

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.178 of 2008

JUDGMENT:-

This Civil Miscellaneous Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity) by the unsuccessful applicants is directed against the order dated 25.02.2008 of the Railway Claims Tribunal, Secunderabad Bench passed in O.A.A.No.28 of 2003.

2. I have heard the submissions of the learned counsel for the appellants/applicants ('the applicants', for brevity) and the learned Standing Counsel for the respondent/Union of India ('the Railways', for brevity). I have perused the material record.

3. The basic facts that lead to the filing of this appeal by the applicants, in brief, are as under:

The applicants, who are the parents of the deceased-Mohammed Imran, ('the deceased', for brevity), had filed an application under Section 16 read with Sections 124-A and 125 of the Act claiming a compensation of Rs.4,00,000/- on account of the untimely death of their son due to his involvement in an untoward incident, i.e., accidental fall from a train. The said application was resisted by the Railways. After full-fledged trial, the said application was dismissed by the Tribunal. Therefore, the applicants are before this Court.

3.1 The case of the applicants, in brief, is this:

The applicants are the parents of the deceased, who died in a railway accident. The deceased used to work as an employee in a Bakery at Tandur and used to stay there. He used to visit his native place Regondi once in a while to see his parents/the applicants herein. As usual on 16.10.2002, the deceased with a view

to go to Regondi, had informed his employer and his friends about his intended journey and had left for Tandur Railway Station to catch the train no.359 Gulbarga – Falaknuma Passenger in the afternoon hours. He had purchased a journey ticket from Tandur to Rukmapur and had boarded the train no.359 Gulbarga – Falaknuma Passenger, but had slipped and fell down accidentally from the said train at Km. No.70/13-14 post near G.R.P. Office due to sudden jerks when the train was leaving the platform of Tandur Railway Station. As a result, he had sustained severe multiple crush injuries and had succumbed to the injuries on the spot at about 16:40 hours on the same day, i.e., on 16.10.2002. He is a *bona fide* passenger holding a valid journey ticket; but, the ticket was lost during the course of the accident. Hence the applicants are entitled to claim a compensation of Rs.4,00,000/- on account of the untimely death of the deceased due to his involvement in an untoward incident, viz., accidental fall from a running train.

3.2 *Per contra*, the case of the Railways, in its reply, is as follows:

The material averments in the application are false. The deceased was not a *bona fide* passenger on the train. The deceased did not die due to the accidental fall from the train, but it is a case of run over. The applicants are not entitled for any compensation as per the provisions of Section 124A and 123C of the Act. The averments in the inquest report are only imaginary and there is no basis for making such averments in the inquest report. As per the version of the Guard of Train No.359 Gulbarga – Falaknuma Passenger, no untoward incident of accidental fall of a person from a running train at Tandur Station or in the entire section between Wadi and Secunderabad had taken place as alleged by the applicants. The applicants are not entitled to claim any compensation. The applicants are put to strict proof of their case that their case falls under the provisions of Section 124A and 123C of the Act. The petition is untenable and is liable to be dismissed.

3.3 Taking into consideration the above pleadings, the Tribunal had framed the following issues for trial.

i) Whether the applicants are the dependants of the deceased Mohd. Imran?

- ii. Whether the deceased was a bona fide passenger of train No.359 Gulbarga – Falaknuma Passenger travelling from Tandur to Rukmapur on 16.10.2002?**
- iii. Whether the deceased died as a result of an account of an untoward**

**incident of accidental fall from the train at Tandur Railway
Station?**

iv. **To what relief?**

(Reproduced verbatim)

3.4 At trial, the 1st applicant, who is the father of the deceased, was examined as AW1 and the employer of the deceased was examined as AW2 and exhibits A1 to A10 were marked. RW1 – the then Assistant Station Master of Tandur Railway Station was examined and exhibit R1 was marked on the side of the Railways.

3.5 After full-fledged trial, the Tribunal had dismissed the claim application of the applicants. Therefore, the applicants are before this court.

4. The learned counsel for the applicants had contended as follows:

The deceased who was employed in a bakery at Tandur used to stay at Tandur and that he used to occasionally visit Regondi, his parents place and therefore, he was travelling by Train No.359 Gulbarga – Falaknuma Passenger to go to Rukmapur village on the date of accident. On the date of accident also, he went to Tandur Railway Station and purchased a journey ticket to travel up to Rukmapur village by Train no.359 Gulbarga-Falaknuma Passenger. He had accidentally slipped and fell down from the running train due to jerks of the train while leaving the platform and had sustained injuries and succumbed to the injuries on the spot. At the time of accident, his dead body was dragged to a distance of several sleepers and, hence, there was every possibility for the loss of the journey ticket. The deceased is a *bona fide* passenger and his death had occasioned due to an untoward incident, viz., accidental fall from a running train. The recitals in the crime record support the version of the applicants. The Tribunal was in error in holding that the recitals in the inquest report are imaginary and not true. The Tribunal was in error in holding that the accident is not an untoward incident and in dismissing the application of the applicants. Since the appreciation of evidence and facts is perverse, there is a substantial question of law involved in this appeal. The applicants have adduced necessary evidence both oral and documentary and had sufficiently established their case. The Tribunal ought to have seen that there is a presumption that every passenger on a train is a *bona fide* passenger unless the contrary is proved. The witness examined on the side of the Railways is not an eye-witness to the accident and hence, there is no rebuttal evidence. Therefore, the appeal may be allowed and

the impugned order may be set aside and compensation as per law and facts be awarded to the applicants by allowing their application.

5. *Per contra*, the learned Standing Counsel for the Railways while supporting the order of the Tribunal had forcefully contended as follows:

The Tribunal had framed appropriate issues and had analytically and correctly considered the evidence and the material facts. There is neither perversity nor arbitrariness in the appreciation of the evidence and the facts. The findings of the Tribunal, which are supported by cogent and valid reasons, do not call for any interference. Investigation had revealed that there are no eyewitnesses to the incident. When there is no eye-witness to the incident, the opinion expressed by the inquest panchas and the averments in the inquest report can only be considered as imaginary. At the time of inquest, a small pocket book with two cinema tickets was found on the wearing apparel of the deceased, but, no railway journey ticket was found. If really the deceased had purchased the journey ticket, the same would have been found from the wearing apparel of the deceased. If the small pocket book and two cinema tickets were very much available on the wearing apparel of the deceased, the contention that the journey ticket alone was lost is not acceptable. The case is not one of an accidental fall, but it is a case of run-over by the train. The deceased is not a *bona fide* passenger. The well-considered findings of the Tribunal are sustainable under facts and in law and that the order impugned does not call for any interference by this Court. No substantial question of law is involved in this appeal. The appeal is devoid of merit and is liable to be dismissed.

6. I have carefully gone through the record. I have bestowed my attention to the facts and I have noted the submissions.

7. The points for consideration are:

- i) Whether the deceased was a bona fide passenger of train No.359 Gulbarga – Falaknuma Passenger on 16.10.2002?**
- ii) Whether the deceased died in an untoward incident of accidental fall from the said train, while undertaking journey from Tandur to Rumkapur?**
- iii. Whether the applicants are entitled to award of compensation as prayed for?**
- iv. Whether the impugned order is unsustainable under facts and in law, as contended by the applicants?**

v. **To what relief?**

8. POINTS:

8.1 The facts that lead to the filing of this appeal by the applicants, the pleadings of the parties and the submissions of both the sides are already stated supra, in detail.

8.2 At the time of enquiry, the first applicant, who is the father of the deceased, was examined as **AW1**. He had affirmed the pleaded case in his affidavit filed in lieu of his examination-in-chief. Admittedly, he was not with his deceased son at the time when he had allegedly purchased a journey ticket to undertake journey from Tandur to Rukmapur and had boarded the train at Tandur Railway Station. He is also not an eye-witness to the accident. In his evidence, a copy of the FIR, a memo pertaining to the accident, inquest report of the deceased, the death report of the deceased issued by Vikarabad Railway Police, the death certificate, the certificate of dependency issued by the MRO were exhibited. He had asserted that the journey ticket of the deceased might have been lost during the accident as the dead body was dragged by the train and was cut into pieces and the clothes were also badly torn. In his cross-examination, he had stated that the railway officials told him that his son had purchased a journey ticket, but, he does not know the identities and the names of the said railway officers. Except this limited cross examination, no other cross examination was done and not even suggestions were put in line with the defence of the Railways. **AW2** is the owner of the bakery in which the deceased used to work as an employee. He had deposed about the deceased leaving his business premises on 16.10.2002 in the afternoon hours after informing him his intention to go to Rukmpaur village to see his parents. He had also deposed that on 18.10.2002, through AW1, he had later learnt that the deceased had slipped and fell down from a running train, i.e., Train No.359 Gulbarga-Falaknuma passenger on 16.10.2002 at Tandur railway station due to jerks of the train and that the deceased had sustained injuries and succumbed to the injuries on the spot. Admittedly, AW2 is also not an eye-witness to the accident and he has no personal knowledge about the deceased purchasing a journey ticket before boarding the train. He had only deposed that on 16.10.2002 at about 02:00 PM, the deceased had left the place of work after taking

permission from him to go to his native place.

8.3 *Per contra*, **RW1**, who is the Deputy Station Superintendent of Tandur Railway Station, had deposed that on 16.10.2002 he was on duty as Assistant Station Master at Tandur Railway Station and that the train no.359 Gulbarga-Falaknuma passenger had arrived at Tandur at 15.51 hours and left at 16.01 hours on 16.10.2002 and that at about 16.20 hours some passengers on platform had informed him that a male dead body was found lying on the track opposite to GRP/Tandur office and that he had immediately informed the same through a message to the SI/GRP/Tandur. A copy of the said message was filed as exhibit R1. In his cross-examination, he had admitted that exhibit R1 is an annexure of the control message book and that he did not go near the dead body to ascertain the details of the incident and that he does not know whether the deceased had fallen from the train no.359 Gulbarga-Falaknuma passenger or not.

8.4 I have thus carefully gone through the entire evidence. Turning first to the relationship, it is to be noted that the Tribunal had held that the applicants are the parents of the deceased. The said finding is not in dispute before this Court.

8.5 Dealing next with the aspects as to whether the deceased was a *bona fide* passenger and whether his death had occasioned due to an untoward incident viz., an accidental fall from the train while he was undertaking a journey to Rukmapur on the train no.359 Gulbarga-Falaknuma passenger, it is to be noted that the journey ticket is not produced and that the case of the applicants is that the journey ticket might have been lost as the dead body was dragged to a distance of several sleepers and was cut into pieces during the course of the accident. I have already referred to the evidence brought on record. Exhibit R1 message reads as under:-

“One male person age about 20 years. Run over and killed by 359 pass DN pass at KM No. 70/14-13 Road No. 1 down loop Road No. 1 near GRP office. Informed by some passenger. Message passed to on duty GRP.”

(Reproduced Verbatim)

The evidence brought on record would show that the deceased was run over by the train no.359 Gulbarga-Falaknuma passenger. It is not the case of the Railways that the deceased had committed suicide or that a dead body was brought and was thrown on the tracks. The inquest report on a perusal would reveal that the panchayatdars had opined that on 16.10.2002 at 16.40 hours the deceased fell down and had died while trying to board a running train on platform no.1 of Tandur Railway Station. Exhibit A8, the final report of the police, on a perusal would also disclose that the deceased had accidentally fell down and had died while boarding a running train i.e., the train no.359 Gulbarga-Falaknuma passenger at platform no.1 of Tandur Railway Station. Therefore, in the well considered view of this Court, there is sufficient evidence on record to come to a safe conclusion that the deceased had died in an untoward incident viz., accidental fall while trying to board a running train namely the train no.359 Gulbarga-Falaknuma passenger at Tandur Railway Station.

8.6 Dealing with the further contention of the Railways that the deceased had not purchased a valid journey ticket and that the applicants had failed to prove that the deceased was a *bona fide* passenger, what needs to be first noted is the contention of the learned standing counsel for the Railways. He had contended as follows: "From the wearing apparel of the deceased a small pocket book with two cinema tickets was recovered; but, the journey ticket was not recovered since it was not found; the theory advanced by the applicants that the ticket that was purchased and that was available with the deceased was alone lost during the course of the accident appears to be far from truth, as a pocket book with two cinema tickets was available and was admittedly recovered from the scene of accident or the wearing apparel of the deceased. If really the deceased held a valid ticket, the same would have also been found and recovered along with the pocket book with two cinema tickets. But, the same was not found and was, hence, not recovered. Therefore, it is not possible to accept the contention of the applicants that the journey ticket alone was lost. Hence, it must be held that the Tribunal was correct in holding that the deceased had not purchased a journey ticket and was not a *bona fide* passenger on the train." *Per contra*, the learned counsel for the applicants had contended as follows: "From the evidence brought on record it is evident that the deceased had tried to board a running train and that in doing so his fall had taken place and his death had occurred even while he was boarding the compartment of the running

train. Therefore, from the evidence available on record, it is possible to take a view that the deceased might have attempted to board the running train with an intention to purchase a ticket from the travelling ticket examiner (TTE), as there was no time to board the train after purchasing a journey ticket. Therefore, the intention to travel with a valid ticket, which the deceased had at the time of boarding the train, is important and significant.” Having so contended he had placed reliance on a decision in **Parisa Anjali and others v. Union of India**. In this decision, this Court while considering a contention as to the validity of the ticket held by the deceased had held as follows:

Even if there is any possibility for treating the tickets held by the deceased, as not valid one, he does not cease to be a passenger, in the context of the extension of benefits, under Sections 124 and 124A of the Act. What becomes material, in this regard, is the intention of the person, who was travelling in the train. It is only when the person boards the train with a clear intention to travel in it, without purchasing a ticket, that he can be treated as not a passenger. Take for instance a situation, where a person finds that the train in which he has to travel, is about to start, by the time he reached the station, and he does not have the time to purchase the ticket. Though he does not hold the ticket, he may still board the train with an intention to pay the fare to the TTE. Such a person can still be treated as *bona fide* passenger, both, when he boarded the train without ticket and after he pays the fare to the TTE.’

Certainly, since the fact that the deceased had attempted to board the running train is borne out by the record, if a view that he had boarded the train with an intention to purchase a ticket from the TTE is to be taken, then the ratio in the decision would be of help to the applicants to advance their case. Be that as it may. The main contention of the applicants based on the pleadings and the evidence is that the ticket, which the deceased had held, might have been lost during the course of the accident as the dead body was dragged to a long distance of several sleepers at the time when the deceased was run over by the train. It is apt to note that the Railways have not filed the ‘scene of accident observation report’, if any prepared by the police concerned. It is undisputed that a person will not be permitted to enter even on to the platform without a platform ticket and that a person will not be permitted to travel in a train without a valid journey ticket with him. A duty is enjoined upon the officers of the Railways to regulate the entry of passengers on to the platform or into the railway station and into the compartments of trains. It is trite to observe that the Railways have sufficient mechanism and manpower to regulate the same. Therefore, it can be presumed that every person entering onto the platform holds a valid platform ticket until the contrary is proved. Similarly it can also be presumed that every person travelling in a train possesses a valid journey ticket. In support of

the view that such a presumption can be drawn, the learned counsel for the applicants had placed reliance on a decision of a Division Bench of the High Court of Kerala in **Union of India v. Parameswaran Pillai and another**. The facts of the reported case disclose that a mother claimed compensation on account of her son's death in an untoward incident namely a railway accident and that at that time she was not accompanying her son and that her testimony was to the effect that he was travelling in connection with his business; therefore, the Court took the view that in the common course of human conduct she would never have had any reason to presume or believe that he would travel without a valid ticket. Going by the facts of the case, it was further presumed that the deceased would have travelled with a ticket and not without a ticket. In the said decision, the Kerala High Court had referred to the decision of the Supreme Court in *Tahazhathe Purayil Sarabi v. Union of India* [2009 ACJ 2444]; the decision of the Kerala High Court in *Joji C. John v. Union of India* [2003 ACJ 52] and that of this Court in *Union of India v. B.Koddekar* [2003 ACJ 1286] wherein it was categorically laid down that among other things the fact that the passenger had purchased a ticket and is a *bona fide* passenger is always to be presumed unless it is shown to be otherwise. As per the ratios in the decisions, such presumptions always swing in favour of the injured; and, if unfortunately the injured dies, such presumptions shall aid those entitled to compensation in that regard. There is no need to multiply the decisions on this settled legal position. The material record shows that after the fall of the deceased from the train, his body was dragged to a long distance and that his dead body was cut into several pieces. Therefore, the contention that there is possibility for loss of journey ticket purchased by the deceased during the course of accident can be accepted in the facts and circumstances of the case. Having regard to the facts, the evidence and the legal position obtaining, it can safely be presumed and accepted that the deceased held a ticket and that the ticket was lost at the time of the accident. Viewed thus, this Court holds that the deceased is a *bona fide* passenger on the train no.359 Gulbarga-Falaknuma passenger.

8.7 The next and alternate contention of the Railways is that the evidence brought on record, if acceptable, indicates that the deceased had tried to board a running train at Tandur Railway Station and, therefore, his accidental fall resulting in his death is only on account of his negligent and criminal acts and that the injuries are

self inflicted injuries and that, therefore, the Railways are not liable to pay any compensation, in view of the legal position obtaining. In order to further appreciate the vital aspects of the case, it is necessary to refer to some of the provisions of the Railways Act. [Section 2](#) clause 29 of the [Railways Act](#), 1989 defines 'passenger' to mean "a person travelling with a valid pass or ticket". Chapter XIII of the Act deals with liability of Railway Administration for death and injury to passengers due to accidents. Under the said Chapter, [Section 123](#) provides for definitions. Clause (a) of [Section 123](#) defines 'accident' to mean an accident of the nature described in [Section 124](#). Clause (c) of [Section 123](#) defines untoward incident, thus:

(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.

Section 124-A of the Act reads as under:

"124-A. Compensation on account of untoward incident: When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

***Provided* that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to---**

- a. **suicide or attempted suicide by him;**
- b. **self-inflicted injury;**
- c. **his own criminal act;**
- d. **any act committed by him in a state of intoxication or insanity;**
- e. **any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.**

Explanation:- For the purpose of this section, “passenger” includes –

- i. **a railway servant on duty; and**
a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

The learned standing counsel for the Railways as already noted had contended alternatively that the deceased had tried to board the running train and therefore, his accidental fall, in any view of the matter, is on account of his own negligence and criminal act and that the injuries are self-inflicted and therefore, the Railways are not liable to pay any compensation. In this regard, it is necessary to refer to the decision of the Supreme Court in **Union of India v Prabhakaran Vijay Kumar**, wherein the Hon’ble Supreme Court while interpreting the term “accidental falling of a passenger from a train carrying passengers” had held that the term includes situation where a person is trying to board a train and falls down from the train while trying to do so. In this decision, the Hon’ble Supreme Court had held as follows:

“In our opinion, if we adopt a restrictive meaning to the expression "accidental falling of a passenger from a train carrying passengers" in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in Railway accidents. It is well known that in our country there are crores of people who travel by trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (Particularly poor and middle class people) from getting compensation under the Railways Act. 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 propulsive, and not literal interpretation should be given to the expression.”

As rightly contended by the learned counsel for the applicants, when once the railways issues tickets to passengers to board trains, it is for the railways to take steps and appropriate measures to provide accommodation in the compartments of trains to all the passengers holding valid tickets and take security measures to close the doors before the trains move from the platform and open on arrival of the train on the platforms. The railways cannot put the lives of the citizens to risk and shirk its responsibility with regard to safety and security of the passengers and then contend that it is not liable to pay compensation. Therefore, the contention of the Railways cannot be countenanced being devoid of merit. Hence, in the facts and

circumstances of the case, it cannot be said that the death of the deceased had occasioned on account of self-inflicted injury or his own criminal act. Therefore, falling down of the deceased from the train was, thus, clearly accidental.

8.8 If any *bona fide* passenger having a ticket, as defined under clause (29) of Section 2 of the Act dies in an untoward accident, it is incumbent upon the Railways to pay the compensation to the victims without putting up any dispute, provided the death of the deceased does not fall within any of the five exceptions (a) to (e), as indicated above. Having regard to the reasons assigned, this Court finds that the findings recorded by the Tribunal for the dismissal of the claim application of the applicants are manifestly unreasonable and unjust in the context of the facts and the evidence on record and that the said findings are, therefore, unsustainable under facts and in law. Viewed thus, this Court finds that there is merit in the appeal and that the appeal deserves to be allowed after setting aside the order of the Tribunal. The points are thus answered in favour of the applicants/appellants.

9. In the result, the appeal is allowed awarding a compensation of Rs.4,00,000/- (Rupees Four Lakhs Only) with interest at 9% PA simple from the date of the application till the date of realisation. The respondent/railways are directed to deposit before the Tribunal the said compensation with interest within two months from the date of the receipt of a copy of this judgment. On failure to do so, the appellants are at liberty to recover the same by following the procedure established by law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.Seetharama Murthi, J

12th October, 2015

Vjl