

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.949 of 2009

JUDGMENT:

Union of India, the unsuccessful respondent, had preferred this appeal under Section 23 of Railway Claims Tribunal Act, 1987 assailing the order dated 03.06.2009 of the Railway Claims Tribunal, Secunderabad passed in OAA.No.225 of 2004 filed by the parents and family members of the deceased-Nuka Arun Kumar claiming compensation for the loss sustained by them due to the untimely death of the said deceased in an untoward incident viz., an accidental fall from a train.

2. I have heard the submissions of the learned Standing Counsel appearing for the appellant/Union of India and the learned counsel for the respondents 1 and 2/applicants 1 and 2. The respondents 3 and 4 are stated to be not necessary parties. I have perused the material record.

3. The basic facts are as follows:

3.1 The case of the applications is that the deceased is a resident of Jyothinagar of N.T.P.C, Kothagudem and was studying II year B.Tech course in Mother Teresa Institute of Engineering & Technology, Peddapally; and, that on 29.07.2004 in the early morning hours, he had informed his father that he would go to the house of his brother-in-law at Ramagundam and that from there he would go to his college at Peddapally by Nagpur passenger; and, that later the family members came to know that the deceased boarded 335 Nagpur Passenger and had accidentally fallen down from that train while travelling in that train and had received grievous injuries and had died on the spot; and, that the journey ticket is lost in the accident and that, therefore, the applicants are entitled to a compensation of Rs.4 Lakhs.

3.2 The case of the Railway Administration as stated in the written statement filed before the Tribunal is in the nature of denial. It is *inter alia* contended in the defence that as per the crime record, the Station Superintendent, Ramagundam gave a message at 11:40 Hrs., to the S.I of

Government Railway Police Station, Bellampalli stating that one male dead body aged about 25 years was lying on the tracks at Ramagundam yard as per the information given by one K.Rajasekhar and that the deceased was not a *bona fide* passenger and that the claim does not come within the scope of the provisions of the Railways Act.

3.3 At trial, the first claimant and a supporting witness were examined as AWs1 and 2 and exhibits A1 to A5 were marked on the side of the applicants. CW1 was examined and exhibit R1-Divisional Railway Manager's report was marked on the side of the appellant herein. Exhibit C1-final report prepared by the police concerned was also marked.

3.4 On merits, the Tribunal had awarded to the applicants 1 and 2 a compensation of Rs.4 lakhs and had directed the Railways to deposit the said compensation amount in the Tribunal within 60 days from the date of the order. It was further observed that on failure to so deposit, the applicants shall be entitled to interest at 9% per annum from the date of the order till realisation. Therefore, the aggrieved Railways is before this Court.

4. The learned counsel for the appellant/Railways would contend that according to the contentions of the applicants, the deceased is an Engineering student but, there was no evidence to that effect and that the dead body was found around 11:40 AM near Ramagundam Railway yard but the departure time of the train is 07:00 AM and that the fact that dead body was not noticed for a long time would show that the death was not due to any accident but, for some other reasons and that the applicants did not produce either a ticket or a pass and therefore, the deceased was not a *bona fide* passenger and that in view of the fact that the dead body was found near Ramagundam Railway yard, it is obvious that the accident did not take place in the railway station and that, therefore, it is possible to deduce that since he did not possess a ticket or a pass, he might have tried to board the train after the train had left the station and that in that process he might have fallen down while boarding the train and that under Section 2(29) of the Railways Act, a passenger means a person travelling with a valid pass or a ticket and

that since the applicants did not produce a ticket or a pass, the deceased is not a *bona fide* passenger and that there is no proof that the deceased died as a result of an untoward incident of accidental fall from the train and that the facts show that the death was due to the negligence and criminal act of the deceased and that, therefore, the Tribunal erred in awarding compensation and fastening liability on the Railways. The learned counsel alternately contended that interest should have been awarded at 7.5% per annum simple.

5. On the other hand, the learned counsel for the applicants while supporting the Award of the Tribunal had *inter alia* contended that the crime records establish the pleaded case of the claimants and that the investigation done by the Railways and the Divisional Railway Manager's report under exhibit R1 also disclose that the deceased had fallen from a running train and that the Railways cannot absolve itself from the liability as there is a presumption generally that every passenger travels with a ticket unless the contrary is proved and that in the facts and circumstances of this case, the presumption is not rebutted and that on the other hand, the final report of the police under exhibit C1 also would disclose that the death is an accidental death and that there is every possibility for the loss of the ticket, purchased by the deceased, as the inquest report under exhibit A2 would show that blood stains were found on the railway tracks and that the dead body was dragged upto 50 sleepers from the place of the incident and that, therefore, the evidence on record is sufficient to hold that the deceased is a *bona fide* passenger and that his death was due to his accidental fall from a train and that, therefore, there is no merit in the contentions of the Railways and that the appeal is devoid of merit and is liable to be dismissed.

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 335/Nagpur passenger on 29.07.2004? And, if so, whether the deceased died as a result of an untoward incident viz., accidental fall from the said train?**
2. **Whether the interest at 9% per annum simple awarded on**

the compensation amount from the date of the order is on the higher side and is to be scaled down as contended by the appellant?

7. POINT No.1:

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7.1 The facts of the matter and the contentions of both the sides are already stated supra, in detail. The 1st applicant who was examined as AW1 deposed in line with his pleaded case. AW2 was further examined to corroborate his version. AW1 has produced the family member certificate-exhibit A4 showing the relationship with the deceased. AW2 is the brother-in-law of the 1st applicant. According to their version, the dead body of the deceased was found on the railway track between Ramagundam and Peddapalli at about 11:30 AM or 12:00 noon and they had received a phone call informing that the deceased had fallen from a running train and that, therefore, they rushed to the spot and identified the dead body.

7.2 Coming first to the question as to whether the deceased died as a result of an untoward incident of accidental fall from the said train, what is to be noted is that in exhibit R1-report of the Divisional Railway Manager it is mentioned as under:

“In view of the above enquiries it is clear that the deceased was not a *bona fide* passenger might have been fallen from a running train. As such claim could not be entertained in this case.” [reproduced verbatim]

Though it is stated in the report that the deceased is not a *bona fide* passenger, the report shows that the deceased might have fallen from a running train. Be that as it may. Exhibit C1-final report filed by the police after due investigation would disclose thus:

“From the evidence collected during the course of investigation, it has revealed that the deceased was the resident of Ramagundam and studying B.Tech at Mother Teresa Engineering & Technology college at Peddapalli. He used to attend college from Ramagundam. On 29.07.2004 to go to college at Peddapalli, he left Ramagundam by 335 down Nagpur passenger train and while leaving Ramagundam railway station, the deceased accidentally fallen down from the train. There is no foul play suspected in the death of the deceased. As such the Hon’ble court may kindly be referred this case as Accidental death and issue further proceedings.”

[reproduced verbatim]

As rightly pointed out by the learned counsel for the applicants, exhibit A2-inquest report reveals that the inquestdars had opined that the dead body was dragged up to 50 sleepers from the place of incident and that blood stains were found on the railway tracks and on a concrete stone. Hence, the contention of the learned counsel for the appellant/Railways that the deceased having not purchased a ticket might have tried to board the running train outside the station and that, therefore, his dead body was found far away from the railway station cannot be countenanced. This submission of the learned standing counsel purely based on an inference on the basis that the dead body was found away from the railway station was for the first time advanced before this Court and does not find support from the material record. In the light of the evidence brought on record, which is not rebutted by any evidence on the side of the respondent/railways, which is worthy of acceptance, it can safely be concluded that the deceased died on account of an untoward incident viz., accidental fall from the train.

7.3 Coming next to the question as to whether the deceased was a *bona fide* passenger, it is an undisputed fact that neither a ticket nor a pass was produced by the applicants. However, the learned counsel for the applicants would contend that there is a possibility of loss of ticket at the time of accident as it is evident from the inquest report that blood stains were found on the railway tracks and a concrete stone and that the dead body was dragged upto 50 sleepers from the place of the incident. He would further contend that it is difficult for the family members of the deceased to say whether or not the deceased purchased a ticket and whether it is lost. As could be seen from the final report, the deceased, who was a B.Tech engineering student, was regularly attending his college by undertaking travel on the said passenger train. It is also the case of the applicants that there is every reason to presume and accept that the ticket might have been lost in the accident as the deceased was regularly travelling by purchasing a ticket. Whether the mere fact that the ticket was not produced by the applicants will justify an inference that the deceased was not holding a valid travel ticket is the question. It is undisputed that a person will not be permitted even onto the platform without

a platform ticket and that a person will not be permitted to travel in a train without a valid ticket with him. The only ground on which the appellant contends that the deceased was not a *bona fide* passenger is that no ticket was found on the dead body or near the dead body. It is note worthy that a duty is enjoined upon the officers of the Railways to regulate the entry of passengers on to the platform or into the railway station 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 onto the 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 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**^[1].

The facts of the reported cased 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 ratio 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 held a ticket and that the ticket was lost at the time of the incident.

7.4 Viewed thus, this Court holds that the deceased is a *bona fide* passenger and that he had died as a result of an untoward incident of accidental fall from the said train. The point is accordingly answered.

8. POINT No.2:

The learned standing counsel had contended that ordinarily the Courts are awarding interest @ 6% per annum simple on the compensation amount, but, in this case the Tribunal had awarded interest at the rate of 9% per annum and that it is on the higher side and that, therefore, it requires to be scaled down. In the case on hand, the learned Commissioner had directed the Railways to deposit the amount of compensation into the Tribunal within 60 days from the date of the order and had further observed that on failure to do so, the Railways would be liable to pay interest at 9% per annum from the date of the order till the date of realisation. On the failure of the Railways to deposit the compensation within the time granted in the order only, the liability to pay interest would arise. Therefore, if only the compensation is not deposited within the said time, the appellant becomes liable to pay the interest. Having regard to the above said facts, this Court finds that award of interest @ 9% per annum does not call for any interference. The point is accordingly answered.

9. In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

19th June, 2015
Note: LR copy to be marked.
(B/o)

Vjl

[\[1\]](#) 2012 Law Suit (Ker) 1545