

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.786 of 2010

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JUDGMENT:-

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is filed by the Union of India/appellant/respondent assailing the award dated 21.04.2010 of the Railways Claims Tribunal, Secunderabad Bench at Secunderabad passed in O.A.A.No.217 of 2005.

2. I have heard the submissions of the learned standing counsel appearing for the appellant/Railways and the learned counsel for the respondents/applicants 1 to 4. I have perused the material record.

3. The basic facts of the case are as follows:-

3.1 The first applicant is the wife of P. Nageswara Rao, the deceased, who was said to have died in an untoward incident viz., accidental fall from a running train. The applicants 2 to 4 are their daughters. According to the applicants, on 06.05.2005, while the deceased was boarding the train no.352 Repalle – Secunderabad Passenger at Bhattiprolu Railway Station, he had accidentally slipped and fell under the train and sustained grievous injuries and had later died on 01.06.2005, while receiving treatment at Government Hospital, Tenali, and hence, the applicants, who are the legal heirs of the deceased, are entitled for compensation for the loss sustained by them on account of the untimely death of the deceased due to his involvement in the railway accident.

3.2 The Railways filed a counter and resisted the claim by raising various defences and had *inter alia* contended that the deceased is not a *bona fide* passenger and that the accident is not an untoward incident and that the falling of the deceased under the train is due to

his negligent and criminal conduct and that, therefore, the Tribunal had erroneously fastened the liability on the Railways and the Railways is not liable to pay any compensation.

3.3 At trial, the first applicant was examined as AW1 and exhibits A1 to A7 were marked on the side of the applicants. The guard of the train No.352 and the then Deputy Station Superintendent, Vijayawada Railway Station were examined as RWs1 and 2 respectively and exhibits R1 to R5 were marked on the side of the Railways.

3.4 On merits, the Tribunal had granted a total compensation of Rs.4,00,000/- with interest to the applicants. Feeling aggrieved, the respondent/Railways had preferred this Appeal.

4. The learned standing counsel appearing for the appellant/Railways had contended as under: "The deceased fell down while he was trying to board the running train. Therefore, the accident is not an untoward incident as provided under Sections 123 (C) and 124-A of the Railways Act. The fall of the deceased from the running train while he was boarding the running train is because of his negligent act. Hence, the Railways is not liable to pay any compensation. The accident had occurred on 06.05.2005; and, the deceased had died on 01.06.2005. There is no nexus between the cause of the death of the deceased and the injuries sustained by him in the alleged incident. Substantial questions of law are involved in the appeal. Since the post-mortem certificate is filed for the first time before this Court, it requires proof in accordance with law. Therefore, the appeal may be allowed and the matter may be remanded to the Tribunal for fresh disposal in accordance with law after giving an opportunity to both the sides to adduce evidence to prove or disprove the post mortem report."

5. The learned counsel for the applicants had submitted as follows:

“The Railways are not disputing the fact that the applicants are the legal heirs and the dependents of the deceased. The applicants have produced the Family Member certificate under exhibit A7 and also the original season ticket of the deceased under exhibit A1 to show that the deceased was the *bona fide* passenger. Though the post-mortem report which was not filed before the Tribunal is filed before this Court, yet the fact remains that the deceased who had sustained injuries in the Railway accident was admitted into the hospital and that even before his discharge from the hospital he had succumbed to the injuries sustained in the accident, while receiving treatment in the hospital. Therefore, the contention that there is no nexus between the injuries sustained in the train accident and the cause of death has no merit. In any view of the matter, the applicants have produced before this Court, along with an application, the post-mortem report of the deceased which, on a perusal would disclose that the cause of death of the deceased was on account of the injuries sustained by him in the accident. Further, the necessary material facts which are required to claim compensation are pleaded and established. Hence, the impugned award, which is well-reasoned, does not call for any interference. No substantial questions are involved; and, the appeal is liable to be dismissed being devoid of merit.

6. In view of the facts and the contentions, the questions that arise for consideration in this appeal are:-

- 1. Whether the deceased was a bona fide passenger on train No.352 Repalle – Secunderabad passenger train?**
- 2. Whether the death of the deceased had occurred due to an untoward incident, viz., accidental fall from train No.352 Repalle – Secunderabad passenger, while he was traveling in the aforementioned train from Bhattiprolu to Guntur on 06.05.2005?**
- 3. Whether the impugned award is unsustainable under facts and in law as contended by the appellant?**
- 4. To what relief?**

7. Points:-

7.1 The facts and contentions are stated supra, in detail. The 1st applicant had deposed in line with the pleaded case and had exhibited exhibit A7—the Family Member Certificate, which shows the relationship of the deceased with the applicants. Before the Tribunal, no serious dispute was raised in regard to the relationship of the applicants with the deceased. Though the Railways had contended that the deceased is not a *bona fide* passenger, the evidence brought on record would show that the applicants had produced the original season ticket of the deceased under exhibit A1 which was issued on 19.04.2005 and which authorized him to travel on the aforementioned train on the date of accident from Bhattiprolu to Guntur. Therefore, the said evidence is sufficient to safely conclude that on the day of the accident, the deceased was a *bona fide* passenger on train No.352 Repalle – Secunderabad passenger.

7.2 Taking up next the contention of the learned standing counsel for the Railways that there is no nexus between the cause of the death of the deceased and the injuries sustained by him in the alleged incident, it is to be noted that the accident had occurred on 06.05.2005 and the deceased had died on 01.06.2005. It is also true that the post mortem report of the deceased was not exhibited before the Tribunal. However, a copy of the said report is filed before this Court. Therefore, it was canvassed that the matter needs to be remitted to the Tribunal to give an opportunity to both the sides to adduce evidence to respectively prove and disprove the contents of the post mortem report.

Be that as it may. As per the settled practice and the summary procedure which the Tribunal follows in cases of the present nature, the contents of the copies of the crime records like the FIR, the charge sheet, the Inquest report, the scene of offence observation report and the post mortem report will be considered, when the copies of the said documents are exhibited, without insisting for any further proof by examining any witnesses associated with the said public documents.

Moreover, the attested copy of the post mortem report issued by the Civil Assistant Surgeon, District Hospital, Tenali can be received on file as it is a public document and as per law, the official acts have to be presumed to have been regularly performed. It is also to be noted that in this case, the copy of the FIR and the inquest report and the statement of the deceased are also exhibited. The Tribunal did not insist upon the proof of the contents of the FIR and the inquest report as obviously there are no unusual circumstances requiring a direction to prove the contents of the copies of the crime records, which are filed and exhibited. Therefore, there are no typical circumstances in this case to remand the matter for a mere proof of the contents of the copy of the post mortem report issued by a competent Government Civil Assistant Surgeon. Further, in the instant case, the evidence brought on record discloses that the deceased who had sustained injuries in the Railway accident was admitted into the hospital and that even before his discharge from the hospital he had succumbed to the injuries sustained in the accident, while receiving treatment in the hospital. The evidence brought on record is sufficient to safely hold that the deceased died on account of the injuries sustained in the accident. Therefore, this Court finds no acceptable merit in the contention that the matter requires to be remitted to the Tribunal to prove the contents of the post mortem report.

7.3 Dealing with the aspect as to whether the fall of the deceased from the train is on account of his own negligence and criminal conduct, there is no dispute that the deceased fell down from the train while he was trying to board the running train. AW1 is not an eye-witness to the incident. RW1 – the Guard of the train No.352 is also not an eyewitness to the incident. He had stated in his cross-examination that he has not entered in the rough journal that after the train moved about 10 to 20 feet only a passenger tried to board the train. The Railways admit the incident. RW2 is the then Deputy Station Superintendent, Vijayawada. He is also not an eyewitness to

the incident. He had only received one message from the Guard of the passenger train No.352 on 06.05.2005 and he had recorded the statement on the same day, which is marked as exhibit R4. Therefore, the evidence on record does not support the theory that the deceased tried to board the train after the train moved about 10 to 20 feet. Even proceeding on the assumption that the deceased had tried to board a running train the contention that the Railways are not liable to pay compensation cannot be countenanced in view of the settled legal position in ***Union of India Vs. Prabhakaran Vijayakumar and others***^[1]. The facts of the cited case disclose that a lady trying to enter into a train had fallen down on the railway track and was run over by the train and had died consequently; the Tribunal held that the said incident was not an 'untoward incident' within the meaning of the said expression in Section 123(c) of the Railways Act, 1989 as the same was not an accident falling of a passenger from a train carrying passengers; however, the High Court held that the case came within the expression 'accidental falling of a passenger from a train carrying passengers'; the Union of India contended before the Supreme Court that there was no fault on the part of the Railways and that there was contributory negligence on the part of the deceased. In this factual background of the case, the Supreme Court having referred to the precedents and the legal position had held as follows: -

"We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion, in either case, it amounts to an 'accidental falling of a passenger from a train carrying passengers. Hence, it is an untoward incident as defined in Section 123 (c) of the Railways Act"

It was further held by the Supreme Court 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 railway trains since everybody cannot afford traveling 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 traveling 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.

The ratio in the above cited decision is that the expression “accidental falling of a passenger from a train carrying passengers” includes accidents when a *bona fide* passenger i.e., a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. This being the legal position which applies in all fours to the facts of the instant case, it follows that the finding recorded by the Tribunal that the accidental fall of the deceased while he was trying to board the train is an untoward incident is correct. Therefore, the contention of the Railways that the accident had occurred due to the negligent act or contributory negligence of the deceased cannot be countenanced.

8. Having perused the award of the Tribunal, this Court finds that the Tribunal had considered the facts accurately and the evidence in the right perspective and had come to a correct conclusion having regard to the correct proposition of law and that therefore, the impugned award of the Tribunal does not call for any interference.

9. Viewed thus, this Court finds that the appeal is *de void* of merit and is liable to be dismissed.

10. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

M. Seetharama Murti, J

11th August, 2015
Bvv

[\[1\]](#) 2008 (2) TAC 777