

Union of India and Others

Vs

Sunil Kumar Ghosh

Special Leave Petition No. 11525 of 1983

(A. P. Sen, M. P. Thakkar JJ)

21.08.1984

ORDER

THAKKAR, J. -

1. Two mishaps, one, 'to the train' by which a passenger is travelling, and another, a sympathetic one, having nexus with the former, and going arm-in-arm with it, 'to the passenger' himself, must occur in the course of the same transaction in order to attract liability of the Railway Administration under Section 82-A of the Indian Railways Act, 1890, rightly contends counsel for the Railway.

2. The High Court, in our opinion, was in error in not upholding this unexceptionable proposition and in awarding compensation to a passenger on the premise that it was not essential to establish that there was an 'accident to the train' by which the passenger was travelling.

3. Counsel for the Railway was fair enough (we very highly appreciate this gesture) to state that it was on account of the erroneous interpretation placed by the High Court which was likely to give rise to untenable claims in future, rather than the relatively small amount awarded to the passenger, that the Railway was obliged to approach this Court by way of the present special leave petition. We declined to interfere with the operative order of the High Court in exercise of jurisdiction under Article 136 of the Constitution of India having regard to the size of the award (both sides would have expended more than the amount at stake in litigation expenses if leave was granted) but observed that the view taken by the High Court in regard to the question of law involved in the matter was erroneous. We now proceed to articulate our reasons in support of the view expressed by us.

4. The question of interpretation of section 82-A of the Act has arisen in the following contextual backdrop.

5. The respondent was travelling by a train in his capacity as a bona fide passenger. While the boggie in which the respondent was travelling was being shunted at a railway station, the respondent accidentally fell down from the train, near the water column at the end of the platform, and his right hand was crushed by that part of the train which was being shunted. As to how exactly the respondent sustained the injury, the versions of the parties differ. The District Judge did not accept the version of the respondent that the boggie in which he was travelling received a sudden jerk and he fell down on that account. The Railway Administration on the other hand contended that the respondent sustained the injury in the manner described in the relevant contemporaneous record (Assistant Station Master's diary) namely :

The injury was sustained by the appellant in going to the rear end of the train and possibly boarding one of the boggies which was being detached during the shunting operation and in this process he appears to have been hit by the water column when these boggies (a part of the train) were being moved during the shunting operation.

6. Now Section 82-A of the Act insofar as material reads thus :

82-A. Liability of Railway Administration in respect of accidents to trains carrying passengers. - (1) When in the course of working a railway 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 the, whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods by the passenger and accompanying the passenger in his compartment or on the train, sustained as a result of such accident. (2) This liability of a railway administration under this section shall in no case exceed fifty thousand rupees in respect of any one person.

7. In interpreting Section 82-A the High Court speaks thus :

The word accident therefore according to its ordinary meaning, which must be given to it and construed in the context in which it is used in Section 82-A must mean to include within its ambit all incidents resulting in the death of or bodily injury to any passenger during his rail journey, occurring in the course of working a railway, if it involves a passenger train or a part thereof. Any incident treated as railway accident involving a passenger train by the public at large and the railway staff should be treated to be such an accident, falling within the ambit of Section 82-A. Any mishap or misfortune in the working of a railway involving a passenger train or a part thereof resulting in the death of or personal injury to a passenger travelling therein, during his rail journey is an accident within the ambit of Section 82-A. This will, of course exclude any incident voluntarily and consciously invited by the passenger, i.e. suicide by jumping in front of the moving train.

8. In our opinion the High Court has shut its eyes to the significance of the essential precondition engrafted in Section 82-A in regard to the 'accident to the train'. Why we say so will become evident presently.

9. A 'body-scan' of the aforesaid provision (Section 82-A) reveals that :

- (1) The machinery of the section is set in motion only provided there is an 'accident.
- (2) The accident must be 'to' the 'train' or 'part of the train' carrying passengers.
- (3) The accident to the train carrying passengers may be due to :

(a) Collision of two trains one of which is the train carrying passengers; or

(b) derailment of such train; or

(c) other accident 'to' such a train.

(4) In case any passenger travelling by such train dies, or sustains any injury to his person or property, as a result of or on account of such accident to the train or a part of the train carrying passengers, compensation to the extent provided in the section will become payable.

(5) Such compensation will be payable regardless of whether or not the accident to the train carrying passengers is due to negligence or fault on the part of the railway administration.

10. That the 'accident' envisioned by the first part of Section 82-A(1) is an accident 'to' the 'train' or 'a part of the train' is self-evident. The section speaks of an accident by reason of either (1) collision or (2) derailment or (3) other accident to a train. There is therefore no room for any ambiguity on that score.

11. So also it cannot be gainsaid that the 'accident' adverted to therein cannot refer to an accident to a passenger 'whilst' on a passenger train even if the said train is not at involved in any accident. Common sense and reason buttress this propositions, for, the philosophy of Section 82-A appears to be to turn an existing 'fault' liability into a 'fault or no fault' liability. Why ? Because a carrier who transports passengers as a part of his business, when he charges fare, impliedly guarantees to carry him with safety insofar as such safety is within his power. It is within his power to transport the passenger without an accident to the train, for such an accident is not something which is ordinarily or in the normal course of events inherent in the running of a train. And presumably in order to be 'fair' to the passengers who pay the 'fare' for a safe (safe from accident to the train) journey, the legislature, with an eye on social welfare, has provided for compensation by a summary proceeding and has made the liability fault-free.

12. But to ensure safe travel is not 'insure' the passenger against accident to himself 'whilst' travelling. The distinction deserves to be spotlighted. What 'is' provided is compensation for death or injury caused or loss sustained on account of accident 'to' the train. What is 'not' provided is compensation for death of the passenger 'whilst' travelling or injury sustained by a passenger 'whilst' travelling on the train, say, by reason of his own act, default, or misfortune, which has no nexus with the 'accident to the train'. In other words, what the section does is to run a liability which was 'contingent on fault' into an 'absolute' liability. What, however, it does not do, is to provide a free 'insurance cover' to the person and property of a passenger so that compensation can be claimed for the accidental death of or injury to the passenger and/or loss or damage to his property even when there has been no 'accident' to the train carrying such a passenger.

13. What is the position when a passenger falls down from the train while the boggie, in which he is travelling, is being shunted ? Say, when he is standing in the door frame or is trying to get in or get out of the train, on account of the jolt to the boggie at the time of impact with the rest of the train ? Is it an accident 'to the train' so as to attract the liability under Section 82-A ? The answer substantially depends on the answer to the question : what is an 'accident' ? An accident is an occurrence or an event which is unforeseen and startles one when it takes place but does not startle

one when it does not take place. It is the happening of the unexpected, not the happening of the expected, which is called an accident. In other words an event or occurrence the happening of which is ordinarily expected in the normal course by almost everyone undertaking a rail journey cannot be called an 'accident. But the happening of something which is not inherent in the normal course of events, and which is not ordinarily expected to happen or occur, is called a mishap or an accident. Now a collision of two trains or derailment of a train or blowing up of a train is something which no one ordinarily expects in the course of a journey. That is why it falls within the parameters of the definition of accident. But a jolt to the bogie which is detached from one train and attached to another cannot be termed as an accident. No shunting can take place without such a jerk or an impact at least when it is attached or annexed to a train by a shunting engine. If a passenger tumbles inside the compartment or tumbles out of the compartment when he is getting inside the compartment, or stepping out of the compartment, it cannot be said that an accident has occurred to the train or a part of the train. It is doubtless an accident 'to the passenger'. But not to train. Otherwise it will have to be held that every time a bogie is detached in the course of shunting operation and attached or annexed to a train in the course of the said operation the train meets with an accident. And if such an event or occurrence is to be ordinarily expected as a part of everyday life, it cannot be termed as an accident - accident to the train (or a part of it).

14. In the case of a mishap to the passenger in such circumstances it cannot be said that there has been an accident to the train and the mishap has nexus with it. The liability under Section 82-A will not therefore be attracted in such cases. Or in the case of a mishap to a passenger in similar circumstances, such as an injury sustained on account of falling down whilst getting on or off a running or stationary train or sustained when he slips in a compartment or when something falls off him whilst travelling. All such mishaps, when not connected with the accident to the train, or a part of it, would be accidents to the passenger only. And until both the mishaps take place, one to the train, and another, a sympathetic one, to the passenger, the liability under Section 82-A of the Act will not be attracted. So also, unless the loss or damage to the property of a passenger is attributable to the accident to the train, liability under Section 82-A will not be attracted.

15. In our opinion, Section 82-A of the Indian Railways Act, 1890 is not capable of the rather strained interpretation placed by the High Court and the true position of law is unfolded in the discussion made heretofore. That is the reason why we have been constrained to observe that the decision of the High Court is not correct, whilst disposing of the petition for special leave.

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