

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.1427 of 2008

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JUDGMENT:

Union of India, the unsuccessful respondent had preferred this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity) assailing the order dated 03.01.2008 of the Railway Claims Tribunal, Secunderabad Bench passed in O.A.A.No.258 of 2003 filed by the applicants claiming compensation for the loss sustained by them due to the untimely death of Shaik Mastanvali, who is the son of applicants 1 and 2, in an untoward accident, viz., an accidental fall from a train.

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

3. The case of the applicants is this:

The applicants 1 and 2 are the parents; the applicants 3 and 6 are the brothers; and, the applicants 4 and 5 are the sisters of the deceased, Shaik Mastanvali. In the early hours of 23.10.2002, the deceased went to Pendekallu for recovering some amount from a building contractor. On the same day, he wanted to return from Pendekallu to Dhone. Therefore, he had purchased a train journey ticket bearing no.82623 to travel from Pendekallu to Dhone by train no.522 Guntakal – Dronachalam Passenger. Having boarded the said train, and, while traveling on the said train, the deceased had got down at Maliyala Railway Station for drinking water. While again trying to board the train, he could not do so as some grass bundles were kept by some passengers near the door of the compartment. However, when the train started with jerks, the deceased had accidentally fallen down from the running train while boarding the compartment of the train in the said circumstances and had succumbed

to the injuries on the spot. The deceased was 18 years of age and was a bachelor at the time of the accident. Hence, the applicants are entitled to a compensation of Rs.4,00,000/- on account of the death of the deceased in an untoward accident, viz., an accidental fall from a train. Therefore, the claim petition is filed against the Railways.

4. The Railways having filed a counter had denied the various averments in the Application and had resisted the claim by *inter alia* contending as follows.

A message was issued on 23.10.2002 by the on-duty Station Master, Maliyala to Sub-Inspector Government Railway Police Station, Dronachalam. In the said message it was mentioned that after passing of the train no.522-Passenger from I loop, a dead body of a male person aged 18 years was found and that it is suspected that he was run over by the train and was killed. Since there was no eye-witness to the incident, the case of the applicants that the deceased had got down from the train at Maliyala Railway Station and had accidentally fallen down from the train, while again trying to board the train is denied.

5. Having regard to the above said pleadings, the Tribunal had framed the following issues for trial.

1. **Whether the applicants are dependants of the deceased Shaik Madarvali?**
2. **Whether the deceased was a bonafide passenger of train No.522 Guntakal – Dronachalam Passenger traveling from Pendekallu to Dhone on 23.10.2002?**
3. **Whether the deceased died as a result of an untoward incident of accidental fall from the train near Maliyala Railway Station?**
4. **Relief and costs?**

(Reproduced verbatim)

6. At trial, the first applicant and two supporting witnesses were examined as AWs 1 to 3 and exhibits A1 to A5 were marked on the side of the applicants. On behalf of the Railways, the driver of train no.522 Guntakal – Dronachalam Passenger was examined as RW1 and exhibit R1– the copy of the combined train register was marked.

7. After full-fledged trial and on merits, the Tribunal had allowed the claim of the applicants and had awarded compensation of Rupees Four Lakhs to the applicants with interest at 9% per annum from the date of the order till the date of actual payment. Feeling aggrieved of the said order, the Railways is before this Court as appellant.

8. The learned counsel for the appellants/Railways would contend as follows: “At the time of inquest, the wearing apparel of the deceased and a train journey ticket bearing no.82623 to travel from Pendekallu to Dhone by train no.522 Guntakal – Dronachalam Passenger was recovered; but, it was a planted ticket; therefore, the deceased is not a *bona fide* passenger. The deceased, having got down from the train for drinking water at Maliyala Railway Station had again boarded the train not from the side of the platform, but from the other side where there was no platform; and, therefore, his accidental fall from the train is on account of his negligence and criminal act. Hence, the accident is not an untoward incident and the injuries are self-inflicted injuries. If a person like the deceased accidentally falls from a running train, it will not go unnoticed as there would be alarm chain pulling after the incident. Even the time of the accident is not mentioned in the claim application of the applicants. As the incident, in any view of the matter, had occurred due to the criminal act and negligence of the deceased, the incident is not an untoward incident as per the provision of Section 124 of the Indian Railways Act. Hence, the applicants are not entitled to claim any compensation. The impugned order is liable to be set aside.”

9. Per contra, the learned counsel for the applicants, while supporting the order of

the Tribunal, had urged as follows: “The Tribunal had framed appropriate issues and had considered the facts accurately and the evidence on record in proper perspective while answering the issues in favour of the applicants. Though the Railways had contended that the ticket was planted, no evidence was adduced in that regard. Since some grass bundles were placed at the door of the compartment of the train, the deceased was prevented from freely entering into the compartment. While the deceased was boarding the train, after taking water at Maliyala Railway Station, due to jerks of the train, the deceased had fallen down between the train and the platform wall and had sustained injuries and had succumbed to the injuries. There is no evidence much less credible on record to show that the deceased had boarded the train from the other side where there was no platform. There is ample evidence that he is a *bona fide* passenger. As per the provision of Section 124A of the Act and as per the settled legal position, the Railways cannot take a plea that the accidental fall of the deceased is on account of his own negligence or criminal act. Under law, the liability of the Railways is strict liability. The well-reasoned order of the Tribunal does not call for any interference. There are no substantial questions of law involved in this appeal. The appeal is devoid of merit and is liable to be dismissed.”

10. In view of the facts and the contentions urged, the points that arise of determination in this appeal are:

Whether the deceased was a *bona fide* passenger of the train No.522 Guntakal – Dronachalam Passenger? And, if so, whether the deceased had sustained injuries as a result of an untoward incident viz., accidental fall from the said train? And, whether or not the award of the Tribunal is sustainable under facts and in law?

11. POINTS:-

11.1 The facts and the contentions of both the sides are already stated supra, in detail. I have given earnest consideration to the facts and the evidence brought on record. I have noted the submissions.

11.2 AW1, the father of the deceased, is not an eyewitness to the incident. However, he had deposed in line with the pleaded case and had exhibited exhibits A1—the copy of the First Information Report; exhibit A2—the copy of the Inquest Report; exhibit A3—the Copy of Post-mortem Examination report; exhibit A4—the Family Member Certificate; and exhibit A5—the Original Ticket. Admittedly, the journey ticket bearing no.82623, which is a valid journey ticket and which authorized the deceased to travel on Train no.522 Guntakal – Dronachalam Passenger is found from the wearing apparel of the deceased at the time of inquest. Though it was sought to be contended before the Tribunal that the said ticket was implanted, the Railways could not establish the same by adducing any evidence or by otherwise dislodging the pleaded case of the applicants. The crime records, particularly the inquest report, fully support the version of the applicants that the journey ticket was recovered from the wearing apparel of the deceased at the time of inquest. Therefore, it can be safely concluded that the Tribunal was justified in holding that the deceased was a *bona fide* passenger.

11.3 Adverting to the aspect as to whether the death of the deceased was an untoward incident viz., an accidental fall from a train, what is to be noted is that AW2, who was said to be a passenger, in his affidavit filed in lieu of examination in chief, had testified that he frequently brings goods for his hotel business from Dhoni and that on 23.10.2002 the train had halted for few minutes at Maliyala Railway Station and that on that he boarded the train as usual to go to Dhoni and that at that time he had observed that the deceased had got down from the train at Maliyala Railway Station for drinking water and that he had again boarded the train in some compartment from the other side of the door and that when the train started with jerks, the deceased accidentally had fallen down from the train and received grievous injuries and died on the spot and that immediately, all the passengers shouted and the train halted for few minutes at Maliyala Railway Station and that a number of passengers including him got down from the train to observe the deceased and that he had observed that the Station Master and the Railway guard came to the spot and noted down about the incident in their register and then the train had started again.

11.4 In his cross-examination, he had stated that he had no acquaintance with the deceased and that he was traveling from Maliyala to Dhone by the said train and that the train had stopped at Maliyala Railway Station at 12:45 noon and that he had boarded the last coach of the train which had only three coaches and that there was a commotion and the train had stopped at the platform and that some grass heaps were placed near the door and that the neck and hands of the deceased were cut in the accident. Further from the evidence of AW2, it is clear that there are no circumstances to hold that the deceased boarded the train from the other side where there is no platform as he had only stated that after drinking water, the deceased had boarded some compartment of the train from the other side of the door.

11.5 Further, the Inquest Report, on a careful perusal, would show that the dead body of the deceased was lying in between the first loop line of the Maliyala Railway Station on the Southern side and Maliyala Platform wall, and in between KM No.309/12-13 tracks and that the head was cut and was separated up to the neck from the body and that the head was facing towards Eastern side and the legs towards Western side and that the body was dorsally faced and that blood was found on the platform wall of Maliyala Railway Station and also on the stones. Thus, the inquest report would also suggest that the deceased had fallen while boarding from the platform side, i.e., in between the train and the platform wall. Therefore, this Court is unable to accept the contention of the learned standing counsel for the Railways that the deceased tried to board the train from the other side, where there is no platform.

11.6 Be that as it may, Section 124A of the Indian Railways Act, reads as under:-

124A. 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 killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be 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 purposes of this section, “passenger” includes—

[\(i\)](#) a railway servant on duty; and

[\(ii\)](#) 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.

11.7 In this regard, it is necessary now to refer to certain decisions on which reliance was placed by the learned counsel for both the sides. The learned Standing Counsel for Union of India placed reliance on a decision reported in ***Union of India, South Central Railways, Secunderabad Vs. Kurukundu Balakrishnaiah, Dhone, Kurnool District***. In this decision, a Full Bench of this Court per majority held as follows:

On the above analysis it appears reasonable to conclude that the circumstances enumerated in the proviso to Section [124-A](#) are in the nature of ex abundanti cautella provisions to emphasise the legislative intent already implicated in Sub-clause (2) of Clause (c) of Section [123](#) of the Act and the proviso is intended to make explicit that the expression "accidental falling" in the above sub-clause excludes fall of the passenger as a consequence of his fault, carelessness, lack of circumspection or absence of such kind and degree of care warranted in the exigencies and circumstances of travel by a train, or on account of absence of prudence and prescience on his part.

On the analysis above we conclude that the expression "untoward incident" in Section [124-A](#) of the Act, which has been defined inter alia, to mean the accidental falling of any passenger from a train carrying passengers (in Sub-clause (2) of Clause (c) of Section [123](#) of the Act) does not comprehend injury or death occasioned by his negligence, carelessness, wrongful act or prohibited conduct, disregard of the requisite standard of care obligated by a person travelling on a train or any such conduct of a passenger which might reasonably be expected to result in his injury or death, as a resultant injury or death would, in such circumstances, be the consequence of a self-inflicted injury.

The learned counsel for the applicants had placed reliance on the decision in ***Union of India owning Southern Railway Vs. G.Jayalakshmi***. The facts of this cited case disclose that the deceased who was a passenger of a train and who was travelling from Corukkupet had accidentally fallen from the train as he was by then near the door of the compartment of the train due to overcrowding in the train. In the stated backdrop of facts, it was sought to be contended that the deceased fell down from the train due to his own negligence and that the injuries are self inflicted and that therefore, no compensation is payable. The Madras High Court referred to the decision of the Supreme Court in ***Union of India Vs. 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 a 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 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 purposive and not literal interpretation should be given to the expression."

A reference was also made by the learned counsel to the decision of the Supreme Court in ***Jameela Vs. Union of India***. In this cited case, the Hon'ble Supreme Court while considering the stand of the Railways that there was no negligence on the part of the Railways and that the applicants had not filed any proof of the accident, had held as follows:

We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section [124-A](#) of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is

admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railway that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section [124A](#) of the Act. It is not denied by the Railways that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a "passenger" for the purpose of Section [124A](#) as clarified by the Explanation. It is now to be seen, that under Section [124A](#) the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. But the proviso to the section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in Clauses (a) to (e). Coming back to the case in hand, it is not the case of the Railway that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

The ratios in the decisions of the Supreme Court are squarely applicable to the facts of the case, in the well-considered view of this court. 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 platforms and open on arrival of the train on the platforms. The Railways having issued tickets to passengers to board trains, which are over crowded 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. In view of the facts and circumstances of the case and the legal position obtaining, the contentions of the Railways cannot be countenanced, being devoid of merit.

11.8 Viewed thus, this Court holds that the deceased is a *bona fide* passenger and that he had died as a result of an untoward incident viz., accidental fall from the train and that in the circumstances, the Tribunal was justified in awarding compensation

to the applicants and that, therefore, the order impugned does not call for any interference.

11.9 Before parting with the case, it is necessary to mention that the learned counsel for the applicants had placed reliance on a decision of the Supreme Court in ***Thazhathe Purayil Sarabi Vs. Union of India*** and urged that the Tribunal ought to have awarded interest from the date of application on the compensation awarded instead of from the date of judgment and that in view of the ratio in the cited decision, the award needs modification in regard to the interest awarded on the compensation amount. However, a perusal of the decision in ***Thazhathe Purayil*** (5 supra) would disclose that the applicants are the appellants before the Supreme Court and therefore, while considering their case on merits, the interest was awarded from the date of the application. In the case on hand, the applicants have not filed either a Cross Appeal or Cross Objections claiming interest from the date of the application; without there being a Cross Appeal or Cross Objections, the contention that the award of interest needs modification cannot be countenanced.

12. In the result, the appeal is dismissed. There shall be no order as to costs.

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

M.Seetharama Murti, J

04th September, 2015

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