

Union of India Vs. Sanjay

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Court : Madhya Pradesh

Decided On : Sep-22-2001

Reported in : 2003ACJ1349; 2001(4)MPHT496

Judge : Rajeev Gupta and ;A.K. Mishra, JJ.

Acts : Indian Railways Act, 1989 - Sections 123, 124-A, 154, 159 and 175; Indian Railways (Amendment) Act, 1994; Indian Railways Rules - Rules 115, 120, 130 and 131

Appeal No. : Misc. Appeal No. 1237/2001

Appellant : Union of India

Respondent : Sanjay

Advocate for Def. : None

Advocate for Pet/Ap. : Atul Choudhary, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

1. This appeal is preferred by the Union of India aggrieved by the award passed by the Railway Claims Tribunal, Bhopal, awarding a sum of Rs. 2 lacs to the claimant Sanjay who suffered amputation of his both legs and suffered disability of 100%

thereby, as train was started with jerk all of sudden without prior indication due to which the claimant fell down and train over run him.

2. The defence taken by the Railways was that the accident could not be termed to be an untoward accident. The claimant was not a passenger travelling with a valid ticket. The Claims Tribunal has found that the claimant was travelling with a valid ticket No. 35455. It is contended that only one ticket was produced whereas friend of the claimant was also travelling. However, the Tribunal has recorded that the ticket No. 35454 was also produced before it.

3. Learned counsel for the appellant submits that the claimant was not a bonafide passenger. He further submits that the Railways was not negligent.

4. As to the first submission : the Tribunal has categorically recorded the finding that the claimant was travelling with the ticket and ticket was filed in the Tribunal. Another ticket which was of the accompanying person of the claimant was also produced. The submission is without any basis and is liable to be rejected.

5. As to the second submission that the railway was not at fault, the finding recorded by the Tribunal is that the train had stopped at un-scheduled halt for no signal. The Tribunal has found that it was not the case where the claimant had got down from the train at the un-scheduled hall. The Tribunal found that the train was started with jerk all of a sudden. The Tribunal has found that the case is that of accidental death as defined in Section 123(c)(2) of the Railways Act, 1989, and the Railway has failed to prove any exceptions or grounds of defence available to them as provided in Section 124A of the Railways Act, 1989 as amended in 1994. This question was considered by this Court in M.A. No. 1114 of 1999 (Union of India v. Mulko Bai), decided on 16-5-2001. It was held that:

'There are certain common law duties as well as the duties imposed under the statute. The Supreme Court in Union of India v. United India Insurance Co. Ltd., AIR 1998 SC 640, has held that the claimants are entitled to sue for breach of common law duty or statutory duty. The Railway carries an inherently dangerous activity of running express trains and have to use certain care and caution at the station while the trains are stopped for halt and started for the further destination.

The Railways are aware that their activity was likely to cause accident, unless it was carried with all reasonable care. The liability is based on perilous nature of the operation. Same is the principle extracted from the decision of Privy Council in *Commissioner for Railways v. Me Dermot*, (1966) 2 All ER 162 (PC) and *Donoghue v. Stevenson*, 1932 AC 562. Particularly at station precautions must be taken by the Railways to see that the train is not started abruptly.

Railway authorities are under a duty to use reasonable care and skill in maintenance of their premises, including their carriages, the provision and maintenance of railway tracks, the provision of a proper system of signalling and the carrying on of their activities effectively so as to prevent accidents. They are also liable for the negligence of the signalmen and other operating the system and of the drivers and others in the driving and management of their trains. Charlesworth & Percy in their treatise on Negligence 7th Edn., at p. 637, have observed that the railway authorities are bound to provide reasonable means for passengers to alight at the station where their trains stop. If the platform provided is either too high or too low having regard to the height of the carriage, it is evidence of negligence on the part of the railway authorities in not providing reasonable facilities for alighting. Much will depend on the circumstances in deciding whether or not there has been such an invitation to alight. Regarding the stopping and starting of trains the author (Charlesworth & Percy) say that trains must be started and stopped with reasonable care. If a train is started with a sudden jerk as a result of which a passenger is injured, there is evidence of negligence. It is further stated that a violent and unusual stopping or starting of the train which occasions injury to a passenger is *prima facie* evidence of negligence. In such circumstances the railway authorities will have 'to show both that they acted reasonably and properly in suddenly stopping the train, and also that the cause which led to the necessity of stopping the train was not brought about by any negligence upon their part'.

In *Ulahannan Rajan v. Union of India*, AIR 1992 KERALA 230, the deceased was getting down from the compartment with child in her hand. That compartment stopped short of platform. No warning or signal was given before the train started. Level of platform was also not raised after converting rail to broad gauge. It was

held that the accident was due to negligence on the part of railway servants.

House of Lords in *Metropolitan Railway Co. v. Delaney*, (1921) All ER Rep 301, considered a case where a passenger had entered the carriage and had reached the vestibule immediately inside it and was approaching the seating accommodation when the train started suddenly depriving him of his balance and throwing him against the back of the carriage. He put out his arms in an attempt to save himself from falling when the sliding door of the carriage set in motion by the starting of the train closed upon his right hand crushing and injuring it. The question which arose firstly, whether the train was set suddenly in motion and secondly, whether it was set in motion without warning and when it was so found, the negligence could be inferred and the award was made.

In *Hare v. British Transport Commission*, (1956) 1 All ER 578, when the plaintiff had gone to the railway station to see her husband off, as the train moved off she remained standing close to the train facing the direction in which it was moving and waving to him. After the train had travelled some 60 yards she was struck from behind by the open door of the guard's van. She had not moved appreciably from the position she was in when the train started. It was held that the defendants were negligent because the door of the guard's van should not have been allowed to remain open while the train travelled so great a distance and the plea of contributory negligence of the claimant, was negatived.

There are certain statutory duties enjoined in the Rules framed under the Indian Railways Act for the guidance of railway servants with respect to all open lines of railways in India. Rule 115 provides that the guard in charge of a train shall not give the signal for starting the train from a station at which it has stopped until he has received permission from the Station Master. The guard shall not give the signal for starting until he is satisfied himself that no passenger is getting into or out of the train, that no person is riding outside a carriage, and that, except in accordance with special instructions, no person is travelling in any compartment or vehicle not intended for the carriage of passengers. A Driver shall not start the train from a station without the authority to proceed and until the guard in charge of the train has given the signal to start under Rule 120. It is the further duty of the

driver to start and stop the train carefully and without a jerk, as stipulated under Rule 130. It is provided in Rule 131 that the driver shall always sound the engine whistle, except under special instruction, before putting an engine in motion, when entering a tunnel and at such other times as may be prescribed by special instructions. The non-observance of rules means and gives rise to action in tort.

Section 154 of the Railways Act, 1989 provides if any person in a rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. Section 159 of the Railways Act, 1989 lays down that if any driver or conductor of any vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. There are other provisions contained in the Act ensuring the safety of the passengers. Section 175 provides if any railway servant, when on duty, endangers the safety of any person-- (a) by disobeying any rule made under this Act or (b) by disobeying any instruction, direction or order under this Act or the rules made thereunder, or (c) by any rash or negligent act or omission, he shall be punishable with imprisonment for a term, which may extend to two years, or with fine which may extend to one thousand rupees, or with both.'

6. In the instant case, when the train was started with jerk all of a sudden, claimant had fallen, has to be held that it is a case of negligence. In the instant case, the accident took place in November 14, 1996, after coming into force of Section 124A. Accident is clearly an untoward accident as defined in Section 124A. It cannot be said that it was self inflicted injury or his own criminal act. It is not a case of intoxication or suicide attempt by the claimant. The case does not fall in the exceptions under Section 124A. Thus, the railway cannot escape from its liability to pay the compensation.

7. We find no merit in the present appeal. It is dismissed.

8. Misc. Appeal dismissed.

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