P.A. Naravanan vs Union Of India & Ors on 13 February, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1659, (1998) 2 MAD LJ 121

Author: S. Rjendra Babu

Bench: S. Rjendra Babu

PETITIONER:
P.A. NARAVANAN

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 13/02/1998

BENCH:
A.S. ANAND, S. RJENDRA BABU.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T DR. ANAND. J.:

Special appellant is aggrieved by the judgment of the High Court dated 1st July, 1991 by which his appeal against summary dismissal of Writ Petition No. 2048 of 1985 was dismissed.

It is an unfortunate case. The wife of the appellant Smt. Shantadevi was at the relevant time working as a Senior Lecturer in English. On 3rd January, 1981, the fateful day, sha left for her college and travelled, as usual, by Harbour Line local train to Bandra from Kings Circle. From Bandra, she boarded Western Railway local train for Andheri. She was travelling on a first class railway pass in the first class ladies' compartment. Before she could reach her destination at Andheri, she was criminally assaulted and also robbed of her gold chain, three bangles and a wrist watch between

Bandra and Andheri railway station while the train was in motion. She pulled the alarm chain but despite of the ringing of the alarm bell neither the guard nor the motorman stopped the train. She ultimately succumbed to the injuries in the compartment. The guard, in his statement recorded during the criminal trail by the learned Additional Sessions Judge, Bombay, admitted that "After I heard the bell. I looked to the eastern and western side of the train and I could not find any untoward incident, Meanwhile the driver had reduced his speed of the train and asked me by giving two beats whether train should stop or not. In reply I gave two beats asking the driver to proceed as there was no necessity to stop the train." The court want on to admit that because of clearances for the signal not having been obtained, the train stopped towards the south or gate no. 22 for about a minute and "even at that time the bell in this cabin was ringing". The train reached platform no. 4 of Andheri railway station at 10.47 a.m. At Andheri railway station, the guard came near the ladies' first class compartment from where the alarm chain had been pulled. He peeped inside and found that a woman was lying a pool of blood, On being asked.

"Q. When you heard the warning bell of the alarm, did you give instruction to the driver to stop the train ?"

The guard replied:

"Ans, No." So as the motorman is concerned, his evidence is almost on the same lines as that of the guard. The accused who were absconding were subsequently tried but we are not concened at the moment with the outcome of the trial of that case.

The appellant made a representation to the Chairman, Railway Board on 29th March, 1981 requesting for compensation for the death of his wife. His representation was rejected by respondent no. 2 who informed him that the liability of the railways could arise only in case of railway accidents and not where death takes place as a result of an attempted murder in a running train. The appellant's writ petition and writ appeal thereafter failed in the High Court. Hence this appeal.

We have hard learned counsel for the parties and Or. Singhvi, whom we had requested to act as amicus curiae in this case.

From the evidence of the guard and the motorman, it is quite obvious that despite the pulling of the alarm chain the train was not made to stop. The whole purpose of providing alarm chain in the compartments of a railway train was, thus, frustrated. This Court can take judicial notice of the fact, that if an alarm chain is wrongly pulled, the person responsible for pulling it is liable to be fined.

There is a common law duty of taking reasonable care which must be attached to all carriers including the railways. In this case, there has been breach of that duty and the negligence on the part of the railway staff is writ large. Had the train been

stopped and first-aid provided when the alarm chain was pulled, the possibility that the deceased may not have met her death, even after the assault in the course of robbery, is a possibility which we cannot totally rule out. The manner in which the guard and the motorman acted exposes a total casual approach on their part, Because of the failure of those railway officials, a precious life has ben lost.

Our attention has been drawn by Dr. Singhvi, the learned amious, curiae to the Railways Act. 1989 which came into force on 1st July, 1990 to urge that the new Act which extensively modifies, amends and consolidates the old 1890 Act, unequivocally incorporates the concept of [liability of the railway administration for death and/or injury to passengers due to any untoward incident while travelling in the train. Section 1239(c) of the Railways Act, 1989 defines and "untoward incident" and inter alia provides the making of a violent attack or the commission of robbery or dacoity as an "untoward incident". According to the learned amicus curiae, the case of the appellant was required to be considered on the basis of res ipsa locquitor (thing speaks for itself) rather than on narrow technicalities based on the provisions of the Railways Act, 1890.

Mr. Goswami, learned counsel appearing for the railway administration does not dispute that under the new Act, there is statutory liability on the railways but submits that the 1989 Act does not have any retrospective operation. We do not wish to go into that question in these case and leave that issue open. We are resting our case on the breach of common law duty of reasonable care, which lies upon all carriers including the railways. The standard of care is high and strict. It is not a case where the omission on the part of the railway officials can be said to be wholly unforeseen or beyond their control. Here there has been a complete dereliction of duty which resulted in a precious life been taken away, rendering the guarantee under Article 21 of the Constitution illusory. Had the deceased not pulled the alarm chain with a view to stop the train, the position might have been different. Liability in this case is fault based. Such a liability is not inconsistent with the scheme of the Railways Act of 1890 either (Refer Section 80 with advantage). The proof of a fault in this case is strong and Mr. Goswami has not rightly challenged it either. To relegate the appellant to approach the Railway Claims Tribunal or the Civil Court, as suggested by Mr. Goswami does not appear to us to be proper. More than 17 years have already gone by since the occurrence and, therefore, it appears appropriate to us to give a quietus to this litigation now.

In the established facts and circumstances of this particular case, keeping in view the evidence of the guard and the motorman, and with a view to do complete justice between the parties, It appears appropriate to us to award a sum of Rs. 2,00,00/- (Rupees two lakhs) as compensation to the appellant for the death of his wife. This amount shall be in addition to Rs. 50.000/- (Rupees fifty thousand) which had been given by the appellant. The among of Rs. 2 lakhs shall be paid to the appellant on or before 31st March, 1998.

This appeal,, therefore, succeeds and is allowed. The judgment of the High Court is set aside. No costs.

Before parting with the case, we wish to place on record our appreciation for the valuable assistance rendered to us by Dr. Singhvi, the learned amicus curiae.