

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.26 OF 2008

JUDGMENT:

Union of India, the unsuccessful respondent, had preferred this appeal under Section 23 of the Railway Claims Tribunal Act 1987 (for short, 'the Act') assailing the order dated 26.09.2007 of the Railway Claims Tribunal, Secunderabad Bench passed in OAA.No.152 of 2004 filed by the applicants claiming compensation for the loss sustained by them due to the untimely death of the husband of the first applicant and the father of the other applicants 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 and the learned counsel for the applicants/ respondents. I have perused the material record.

3. The case of the applicants is this:

The 1st applicant is the wife and the applicants 2 to 4 are the children of the deceased, Gopu Subba Rao. The deceased went to Eluru from Vijayawada on 22.06.2004 to see his daughter, T. Hemalatha, in connection with her Wedding Anniversary and had presented her new clothes and had stayed there overnight. For the return journey to Vijayawada from Eluru, in the morning of 23.06.2004, he came to Powerpet Railway Station accompanied by T.V.N. Seshu Babu, the father in law of his daughter. On arriving at the Railway Station, the said Seshu Babu had purchased a passenger train journey ticket bearing no.83798 for the deceased and a platform ticket for himself and both of them came on to the platform. Later, the deceased had boarded the general compartment of the train bearing no.432, i.e., the Fast Passenger from Kakinada to Vijayawada; the train had left powerpet railway station for Vijayawada. While traveling in the said train, the deceased had slipped and fell down accidentally from the said running train at a place between Vatluru and Nuzvidu Railway Stations and was dragged

by the train to some distance. In the said accident he had sustained severe multiple injuries and had succumbed to the injuries on the spot. Therefore, the claimants filed the claim application against the railways claiming that they are entitled to a compensation of Rs.4 lakhs with interest and costs.

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 follows.

The Key man of the Railways having noted at about 10.10 hours that a male body was found lying in the bushes in between Vatluru and Nuzvidu Railway Stations had reported the said fact to the Station Superintendent of Vatlur Railway Station at 1215 hours. As per the report of the Key man, the dead body of the deceased was found in the bushes, but, not on the Railway track and there were no bloodstains on the track. There was no eye witness to the incident. The incident is not an untoward incident. If a person like the deceased falls down from a running train, it will not go unnoticed, as there would be alarm chain pulling after the incident. According to the version in the Inquest Report, he was holding a hand bag in one hand and a catch rod with the other and was hanging at the door of the compartment of the running train. The incident, in any view of the matter, had occurred due to gross negligence on the part of the deceased and his death had occurred on account of his own negligence and criminal act and the alleged incident is not a case of accidental fall. Therefore, the Railways cannot be fastened with any liability in view of the provision of Section 124 of the Act. The averment that the deceased is a *bona fide* passenger is denied. The applicants are not entitled to claim compensation. The petition is liable to be dismissed.

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

- 1) Whether the applicants are the dependents of the deceased?
- 2) Whether the deceased was a *bona fide* passenger of the train in question?
- 3) Whether the deceased died as a result of an

- untoward incident of accidental fall from the said train?
- 4) Whether the applicants are entitled to claim compensation of Rs.4,00,000/-?
- 5) To what relief?

6. At trial, the first applicant and a supporting witness were examined as AWs 1 and 2 and exhibits A1 to A7 were marked on the side of the applicants. On behalf of the Railways, the Assistant Station Master of Vatluru Railway Station and the Key man, on whose report the death of the deceased has come to the notice of the Railways, were examined as RWs 1 and 2 and exhibits R1 to R3 were marked. The Constable of the Government Railway Police Station, Eluru was examined as CW 1 and exhibits C1 to 4 were marked.

7. After full-fledged trial and on merits, the Tribunal had awarded compensation of Rs.4 lakhs with interest at 6% per annum from the date of receipt of copy of the judgment of the Tribunal till realization. Therefore, the aggrieved Railways is before this Court.

8. The learned counsel for the appellant/Railways would contend as follows: "The deceased is not a *bona fide* passenger; and, the applicants had failed to prove that he was holding a valid ticket to undertake the journey. As per the material record including the version in the inquest report, he was either standing on the footboard or near the door of the compartment at the time of the alleged incident and, hence, his accidental fall from the train, while the train is in motion, is on account of his negligence and criminal act.

Therefore, his fall from the train is neither an untoward incident nor an accidental fall; but, it is due to his gross negligence as is evident from the record. At the time of the accident, there was no alarm chain pulling. The order of the Tribunal that fastening liability on the Railways is erroneous. Therefore, the appeal may be allowed and the impugned order may be set aside."

9. On the other hand, 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 accurately considered the facts and properly appreciated the evidence on record while answering the issues in favour of the applicants. Some time after the accident, the Key man of the Railways, having noticed the dead body of the deceased in the bushes by the side of the Railway Track between Vatluru and Nuzvidu Railways Stations, had reported the matter to the Railway authorities. Subsequently, inquest was held. In the Inquest Report it is clearly mentioned that he was holding a ticket. At the time of inquest over the dead body, two tickets, one for upward journey and the other for the subject return journey, were found. 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 is on account of negligence or criminal act of the deceased. 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.432? 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. I have noted the submissions.

11.2 AW1, the wife of the deceased, is not an eye witness to the incident. However, she had deposed in line with her pleaded case and exhibited exhibit A1- the copy of First Information Report, exhibit A2- the copy of the Inquest Report, exhibit A3-the copy of the Post Mortem Examination Report,

exhibit A4-the Death Certificate, exhibit A5-the Copy of Ration Card, exhibit A6- the copy of the Final Report and exhibit A7- the Family Members Certificate. AW2 is the father-in-law of the daughter of the deceased, by name, Sri T.V.N.Seshu Babu, who was said to have accompanied the deceased to the Railway Station and had purchased the ticket for the journey of the deceased on the date of the incident. He filed his affidavit in lieu of his examination in chief in support of his evidence and confirmed that he had accompanied the deceased to the Railway Station on 23.06.2004 and that he had purchased a passenger journey ticket bearing no.83798 and that the deceased boarded the train at Powerpet Railway station. He had maintained his stand in the cross examination. Exhibit A2-the copy of the Inquest Report, on a perusal would show that in the shirt pocket of the deceased apart from other articles, there were two train tickets i.e., one bearing no.08806364 dated 22.06.2004 worth Rs.14/- and another bearing no.83798 worth Rs.14/- from Powerpet to Vijayawada. The report of the Divisional Railway Manager, which is exhibited as exhibit R1, would show that the ticket bearing no.83798 was issued at Powerpet Railway Station on 23.06.2004 and that it is a valid ticket for the journey of the deceased. Exhibit A6- the Certificate-cum-Final Report of Government Railway Police Station, Eluru, would also show that the ticket held by the deceased was valid and that the same was found on the dead body of the deceased. In view of the overwhelming evidence, it can safely be held that the deceased is a *bona fide* passenger and that he died as a result of an untoward incident of accidental fall from the said train.

11.3 Coming to the next contention that the applicants are not entitled to claim compensation for the reason that the accident had occurred only because of the criminal negligence and own criminal act of the deceased, what is to be noted is that this contention was advanced on behalf of the Railways on the following facts and submissions: "That the deceased was either standing on the footboard of the compartment or near the door of the compartment, while the train was in motion; the dead body of the deceased was noticed by the Key man, RW2, in the bushes by the side of the Railway Track between Vatluru and Nuzvidu Railway Stations; the Inquest Report

also shows that at that time, he was holding a hand bag in one hand and the catch rod of the bogie with another hand; therefore the fall from the train is not an accidental fall and not an untoward incident; and, the fall is due to negligence and criminal act of the deceased.” On the other hand, learned counsel for the applicants, as already noted, would submit that the Railways cannot be absolved from its liability as the liability is a strict liability and the Act is enacted with an avowed objective to benefit the claimants like the applicants.

11.4 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 v. Kurukundu Balakrishnaiah, Dhone, Kurnool District**^[1]. 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 abundenti 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 v. G.Jayalakshmi^[2]. 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 v Prabhakaran Vijay Kumar**^[3], 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.”

He had also referred to the decision of the Supreme Court in **Jameela v.**

Union of India^[4]. 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 contention of the Railways cannot be countenanced, being devoid of merit.

11.5 Viewed thus, this Court holds that the deceased is a *bona fide* passenger and that he 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 the compensation to the applicants and that therefore, the order impugned does not call for any interference.

11.6 Before parting with the case, it is necessary to mention that the learned counsel for the applicants placed reliance on a decision of the Supreme Court in **Thazhathe Purayil Sarabi v. Union of India**^[5] 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 need 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 rate of interest from the date of the application; without there being a Cross Appeal or Cross Objections, the contention that the 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

14.07.2015

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^[1] 2004 (1) ALT 100 (F.B.)

[\[2\]](#) ACJ-2013-0-1714 = LAWS (MAD) 2012-2-254

[\[3\]](#) 2008-2-KLT-700-SC

[\[4\]](#) 2010 ACJ 2453

[\[5\]](#) (2009) 7 SCC 372