

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

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**C.M.A.No.920 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 28<sup>th</sup> September 2005 of the Railway Claims Tribunal, Secunderabad Bench passed in O.A.A.No.103 of 1999.

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, in brief, are as follows: -

The deceased Ummadi Rambabu is the husband of the 1<sup>st</sup> applicant and the other applicants are their children. The applicants had filed the claim petition under Section 16 of the Railway Claims Tribunal Act read with Sections 124-A and 125 of the Indian Railways Act claiming a compensation of Rs.4,00,000/- *inter alia* contending that the deceased had died in an untoward incident, i.e., an accidental fall from a train bearing No.7046, while he was undertaking a journey with a valid ticket from Visakhapatnam to Kharagpur. The Railways had resisted the case of the applicants *inter alia* contending that the deceased was not a *bona fide* passenger and that the incident of death was not an untoward incident covered under the provisions of the Indian Railways Act and that therefore, the Railways are not liable to pay any compensation.

3.1 Taking into consideration the pleadings of both the parties, the Tribunal had framed the following issues for trial.

i) Whether the applicants are dependants of the deceased Ummadi Rambabu?

**ii) Whether the deceased was a bona fide passenger of train No.7046 Hyderabad-Howrah East Coast Express travelling from Visakhapatnam to Kharagpur on 2.11.1998?**

**iii. Whether the deceased died as a result of an untoward incident of accidental fall from the train between Nellimarla and Garividi railway stations?**

**iv. To what relief?**

**[Reproduced verbatim]**

**3.2** At trial, the 1<sup>st</sup> applicant and a supporting witness were examined as AWs 1 and 2 and exhibits A1 to A6 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 aggrieved applicants are before this court.

**4.** The learned counsel for the applicants would contend as follows:

The Tribunal had held that the applicants i.e., the wife and children of the deceased are the dependants on the deceased; but, had erroneously held against the applicants on issues 2 and 3 though there was sufficient evidence on the side of the applicants, which is well corroborated by the contents of the crime records. The said evidence in the absence of any rebuttal evidence sufficiently established the case of the applicants that the deceased was a *bona fide* passenger and that his death had occurred on 02.11.1998 in an untoward incident, i.e., an accidental fall from the Train bearing No.7046 while he was undertaking a journey in a general compartment from Visakhapatnam to Kharagpur. The Tribunal had erroneously held that the inquest report is unreliable and that the evidence of AW2 is not credit worthy. Admittedly, the dead body of the deceased was first noticed by the driver of the down Train No.2704 Secunderabad-Howrah Falaknuma Express on the morning of 03.11.1998 at 06.35 hours when it was found lying at K.M.No.799/5-4 posts on the down line between Nellimarla and Garividi Railway stations. At the time of inquest, the dead body was not identified as that of the deceased as by that time the details of the relatives of the deceased could not be traced. Therefore, there was no intimation to the relatives of the deceased including the applicants herein; and, after conducting the inquest and post mortem examination, the dead body was disposed of as the relatives of the deceased could not be traced. Hence, the inquest report, which was prepared in the presence of independent inquest panchas and in the absence of the relatives of the deceased cannot be doubted. Therefore, there is

no reason for the inquestdars to give false information at the time of inquest and it cannot also be said that the applicants, who are the relatives of the deceased had influenced the police or the inquestdars and got made recitals in the inquest report to suit their case. The learned Commissioner had grossly erred in discarding the opinion of the inquestdars and the contents of the inquest report. The journey ticket was lost at the time of the accident. The manner of accident discloses that the body was dragged to a distance. Therefore, there is every possibility for loss of ticket at the time of the accident. Therefore, the order impugned is unjust and is liable to be set aside. The petition may be allowed as prayed for after setting aside the impugned order.

5. On the other hand, the learned Standing Counsel for the Railways while supporting the order of the Tribunal had *inter alia* contended as follows:

The dead body of the deceased was found near the railway track on 03.11.1998; but, the claim application was belatedly made in April 1999; and, at the time of inquest, no tickets related to upward and downward journey were recovered either from the wearing apparel of the deceased or from the scene of accident. The evidence of AW2, as rightly held by the Tribunal, is not credit worthy. If the case of the applicants that the compartment was full with passengers and is crowded and that in the circumstances, the deceased who was sitting at the door had fallen off from the train while it was in motion is true, then there should have been some commotion or alarm chain pulling by the co-passengers; however, there was no such chain pulling in this case; and, strangely there is no eye witness to the incident. Therefore, it is unexplained as to how the inquest panchas, who are not known to AW1 and AW2, had opined that the deceased had fallen down from the train while taking a nap at the door of the compartment of the train. The evidence of AW2 shows that he had heard from the fellow passengers that one person who was sitting at the door had fallen from the train. His further version that he had stayed back at Visakhapatnam without informing anybody in spite of the fact that the deceased was missing is an unbelievable story. Therefore, the evidence of AW2 is unreliable. In the absence of his evidence, there is no proof that the deceased had purchased a ticket and had travelled in the subject train and had fallen down from the compartment of the train while undertaking a journey from Visakhapatnam to Kharagpur. There is nothing on record to show that the statements of the so called co-passengers of the deceased/inquest panchas are reliable as they have done

nothing like pulling the alarm chain or making a hue and cry at the time of the incident. If really they had seen the deceased falling off from the compartment, one would expect them to raise hue and cry or pull the alarm chain. They did not do so. It is unexplained as to why they did not make a mention of the incident to anybody till they had completed their journey and till the time of the inquest. The inquest report contents are unreliable and there is no consistency in the case of the applicants. Therefore, there are no grounds much less valid grounds calling for interference with the well considered order of the Tribunal. There is no merit in the appeal and the appeal is devoid of merit.

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

1. **Whether the deceased was a *bona fide* passenger of the train No.7046 Hyderabad-Howrah East Coast Express on 02.11.1998? And, if so, whether the deceased had 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? And, if so, whether the impugned award is liable to be set aside in the facts and circumstances urged by the applicants?**
3. **To what relief?**

## **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 on record.

**7.1** The Tribunal had held on issue no.1 that the applicants who are the wife and children of the deceased are his dependants. The relationship of the applicants with the deceased is not in dispute before this Court. Further, on examination of the material record, this Court finds that there are no grounds calling for interference with the finding of the Tribunal on the said issue. Therefore, the following questions now need determination: 'Whether the deceased was a *bona fide* passenger of Train No.7046 Hyderabad-Howrah East Coast Express? And; if so, whether the deceased

had died as a result of the untoward incident, i.e., accidental fall from the said train?’

**7.2** AW1, the 1<sup>st</sup> applicant is the wife of the deceased. She had affirmed in her evidence the case of the applicants as pleaded in their application. She is admittedly not an eyewitness to the accident. She has only stated in her cross-examination that while leaving the house her husband had told her that he will be returning after four days; and, she had denied the suggestions that her husband did not die due to his fall from the train and that she had not identified the photo of her husband and that she had filed a false case. To substantiate the case of the applicants, AW2 was examined.

**7.3** AW2 had categorically stated as under: ‘That on 02.11.1998 at about 4 PM, he and the deceased along with cloth bags had left Araku valley for Visakhapatnam by bus. From there, they had intended to go to Kharaghpur by Train for making enquiries for commencing readymade garments business by the deceased at Araku valley. The deceased had purchased II Class Train journey tickets for both the deceased and AW2 from Visakhapatnam to Kharaghpur and kept the tickets with him. Both of them had boarded the II Class General compartment of the Train No.7046 Hyderabad-Howrah East Coast Express at Visakhapatnam Railway station on the night of 02.11.1998. He (AW2) had secured an upper berth in General bogi; he had slept on that berth after the train had left Visakhapatnam Railway station. He had seen the deceased sitting near the door as there was no place in the general compartment. He had woken up at Berhampur Railway station and had searched for the deceased. On search, he had found that the deceased was missing. He had then searched the other general bogies; and had travelled up to Cuttak and made enquiries; and, ultimately, he was informed by some passengers that one male passenger slipped and fell down from the running train between Nellimarla and Garividi Railway stations. Therefore, he had doubted that his friend might have fallen down from the train; out of fear, he had cut short his journey at Cuttak and had returned to Visakhapatnam by the next available train and had stayed there for about one month at the house of his sister Vijayalakshmi Patro. Later, he came down to Araku valley and went to the house of the deceased. On enquiries made with AW1, he came to know that the deceased did not return after he had left his house on 02.11.1998. Then, he had informed AW1 as to what had happened. On that, he along with the family members and relatives of the deceased went to the local police station at Araku valley. An oral complaint was lodged about the missing of the

deceased. They were referred by the said police to the Government Railway Police Station, Visakhapatnam for making enquiries about the deceased. He and the wife of the deceased and some others went to Visakhapatnam Railway Police Station. They were then referred to the Government Railway Police, Srikakulam. On their enquiries about the deceased, they were shown some photographs. On seeing the photographs of the deceased, they had identified them as those of the deceased. They were informed by the Railway Police about the accident and that there were witnesses to the accident and also at the time of the police panchanama. They were also informed that the burial of the corpse was already done by the railway police.’

Before the evidence of AWs 1 and 2 is further analysed and appreciated, what is relevant to note is that the cross-examination of AWs 1 and 2 by the Standing Counsel for Railways was bare minimal. The cross-examination of AW1 is already referred to supra. Coming to the cross-examination of AW2, it was elicited that he does not know S.K.Shanaji and Kotipalli Satyanarayana of Vizianagaram and Srikakulam respectively and that police have given them (him and others) the photo of the deceased but not the bag and cloths of the deceased and that on seeing the photo they had noticed small injuries on the face of the dead body in the photo shown by the police. He had further stated that at the time of the journey the deceased was wearing white pant and white shirt with stripes. He had denied the suggestion that he did not travel with the deceased and had testified that in his absence, his wife carried on his business in tea stall and that he did not go to his wife during his one month stay with his sister at Visakhapatnam and that even his wife did not know about his whereabouts during such period. The cross-examinations of AWs 1 and 2 by the Standing Counsel for Railways does not show any circumstances to disbelieve the case of the applicants on any ground. Be that as it may, what is strange in this case is the approach of the Tribunal during trial. The depositions of AWs 1 and 2 would show that the Tribunal by taking over the role of the cross-examining counsel had extensively cross-examined both AWs 1 and 2 and had taken upon itself the responsibility to espouse the cause of the Railways. In the well-considered view of this Court, no doubt, the Presiding Officer of the Tribunal is expected to participate in the trial and can be even pro active and put questions invoking the provision under Section 165 of the Indian Evidence Act to clear any ambiguity in the evidence and obtain proper proof of relevant facts and elicit information, which is appropriate to the context and for reaching the correct conclusions in the matter, but, the Presiding Officer cannot take the side of the

Railways and extensively cross-examine all the witnesses of the applicants. Therefore, the approach adopted by the learned Presiding Judge of the Tribunal is not in consonance with the provision of the said Section of law. Hence, this Court finds that the Tribunal did not act in a fair manner in the matter and on the other hand, acted in a manner prejudicial to the interests of the applicants. What is important to note is that the Railways did not adduce any evidence in rebuttal. As rightly pointed out by the learned counsel, the inquest report fully supports the version of the applicants.

**7.4** Dealing with the issue as to whether the deceased was holding a valid journey ticket to travel in the train, the evidence of AW2, who was said to have accompanied the deceased during the journey, would show that the deceased had purchased journey tickets for himself and AW2. Nonetheless, the inquest report on a perusal would show that the dead body of the deceased was dragged to a distance of 30 or 40 sleepers on the track and that at the scene of accident, there are pieces of skull and inner portions of head lying to a distance of 40 sleepers on the track. Therefore, there is every possibility for the loss of ticket 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 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 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.

**7.5** Dealing next with the aspect as to whether the fall of the deceased from the train is an untoward incident, it is relevant to note that in the English translation of the inquest report, in paragraph no.II, it was stated that on the morning of 03.11.1998 at 06.35 the dead body of the deceased was first found by the driver of down Train No.2704 Secunderabad-Howrah Falaknuma Express, when it was lying at K.M.No.799/5-4 posts on the down line between Nellimarla and Garividi Railway stations and that in fact, the said driver had given intimation to the higher authorities and that information was forwarded to the Station House Officer of Palasa Railway Police Station and hence, the crime was registered and was investigated into. The contents of exhibit A2, the copy of the inquest report would show that the inquest was held immediately on 03.11.1998 in the absence of relatives of the deceased as by then, the identity of the deceased was not known. A careful perusal of the inquest report would show that the dead body was lying on the stones adjoining the track with head towards East (towards Garidivi R.S) and legs towards West (towards Nellimarla R.S) between Nellimarla and Garividi Railway Stations at a distance of two and half telegraph posts from the Jammupet Railway gate (unmanned) on the Eastern side (towards Garividi R.S) and that there was profuse bleeding on the

stones where the corpse was lying and that there are pieces of skull and the inner parts of the head as the head was broken and that there are also blood stains at the ends of sleepers on the outer side of the track, i.e., on the Southern side (towards up line) to a distance of 20 yards (30 sleepers) from the post at K.M.No.799/5 to the place where the corpse is lying on the down line and therefore, it was opined in the inquest report that the deceased was dragged to a distance of 20 yards (30 sleepers) from the post at K.M.799/5. A careful perusal of the inquest report would further show that the inquestdars had opined that the deceased was undertaking a journey in a general compartment on 02.11.1998 in Train No. 7046 Hyderabad-Howrah East Coast Express and that he was taking a nap while sitting at the door of the compartment and that he was last seen alive by the co-passengers Shaik Shanaji and Kotipalli Satyanarayana of Vizianagaram. At the time of the inquest, it is opined and stated by the inquest panchas to the following effect: *"It is learnt that the deceased, while travelling by sitting at the door of the compartment of Train No.7046 Secunderabad-Howrah East Coast Express, took a nap and had slipped and fallen down from the running Train near the curve between K.M.No.799/4-5 due to jerks of the Train and that in the said accident which resulted in his death, his dead body was dragged by the Train to a distance of 50 sleepers and that in the accident the head and the limbs of his body were crushed under the wheels of the Train, blood was lost."* By the time of inquest, the dead body was not identified, since by that time the details of the relatives of the deceased could not be traced out by the police; and, therefore, there was no intimation to the relatives of the deceased including the applicants herein; and that after conducting the inquest and post mortem examination, the dead body was disposed of as the relatives of the deceased could not be traced. Hence, the inquest report, which was prepared by the police concerned in the presence of independent inquest panchas and in the absence of the relatives of the deceased, cannot be doubted. Therefore, there is no reason for the inquestdars to give false information at the time of inquest and it cannot also be said that the applicants, who are the relatives of the deceased had influenced either the police or the inquestdars and got made recitals in the inquest report to suit their case. As a result, this Court finds merit in the contention of the learned counsel for the applicants that the learned Commissioner had grossly erred in discarding the opinion of the inquestdars and the contents of the inquest report. In the light of the evidence of AW2, the contents of the inquest report and the further fact that the Railways did not adduce any evidence in rebuttal, it can safely be concluded that

the deceased died on account of his fall from Train No.7046 while undertaking a journey in the general compartment and that therefore, his death is an untoward incident, i.e., accidental fall from the train. Therefore, this Court is inclined to accept the explanation of the applicants that the journey ticket which was purchased by the deceased might have been lost at the time of the accident.

**7.6** Before parting with the case, it is necessary to consider the alternative contention of the learned Standing Counsel for the Railways that the act of the deceased in sitting at the door of the compartment is a negligent and criminal act and that therefore, the alleged incident of his fall from the train is attributable to his negligence and criminal act and that hence, the injuries resulting in his death are self-inflicted injuries and that therefore, the fall of the deceased from the train, even if true, is not an untoward incident as per the provision of Section 124-A of the Act. The said Section of Law 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.”**

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 sitting 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 or sitting at the open doors of the compartment of a running train may be a negligent act or even a rash act, but, without anything else, it is certainly not a criminal act, as per settled legal position. 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 the 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. He would further contend that when the compartments are over-crowded and when there is no place in the compartment except at the doorway, a passenger cannot be found fault for either standing or sitting at that place. 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** on which reliance was placed. 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 running 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 overcrowded, 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 alternate 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.

**7.7** Having regard to the reasons and findings supra, this Court finds that the order impugned is unsustainable both under facts and law and is liable to be set aside. As a sequel, this Court accordingly answers all the points in favour of the applicants and against the Railways.

**8.** In the result, the appeal is allowed without costs and the order impugned is set

aside. Accordingly, the application is allowed without costs 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/Railways 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 of the Railways to do so, the applicants 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**

14<sup>th</sup> September 2015

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