. According to the Tribunal, fall of a person inside the train is not an untoward incident and finally dismissed the application.

11. Section 123 (c) of the Railways Act 1989 defines the term untoward incident as follows:

123(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 precincts of a railway station; or

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

12. As per Sub Clause (2) of Section 123(c) accidental fall of any passenger from a train carrying passengers amounts to untoward incident.

13. In the decision in Sahadeo Sindhu Sanas and Another v. Union of

India and Others [2011 ACJ 799], High Court of Bombay held that in order to constitute an untoward incident, the passenger need not fall outside the train. In other words, accidental fall inside the train also amounts to untoward incident.

14. In Union of India vs. Prabhakaran Vijaya Kumar [2008 (2) KLT

700], the Honble Supreme Court held that accidental falling of a passenger from a train carrying passengers includes accidents when a bona fide passenger is trying to enter into a railway train and falls down during the process. In paragraph 14, the Apex Court held as follows:

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.

15. In the decision in Union of India v. Rina Devi [2018 (2) KHC 920],

the Apex Court also held that the death or injury in the course of boarding or deboarding the train will be an untoward incident entitling a victim to the compensation and will not fall under the proviso to Section 124 A merely on the plea of negligence of victim as a contributing factor. In paragraph 16.6, the Apex Court held as under:

16.6 We are unable to uphold the above view as the concept of self inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case

of liability based on no fault theory. We may in this connection refer to

judgment of this Court in United India Insurance Co. Ltd. versus Sunil

Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on no fault theory under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an untoward incident entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.

16. From the available evidence, in the light of the above decisions, it can

be seen that it is a clear case of untoward incident as defined under Section 123(c) of the Railways Act and as such appellant is entitled to compensation due to him, as provided under Section 124 A of the Railways Act.

17. As per Exhibit A2 discharge summary, the appellant suffered

comminuted fracture patella (L). From Exhibit A3 Medical Certificate, issued from the Specialist Hospital, Ernakulam, also, it is revealed that appellant was admitted in the above hospital on 6.10.2011 with comminuted fracture Patella (L) and he is operated with Tension Band Wiring on 6.10.2011. He is still undergoing treatment in the hospital. He is advised rest from 6.10.2009. From Exhibits A2 and A3, it can be seen that because of the incident, he sustained comminuted fracture patella (L), and he had to undergo operation. On 13.10.2009, on the date of Exhibit A3, he was also under treatment in Specialist Hospital, Ernakulam.

18. In the Schedule to Railway Accidents and Untoward Incidents

(Compensation) Rules 1990, the injuries sustained by the appellant is not included. Hence compensation payable to the appellant is to be fixed as provided under Sub rule (2) and (3) of Rule 3, which are extracted below for reference: 3. Amount of

compensation.-(1) xxxx xxxx

(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 any work, shall be rupees eight lakhs].

(3) The amount of compensation payable in respect of any injury

(other than an injury specified in the Schedule or referred to in sub- rule (2) resulting in pain and suffering), shall be such as Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable: Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury; Provided further that the total compensation in respect of all such injuries shall not exceed rupees One lakh sixty thousand. As per the above rule, the maximum compensation payable was Rs.80,000/- on 5.10.2009, the date of incident.

19. However, in the light of the dictum laid down in Union of India v. Rina

Devi [2018 (2) KHC 920] and Union of India v. Radha Yadav [(2019) 3 SCC 410], for the above amount of Rs.80,000/-, the appellant is entitled to get a reasonable rate of interest also. If the amount so calculated including interest is less than Rs.1,60,000/- the appellant is entitled to get Rs.1,60,000/-. If the amount so calculated is more than Rs.1,60,000/-, he is entitled to get the amount in excess of Rs.1,60,000/-.

20. Considering the nature of injuries sustained by the appellant, and the

period of treatment undergone by him, I hold that in the instant case, appellant is entitled to get the maximum amount of Rs.80,000/- payable under Rule 3 along with interest @ 6% per annum from 5.10.2009. Since the amount so calculated is less than Rs.1,60,000/-, the appellant is entitled to get a compensation of Rs.1,60,000/-. In addition to the same, he is also entitled to get interest for the

said amount @6% per annum from today till realisation from the respondent. The respondent is directed to deposit the amount within a period of two months from today. Sd/- C. PRATHEEP KUMAR, JUDGE sou.

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