

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.132 of 2008

-

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 12.11.2007 of the Railway Claims Tribunal, Secunderabad Bench passed in O.A.A.No.400 of 2003 filed by the injured-applicant claiming compensation for the injuries sustained and disability suffered due to his involvement in an untoward accident viz., an accidental fall from a running 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 respondent/applicant ('the applicant, for brevity). I have perused the material record.

3. The case of the applicant, in brief, is this:

On 05.12.2003, the applicant, who was holding a valid journey ticket from Bapatla to Tirupati by train no. 7424, had accidentally slipped and fell down from the said running train at Bapatla Railway Station and had sustained severe injuries. Immediately, the Railway officials have shifted him to the Government Hospital, Bapatla for treatment. He was later shifted to Government General Hospital, Guntur for better treatment. In the said hospital, his left hand was amputated at the shoulder level. He was aged 26 years and was a barber by profession. On account of the injuries sustained and the disability suffered, he had lost his earning capacity and is unable to eke out his livelihood. Therefore, he is entitled to a compensation of Rs.4,00,000/- for the said untoward incident, viz., an accidental fall from the running train. Hence, he had filed the application against the Railways/UOI.

4. The Union of India/Railways, having filed a counter, had denied the various

averments in the application and had resisted the claim by *inter alia* contending as under:

The Guard of the Train no.7424, on 05.12.2003 had reported as follows: The said train had started at Bapatla railway station after halting for two minutes as usual. After the train had started and was in motion, one person attempted to entrain and had fallen down. In the accident, his left hand was cut. Therefore, he had stopped the train by applying emergency brake and had rendered first aid to that injured person and handed over that person to the Deputy Station Superintendent, Bapatla Railway Station for further action.' From this report, it is clear that the applicant had tried to negligently and carelessly board the running train and had slipped and fallen down. Therefore, the injuries are self inflicted and fall within the purview of the exception to Section 124A of the Act. Hence, the petition may be dismissed.

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

1. **Whether the applicant was a *bona fide* passenger of the train in question?**
2. **Whether the applicant sustained injuries as a result of an untoward incident of accidental fall from the said train?**
3. **Whether the applicant is entitled to claim compensation of Rs.4 lakhs?**
4. **To what relief?**

6. At trial, the sole applicant was examined as AW1 and exhibits A1 to A5 were exhibited on his side. No oral and documentary evidence has been adduced on behalf of the Railways. However, the DRM's report was exhibited as exhibit R1.

7. On merits, the Tribunal had allowed the claim of the applicant. The operative portion of the order reads as follows:-

“In the result, the claim is allowed awarding compensation of Rs.2,50,000/- for the injuries sustained by the applicant. From out of the compensation amount, the applicant is permitted to withdraw Rs.80,000/- and the remaining amount to be kept in FDR in State Bank of Hyderabad, South Lalaguda Branch, Secunderabad, for a period of three years. Periodical interest accrued on the FDR to be transferred and credited to his S.B. Account to be opened by the applicant near the place of his residence and the account number to be furnished by the applicant to State Bank of Hyderabad, South Lalaguda Branch as well as this Tribunal.

The respondent is directed to deposit the said amount before the Tribunal within 60 days from the date of order, failing which interest at 6% per annum to accrue from the due date till payment.”

Feeling aggrieved of the said order, the Railways is before this Court as appellant.

8. The learned standing counsel for the Railways, while fairly conceding that the applicant is a *bona fide* passenger, had contended that the applicant did not board the train during the period of scheduled halt at Bapatla Railway Station and that when the train was in motion, he had hurriedly, negligently and carelessly tried to board the general compartment of the train and that in the said process he had fell down in between the train and the platform and had sustained injuries and that at that time, the Guard of the train had rendered first aid to him and that the applicant was immediately admitted as an inpatient in the hospital at Bapatla and that, therefore, the conduct of the applicant would show that the accident is the result of his negligent act and that the injuries are self-inflicted and that therefore, his case falls under the exceptions (b) and (c) of Section 124A of the Act and hence, the order impugned is erroneous and is liable to be set aside.

9. On the other hand, the learned counsel for the applicant, while supporting the order of the Tribunal, had *inter alia* contended that the first information, which was given by the Station Manager, would show that the Guard of train No.7424 had reported that one person, holding a valid ticket with number 25573016 dated 05.12.2003 for Rs.83/- from Bapatla to Tirupati was involved in an untoward incident, viz., accidental fall from the moving train No.7424 at Bapatla Railway Station and that his left hand was cut off in the accident and that first aid was rendered to him. He would further submit that the applicant after purchasing the

ticket had boarded the compartment of the train and was attempting to go inside the compartment, but at that time the train had started with sudden jerks and hence, he had lost his balance and fell down from the running train in between the train and the platform and that on account of the said fall, he had sustained injuries, i.e., amputation of the left hand upto the shoulder and that therefore, no negligence can be attributed to him and that the incident cannot be termed as a criminal act and the injuries are not self-inflicted injuries as being contended by the Railways; and, even assuming for a moment that the applicant had tried to board the running train, it does not fall under any of the exceptions to Section 124A of the Act. In support of this contention, the learned counsel had relied on the judgment of the Apex Court in ***Union of India Vs. Prabhakaran Vijaya Kumar and others.***

10. In view of the facts and the contentions urged, the only point that arises of determination in this appeal is:

Whether the applicant had sustained injuries as a result of an untoward incident viz., accidental fall from the running train no.7424? And, whether the award of the Tribunal is unsustainable under facts and in law as contended by the Railways?

POINTS:-

11. The facts and the contentions of both the sides are already stated *supra*, in detail. I have given earnest consideration to the facts and noted the submissions.

11.1 The applicant, having pleaded that while traveling in the train No.7424 he had accidentally fallen down from the train at Bapatla Railway Station, had maintained his stand in his evidence. His version is as follows: 'After purchasing the ticket, he had boarded the compartment of the train and was attempting to go inside the compartment; but, at that time the train had started with sudden jerks; and, hence, he had lost his balance and fell down from the running train and in between the train and the platform; on account of the said fall, which is an untoward incident, he had sustained injuries; the injuries resulted in the amputation of the left hand upto the level of the shoulder; therefore, no negligence can be attributed to him; and the

incident cannot be termed as a criminal act; the injuries are not self-inflicted injuries as being contended by the Railways. The Railways, in its defence, had contended that the applicant had sustained injuries due to fall while trying to get into the general compartment of the train when the train was in motion and that the Guard of the train is an eye-witness to the said incident and, therefore, the accident is as a result of the negligent act of the applicant and that the injuries are self-inflicted and fall within the exceptions of the relevant provision of law. It is not in dispute that in the first information that was entered into the Assurance Register would show that the applicant, who was a *bona fide* passenger, had fallen down from the moving train and his left hand was cut off.

11.2 Be that as it may. The version of the Railways is as follows: 'The said train had started at Bapatla railway station after halting for two minutes as usual. After the train had started and was in motion, The applicant had attempted to entrain and had fallen down. In the accident, his left hand was cut off. Therefore, the Guard had stopped the train by applying emergency brake and had rendered first aid to the injured applicant and handed over him to the Deputy Station Superintendent, Bapatla Railway Station for further action.' Now it is to be examined as to whether the said conduct of the applicant would fall within one of the exceptions from (a) to (e) to Section 124A of the Act and would disentitle him to claim any compensation.

Section 124A of the Act reads under:-

“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 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 purpose of this Section, “Passenger” includes –

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

11.3 In this regard, it is necessary now to refer to certain decisions. In ***Union of India, South Central Railways, Secunderabad Vs. Kurukundu Balakrishnaiah, Dhone, Kurnool District***, a Full Bench of this Court per majority held as follows:

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.

11.4 The learned counsel for the applicants had placed reliance on the decision of the Supreme Court in ***Prabhakaran Vijaya Kumar*** case (1 supra) 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."

11.5 The ratio in the decision of the Supreme Court is 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 applicant, 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 contention of the Railways cannot be countenanced, being devoid of merit.

12. Viewed thus, this Court holds that the applicant is a *bona fide* passenger and that he had sustained injuries as a result of an untoward incident viz., accidental fall from the train and that in the circumstances, the Tribunal was justified in awarding the compensation to the applicant and that therefore, the order impugned does not call for any interference.

13. 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.

14th October 2015

BVV