

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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**C.M.A.No.507 of 2008**

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**JUDGMENT:**

The unsuccessful applicants had preferred this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 assailing the order dated 19.04.2006 of the Railway Claims Tribunal, Secunderabad Bench passed in O.A.A.No.41 of 2001.

2. I have heard the submissions of the learned counsel for the appellants/the applicants and the learned Standing Counsel for the respondent/the Union of India. I have perused the material record.

3. The case of the applicants and the basic facts leading to the filing of this appeal by the applicants are as follows: -

The deceased-Devasahayam, who is holding a journey ticket, while travelling, by train no.7479-Howrah-Tirupati Express on 23.12.2000, from Rajahumundry to Vijayawada, was standing at the door of the compartment with a view to get down from the train at the Vijayawada railway station. While the train was coming to a halt, he had slipped and fell down accidentally from the running train due to jerks and had succumbed to the injuries on the spot. Therefore, the applicants had filed an application under Section 16 of the Railway Claims Tribunal Act read with Sections 124-A and 125 of the Railways Act before the Tribunal claiming a compensation of Rs.4,00,000/- due to the untimely death of the said deceased, who is the husband of the 1<sup>st</sup> claimant, in an untoward incident, i.e., an accidental fall from a train. The railways had resisted the case of the applicants *inter alia* contending that the deceased was not a *bona fide* passenger as he was not having a ticket for his journey from Rajahumundry to Vijayawada and as the fall of the deceased from the train is due to his own negligence and criminal act. Therefore, it is contended that the railways are not liable to pay any compensation.

3.1 The Tribunal had framed the following issues for trial.

i) Whether the applicants are dependants of the deceased G.Devasahayam?

ii) Whether the deceased was a bona fide passenger of train No.7479 Howrah–Tirupati Express travelling from Rajahmundry to Vijayawada on 23.12.2000?

iii. Whether the deceased died as a result of an untoward incident of accidental fall from the train at Vijayawada railway station as alleged?

iv. To what relief?

**3.2** At trial, the 2<sup>nd</sup> applicant, the son of the deceased, was examined as AW1 and exhibits A1 to A5 were marked. No oral and documentary evidence was adduced on the side of the railways. 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 would contend that the applicants are the wife and the children of the deceased and that on 23.12.2000, the deceased was holding a journey ticket while he was travelling from Rajahmundry to Vijayawada on Howrah-Tirupati Express and that when he was near the door of the compartment with a view to get down at Vijayawada railway station, there were jerks while the train was coming to a halt and that on account of the jerks, he had accidentally slipped and fallen down and had succumbed to the injuries on the spot and that in the accident, the journey ticket was lost and that, therefore, for non-production of the journey ticket, it cannot be said that the deceased is not a *bona fide* passenger and that before the Tribunal, sufficient evidence was adduced and that the Tribunal had also accepted the relationship between the applicants and the deceased and also the death of the deceased due to his fall from the running train, but, had not awarded compensation only on the ground that the ticket was not produced, and, that the Tribunal had erred in not properly appreciating the facts and the evidence brought on record and that the Tribunal ought to have seen that the railways cannot absolve itself from the liability as there is a presumption generally that every passenger travels with a ticket and that unless the contrary is proved, it cannot be said that the presumption is rebutted and that in the case on hand, the railways did not adduce any rebuttal evidence and that, therefore, the presumption is not rebutted and that in the facts and circumstances of the case, the Tribunal ought to have held that the deceased was a *bona fide* passenger and that his fall from the train is accidental and, hence, ought to have awarded compensation as prayed for by the applicants.

5. On the other hand, the learned Standing Counsel for the Railways while supporting the award of the Tribunal had *inter alia* contended that from the pant pocket on the dead body of the deceased, certain items like identity card and an expired railway pass were recovered at the time of inquest and that the purse with the alleged ticket, said to have been purchased by the deceased, was not recovered; and, that apart from the above two items, other articles like small address book and a wrist watch with stainless steel chain, which were found on the body of the deceased, were also recovered besides a plastic bag with some frocks which was lying at the scene of the accident; and, that when so many articles were found and recovered, it is hard to believe that the purse containing the ticket was lost; and, that in the facts and circumstances, the Tribunal had rightly held that the theory of the applicants that the ticket, which was allegedly purchased by the deceased, was lost cannot be believed; and, that the Tribunal was justified in further holding that the deceased is not a *bona fide* passenger; and, that the Tribunal had also held based on the contents of the inquest report, that it is evident that the injuries are self inflicted and that the accident is not an untoward incident of accidental fall of the deceased from the train; and, that the said findings are based on the facts and the evidence brought on record; and, that therefore, there is no merit in the appeal.

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

1. **Whether the deceased was a *bona fide* passenger of the train 7479-Howrath-Tirupati Express on 23.12.2000? And, if so, whether the deceased died as a result of an untoward incident viz., accidental fall from the said train?**
2. **Whether the applicants are entitled to award of any compensation? And, if so, to what amount?**
3. **Whether the impugned award is liable to be set aside in the facts and circumstances urged by the applicants?**

## **7. POINTS:**

The facts of the matter and the contentions of both the sides are already stated supra, in detail. I have carefully perused the pleadings and the evidence.

7.1 In the first place it is to be examined as to whether the deceased was a *bona fide* passenger. AW1, the 2<sup>nd</sup> applicant had affirmed the pleaded case of the applicants

in his affidavit filed in lieu of examination-in-chief. He is not an eye witness to the incident. His evidence brings to the fore the following facts: 'The deceased is a retired Travelling Ticket Examiner of the railways and he had retired from service in the month of August 1994. In the early hours of 23.12.2000, the deceased, with a view to see his daughter staying at Vijayawada and present new clothes to her three children and also sweet meats to them for Christmas festival, had informed the 1<sup>st</sup> applicant about the same and had left for Rajahmundry railway station along with the 2<sup>nd</sup> applicant (AW1). And, at that time, he was carrying clothes and sweets in a bag. AW1 had purchased a 2<sup>nd</sup> class train ticket from Rajahmundry to Vijayawada for the journey of the deceased and gave it to him. The deceased had kept it in his money purse in his pant pocket. AW1 had also purchased a platform ticket for himself. Later, the train no.7479/Howrah-Tirupati Express had arrived at Rajahmundry railway station. The deceased had boarded the train in the 2<sup>nd</sup> class general compartment along with luggage. After the train had departed, the AW1 returned to his house from the railway station. On the night of 24.12.2000 at about 10 PM, a railway police constable came to the house of the applicants and enquired about the deceased and then informed that on the previous day morning, i.e., on 23.12.2000, the deceased had slipped and fell down accidentally from Howrah-Tirupati Express at Vijayawada railway station before the train had halted and had died on account of the injuries sustained in the accident. He had further asked AW1 to attend the Government Railway Hospital, Vijayawada for identification of the dead body. On that, AW1, the 1<sup>st</sup> applicant and others rushed to Vijayawada from Rajahmundry and had identified the belongings and also the dead body of the deceased. Afterwards, the police had completed the formalities like preparation of the inquest panchanama, post mortem examination, examination of witnesses etcetera. On enquiries, AW1 came to know that his father had fallen down accidentally from the running train due to jerks at the time of halting and that he was dragged to a distance of nine sleepers and had sustained severe multiple injuries and had died on the spot.' AW1 had further deposed that the journey ticket of the deceased was not found along with his money purse as his clothes were badly torn at the time when he was dragged by the train. In his evidence, the copy of the FIR-exhibit A1, the copy of inquest report-exhibit A2, the copy of Post mortem report-exhibit A3, the certificate of death-exhibit A4 and the family member certificate-exhibit A5 issued by Mandal Revenue Officer, Rajahmundry were marked. Though

the entire material record received from the Tribunal is carefully perused, this Court did not find the cross-examination part of the deposition of AW1. In the order impugned, there was only reference to the affidavit filed in lieu of examination-in-chief, but there is no reference to the cross-examination, if any done. Therefore, this Court is of the view that AW1 was not at all cross-examined and his statements in examination-in-chief had remained unchallenged. The railways did not adduce any evidence in rebuttal. However, the Tribunal, having placed reliance on the contents of the inquest report and considering the location of the dead body had come to a conclusion that the accident had occurred only on account of the negligence and criminal act of the deceased and that before the train came to a halt at Vijayawada railway station, the deceased had made an attempt to get down from the running train much before the train entered the platform of Vijayawada railway station and that in the process, he had fallen from the running train at the Northern end of the platform near starter signal and that therefore, the contents of the inquest report, which are contrary to the evidence of AW1 would show that the accident is not an untoward incident, viz., accidental fall from the train. Further, as certain items/articles, viz., identity card, an expired railway pass, small address book and a wrist watch with stainless steel chain were found on the dead body of the deceased besides a bag containing some frocks near the scene as per the contents of the inquest report, the Tribunal did not believe the version of the applicants that the purse containing the ticket was lost when the dead body was dragged to a distance at the time of the accident and had therefore, held that the deceased is not a *bona fide* passenger. In the well considered view of this court, the approach adopted by the Tribunal in drawing an inference from the contents of the Inquest report to the above effect is not a correct approach and the said inferences are not based on sound appreciation of the evidence and the facts and the circumstances of the case. As rightly contended by the learned counsel, an inference also can be drawn from the facts that the deceased came near the door and stood near the door of the compartment with a view to get down at Vijayawada railway station and that while the train was proceeding towards Vijayawada railway station platform, the deceased, who was standing near the door of the compartment might have accidentally fallen down due to jerks of the train. The learned counsel for the applicants had further reiterated that in the absence of rebuttal evidence, the presumption that generally every passenger holds a journey ticket unless the contrary is proved is applicable to the case on hand. The only ground on which the

railways contend that the deceased was not a *bona fide* passenger is that no ticket was found and was recovered from the possession of the dead body or from the scene of accident. It is not in dispute that the dead body of the deceased was dragged to a distance of nine sleepers from the place, where his fall from the train had taken place and that his body was cut into two pieces. Therefore, there is a possibility and probability of some of the articles on the body of the deceased not being traced and collected from the scene.

**7.2** What is important to note is that the Railways did not mark a copy of the scene of offence observation report and the rough sketch of the scene of offence, if any, prepared by the police to show as to where the various other articles found near the dead body were lying apart from the articles that were recovered from the dead body at the time of the inquest. So, this Court is inclined to accept the explanation of the applicants that the journey ticket, which was purchased by AW1 and was given to his father, who had undertaken the journey from Rajahmundry to Vijayawada on that day, might have been lost at the time of the accident. It is undisputed that a person will not be permitted to enter even onto 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 onto the platforms or into the railway stations and into the compartments of trains. It is trite to observe that the Railways have sufficient mechanism and man power to regulate the same. Therefore, it can be presumed that every person entering on to a platform holds a valid platform ticket until the contrary is proved. Similarly it can also be presumed that every person travelling in a train possessess 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 and that, 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 having 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 decisions on this settled legal position. Having regard to the facts and the legal position obtaining it can safely be presumed and accepted that the deceased in the instant case held a ticket and that the ticket was lost at the time of the incident. Viewed thus, this Court holds that the deceased is a *bona fide* passenger.

**7. 3** Before dealing with the next aspect as to whether the accidental fall is an untoward incident or not, it is necessary to first refer to Section 124-A of the Act, which 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**
- 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.”**

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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. Simply because the deceased was standing near the door of the compartment at the time when he fell down from the running train, it is being sought to be projected as his own negligence and criminal act. A criminal act envisaged under clause (c) must have an element of malicious intent or *mens rea*. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. The learned counsel for the applicants would contend that the trains in India are generally overcrowded and that the scheduled halting time at stations is generally a short time and that unless the passengers reach near the door of the compartment before the train halts at the station, it is not possible for the passengers alighting to get down from the train within the short duration of scheduled halting time of the train and that therefore, any passenger reaching a place near the door with a view to alighting the train cannot be found fault for doing so. In this regard, it is necessary to refer to the decision of the Madras High Court in **Union of India owning Southern Railway v. G.Jayalakshmi**. As per the facts of this cited case, 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 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 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 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. 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 is on account of self-inflicted injury or his own criminal act. Therefore, falling down from the train was, thus, clearly accidental. Exhibit A5, the certificate issued by the Mandal Revenue Officer sufficiently established the relationship of the applicants with the deceased and the same is not being disputed before this Court. When once this court has recorded a finding on issue no.1 that the deceased was a *bona fide* passenger and that his death was on account of an untoward incident, viz., accidental fall from the train, it follows that the railways are liable to pay compensation to the applicants. Having regard to the reasons assigned, this Court finds that the findings recorded by the Tribunal for dismissal of the claim application of the applicants are unsustainable under facts and in law. The points are thus

answered in favour of the applicants/appellants.

8. In the result, the appeal is allowed without costs and the order impugned is set aside. As a sequel, the application is allowed and a compensation of Rs.4,00,000/- (Rupees Four Lakhs only) is awarded to the applicants with interest at 9% per annum from the date of the application till the date of payment/realization. The respondent/railway is 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.

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

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**M. SEETHARAMA MURTI, J**

29<sup>th</sup> July, 2015

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