P.A. NARYANAN

v.

UNION OF INDIA AND ORS.

FEBRUARY 13, 1998

[DR. A.S. ANAND AND S. RAJENDRA BABU, JJ.]

Tort—Negligence—Res ipsa loquitur—Robbery and murder in running train—A lady was criminally assaulted and robbed of her ornaments and wrist watch while returning home by a local train—She pulled the alarm chain but the train did not stop—She succumbed to the injuries—Evidence of the guard and motorman of the train showing that despite pulling of the alarm chain by the deceased, the train was not made to stop—Held, Railways liable for complete dereliction of duty of its staff—Liability fault based—Standard of care high and strict—Appellant, deceased's husband, entitled to compensation—Instead of relegating the appellant to go to Railways Claims Tribunal or Civil Court, a Compensation of Rs 2 lakhs awarded to do complete justice between the parties—Constitution of India, Article 21, 136 and 142—Loss of life due to dereliction of duty by government servant—Compensation—Railways Act, 1890, Sections 80, 109, 123(c) and 124-A.

A lady while returning home in a first class railway compartment was criminally assaulted and robbed of her ornaments and wristwatch. She pulled the alarm chain but the train was not made to stop. The evidence of both the guard and motorman showed that in spite of the alarm chain being pulled by the deceased, they did not act to stop the train. The lady finally succumbed to the injury. The claim compensation made by her husband was rejected by Chairman, Railway Board on the ground that liability of the Railways could arise only in case of railway accident and not where the death takes place as a result of attempted murder in a running train. The appellant's writ petition and writ appeal filed before the High Court were rejected. Hence this appeal.

It was contended by the amicus curiae that the Railways Act, 1989 (amending Railways Act of 1890) incorporates the concept of liability of Railways for death and/or injury due to any untoward incident while travelling in the train and Section 123(c) of the new Act defines "untoward incident" to include making of a violent attack or the commission of robbery or dacoity. He further submitted that the case of the appellant has to be considered on

A the doctrine of res-ipsa loquitur rather than narrow technicalities of the Railways Act, 1890.

It was submitted by the Respondent that the new Act, which came into effect from 1-7-1990 has no retrospective operation.

B Allowing the appeal, this Court

HELD : 1. There is a common law duty of taking reasonable care which must be attached to 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. C Had the deceased not pulled the alarm-chain with a view to stop the train, the position might have been different. But the evidence shows 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. The Court can take judicial notice of the fact, that if an alarm D chain is wrongly pulled, the person responsible for pulling it is liable to be fined. 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 cannot be ruled out. The manner in which the guard and the motorman acted exposes a total casual approach on their part. There has been a complete dereliction E of duty which resulted in a precious life being taken away, rendering the guarantee under Article 21 of the Constitution illusory. Liability in this case is fault-based. Such a liability is not in consistent 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. [903-D-E]

F

2. To relegate the appellant to approach the Railway Claims Tribunal or the Civil Court, does not appear to be proper. More than 17 years have already gone by since the occurrence and, therefore, it appear appropriate 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 G guard and the motorman, and with a view to do complete justice between the parties, it appears appropriate to award a sum of Rs. 2,00,000 (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 thousands) which had been given by the State Government as ex-gratia in favour of the son of the H appellant. [903-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 824 of 1998. A

From the Judgment and Order dated 1.7.91 of the Bombay High Court in A. No. 1107/85 in W.P. No. 2048 of 1985.

Dr. A.M. Singhvi, (A.C.) and Ms. K. Sarada Devi for the Appellant

N.N. Goswami, S. Wasim A. Qadri and Ms. Sushma Suri for the Respondetns. B

The Judgment of the Court was delivered by

DR. ANAND, J. Special Leave granted. The 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. C

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 trial 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 guard went on to admit that because of clearance for the signal not having been obtained, the train stopped towards the south of 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 in a pool of blood, On being asked. D E F G H

A "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."

B So far 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.

C 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 D Court. Hence this appeal.

We have heard learned counsel for the parties and Dr. 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 E 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.

F 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 a 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, G 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 been lost.

Our attention has been drawn by Dr. Singhvi, the learned *amicus,* H *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 123(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 State Government in 1989 as *ex-gratia* in favour of the son of the appellant. The amount of Rs. 2 lakhs shall be paid to the appellant on or before 31st March, 1998.

A 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 earned amicus curiae.

B

R.K.S. Appeal allowed.