

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.1047 of 2008

JUDGMENT:

This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 by the unsuccessful applicants is directed against the order dated 08.01.2002 of the Railway Claims Tribunal, Secunderabad Bench passed in O.A.A.No.152 of 1998.

2. I have heard the submissions of the learned counsel for the appellants/the applicants ('the applicants', for brevity) and the learned Standing Counsel for the respondent/the Union of India ('the Railways', for brevity). I have perused the material record.

3. The basic facts leading to the filing of this appeal by the applicants, in brief, are as under: "The applicants, who are the parents of the deceased- Kandula Suresh Kumar had filed an application under Section 16 of the Railway Claims Tribunal Act read with Sections 124-A and 125 of the Railways Act claiming a compensation of Rs.4,00,000/- on account of the untimely death of their son in an untoward incident, i.e., accidental fall from a train. The said application was resisted by the Railways. After full-fledged trial, the said application was dismissed by the Tribunal. Therefore, the applicants are before this Court."

3.1. The case of the applicants is this: "The deceased, Kandula Suresh Kumar, went to Berahampur along with some other business men with a view to purchase business material. On the evening of 14.03.1997, accompanied by his friends, the deceased went to a hotel near Berahampur Railway station. They had spent some time at the said hotel. Later, they all went to Berahampur Railway Station. The deceased had purchased a journey ticket for his journey from Berahampur to Palasa and had boarded the train no. DMU 5 Balugaon-Palasa passenger. His friends who had come to the railway station saw him off. While travelling in the said train during night

hours, when the train reached K.M.No.667/14/15, between Mandasa and Summadevi Railway Stations, the deceased had slipped and accidentally fallen down from the said running train. On his fall from the train on the track, his head was cut and was separated from the body and he had succumbed to the injuries sustained in the accident. Thus, his death had occasioned on account of an untoward incident, viz., accidental fall from the train while undertaking a journey with a valid ticket as a *bona fide* passenger and hence, the Railways are liable to pay the compensation to the applicants.”

3.2 *Per contra*, the case of the Railways, in its reply, is as follows: “There was an untoward incident between Mandasa and Summadevi Railway stations on 14.03.1997 and that the said incident comes within the purview of the provision of Section 124A of the Railway (Amendment) Act, 1984 is not admitted. The deceased had fallen down from 5 DMU Balugaon-Palasa passenger on 14.03.1997 is not admitted. The applicants are put to strict proof of the cause of death of the deceased and that it was not due to the conditions stated in clauses (a) to (e) of Section 123 (c) of the Railways Act. The applicants are put to strict proof that the deceased is a *bona fide* passenger of the said train. There is no substantial proof that the deceased had purchased a ticket except a written declaration in the application about the loss of the same. The applicants are put to strict proof that they are the dependants on the deceased. The Railways cannot be saddled with any liability to pay any compensation. The application may be dismissed.”

3.3 The Tribunal had framed the following issues for trial.

- i) **Whether the deceased Kandula Suresh Kumar was a passenger travelling in train no.DMU 5 Balugaon-Palasa passenger on 14.3.97?**
- ii) **It is further proved that Kandula Suresh Kumar slipped and fell down accidentally from running train, suffered injuries and died thereby?**
- iii) **What are all the dependents of the deceased?**
- iv) **What compensation?**

(Reproduced verbatim)

3.4 At trial, the 1st applicant, who is the father of the deceased, was examined as AW1. One P. Sivasankar Rao was also examined as AW2; and, exhibits A1 to A8 were marked. RW1 the then Commercial Inspector was examined and exhibits R1 to R3 were marked on the side of the Railways. A police constable of the Railway Police Station was also examined as a court witness.

3.5 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 had contended as follows:

The applicants having pleaded the necessary facts and adduced the necessary oral and documentary evidence had sufficiently established their case that their deceased son is a bona fide passenger and that his death had occasioned in an untoward incident, viz., accidental fall from the train and also their entitlement to compensation under facts and in law, but the Tribunal had erroneously rejected their claim without assigning any valid and cogent reasons and without proper consideration of the facts and evidence. The Tribunal had failed to note that no rebuttal evidence, which is worthy of credence was adduced and therefore, the established case of the applicants has remained unrefuted. The conclusions of the Tribunal are arbitrary and are not based on sound reasons. The Tribunal was in error in holding that the accident is not an untoward incident and in dismissing the application of the applicants. Since the appreciation of evidence and facts is perverse, there is a substantial question of law involved in this appeal. The appeal may be allowed and the impugned order may be set aside and compensation as per law and facts be awarded to the applicants by allowing their application.

5. *Per contra*, the learned Standing Counsel for the Railways while supporting the order of the Tribunal had forcefully contended as follows:

The Tribunal had framed four appropriate issues and had analytically and correctly considered the evidence and the material facts and that there is

neither perversity nor arbitrariness in the appreciation of the evidence and the facts and that the findings of the Tribunal, which are supported by cogent and valid reasons do not call for any interference. Investigation had revealed that there are no eyewitnesses to the incident. The Investigating Officer had not examined AW2 or any other friends of the deceased who were said to have accompanied him to the Railway Station and saw him off at the Railway Station. The certificate issued by the police is based on imaginary grounds and there is no basis for arriving at the conclusions stated in the said certificate. The inquest and post mortem reports show that he had sustained only three injuries. Had the incident been an accident, the deceased ought to have sustained more injuries. The injuries sustained are possible when a person commits suicide by putting his head on the track, as rightly held by the Tribunal. The view that the deceased might have committed suicide is more probable and possible in the facts and circumstances of the case. The said fact finding by the Tribunal does not call for any interference by this Court. There is no substantial question of law involved in this appeal. The appeal is devoid of merit and is liable to be dismissed.

6. I have carefully gone through the record. I have bestowed my attention to the facts and I have noted the submissions.

7. The points for consideration are:

- i) **Whether the deceased was a *bona fide* passenger of train No. DMU 5 Balugaon Palasa Passenger on 14.03.1997?**
- ii) **Whether the deceased died in an untoward incident of accidental fall from the said train, while undertaking journey from Berahmpur to Palasa?**
- iii) **Whether the applicants are entitled to award of compensation as prayed for?**
- iv) **Whether the impugned order is unsustainable under facts and in law, as contended by the applicants?**
- v) **To what relief?**

8. POINTS:

8.1 The facts that lead to the filing of this appeal by the applicants, the pleadings of the parties and the submissions of both the sides are already stated supra, in detail.

8.2 At the time of enquiry, the 1st applicant, who is the father of the deceased, was examined as **AW1**. He had affirmed the pleaded case in his affidavit filed in lieu of his examination-in-chief. Admittedly, he was not with his deceased son at the time when he had allegedly purchased a journey ticket from Berahampur to Palasa and had boarded the train at Berahampur Railway Station. He is also not an eye witness to the accident. In his examination-in-chief, he had stated that his son who had been Berahampur did not return to the house, but, the friends of the deceased who had seen him off at Berahampur railway station and who had stayed there till the next day, i.e., 15.03.1997 had later returned to Palakonda, the village of the deceased, and that therefore, he had enquired with the friends of the deceased and came to know that the deceased had left Berahampur a day prior to 15.03.1997, but, they do not know as to why the deceased had not returned to the house. He had further stated that on the same day, he had learnt about the involvement of his deceased son in an accident through a news item in a newspaper and that on that, he and his son's friend Sivasankara Rao and some other business people had immediately rushed to the Government Railway Police Station, Palasa and that they had made enquiries about the deceased and that at the police station, they were shown photographs, clothes and Hawaii chappals of his deceased son and that on that they had identified the same as belonging to their deceased son and that on that it was confirmed that the deceased had died in a train accident due to his accidental fall from a running train. He had further stated that by that time, the dead body of the deceased was already buried by the railway police after completing the formalities and investigation. He had also deposed that it was learnt that it was decided by the railway police that their deceased son while travelling in the train had slipped and accidentally fallen down from the

running train between Mandasa and Summadevi Railway Stations at K.M.No.667/14/15 and had succumbed to the injuries sustained in the accident. He had exhibited the certified copies of the FIR, the inquest report, the Post Mortem Examination report, the death certificate, the certificate issued by the R.D.O, the certificate issued by the Government Railway Police, Palasa and the SSC certificate of the deceased and also the paper clipping containing news item regarding the accident as exhibits A1 to A8. In his cross-examination, he had stated that the deceased is his eldest son and that he is aged about 23 years, and that he had left the house on 14.03.1997 with a cash of Rs.10,000/- to purchase and bring kirana goods (provisions) and that on 16.03.1997 he had seen a paper publication in Eenadu Telugu daily about the death of one person on the railway track and that on the basis of the wearing apparel he had suspected that it might be his son as his son did not return and that from the friends of his deceased son by name P.Sivasankara Rao and others he came to know that his son had boarded the train at Berahampur on 14.03.1997 in order to come to Palasa. He had further stated that he does not know as to how it came in the newspaper that his deceased son had left the house with a cash of Rs.40,000/-; but, had further stated that on 16.03.1997, he went to the Government Railway Police, Palasa and came to know that the dead body of the deceased was buried and that he had identified the chappals and the clothes of his deceased son, which were preserved by the police. It was also elicited from him that at that time the police did not give any amount or ticket to him. **AW2**, P.Sivasankara Rao who was said to be a friend of the deceased had testified that he is doing business under the name and style Tirumala Electricals for the last six years and that he often goes to Berahampur along with some other business men who are his friends to purchase business material on wholesale prices and that as usual, on the morning of 14.03.1997, he, the deceased and two other friends went to Berahampur for purchasing business material and that the deceased had purchased the business material on the same day and wanted to return on the same day evening to Palakonda; but, his business work was not completed on that day and hence, he had stayed back till the next day evening and that on 14.03.1997, about 8 PM, all of them went to Berahampur

Railway station to see off the deceased and that as there was time for arrival of the train no.DMU 5 Balugaon-Palasa passenger, they all had been to a hotel near the railway station and had spent some time at the hotel and that after some time they had returned to the railway station and that the deceased had purchased a passenger train journey ticket from Berahampur to Palasa and had boarded the train along with his luggage at about 9 PM and that afterwards, he and his other friends had returned from the railway station and that after completion of the business work, he had reached Palakonda from Berahampur on the morning of 16.03.1997 and that on enquiries by the father of the deceased about the non return of the deceased, he was surprised and he had told him that the deceased had left for Palakonda from Berahampur on the night of 14.03.1997 itself after purchasing business material by DMU 5 passenger. He had further testified that on the same day they had come to know through a news item about the accident in which the deceased was involved and the death of the deceased on the spot by falling down from the running train during night hours of 14/15-03-1997 between Mandasa and Summadevi railway stations. He had also testified that he along with AW1 and others went to the Government Railway Police Station on 16.03.1997 and that they had enquired about the accident and that on that they were shown the photographs of the deceased and his clothes and that on that AW1 had identified the same as belongings of the deceased and that AW1 had further confirmed that their son had died due to his accidental fall from the running train and that thereafter, they were informed that the dead body was buried by the railway police after completing the formalities and that he was examined by the railway police and that he had informed the facts to them. In his cross-examination while maintaining his stand, he had stated that on 14.03.1997 they all went to Srikakulam by a bus and had reached Srikakulam at 6 AM and that after getting down at Srikakulam, they had been to Amudalavalasa in another bus and that at that place they had boarded Coromandel Express to go to Berahampur and that they had reached Berahampur at about 8.30 AM and that the deceased went from Berahampur railway station to purchase kirana articles whereas he and others went to purchase electrical items and that they had disbursed at Berahampur railway

station and that they all had gathered again at Ramakrishna Lodge and that a room was taken in that Lodge in the name of the deceased and that they had again gathered at 12 noon in the lodge and that by that time, the deceased had purchased his articles and had informed them that he had purchased the articles worth Rs.8,000/- and that he is having Rs.2,000/- with him and that the deceased had stayed in the room taken in the lodge, but he and his other friends did not purchase electrical goods as the same were not available in the shop and that on the next day, they had purchased the goods such as fans, regulators, switches etcetera and that they had stayed in the room from noon till evening and that at the time of the deceased leaving Berahampur for Palasa, they came to Berahampur railway station at about 6.30 PM and that the deceased had purchased a ticket and that the deceased had also booked his luggage and had boarded the train that goes to Palasa and that from Palasa, the deceased has to catch another train or bus to Srikakulam and onwards to Palakonda. Thus, he had maintained his stand in the cross-examination and had asserted that on 16.03.1997, the police have handed over the purse of the deceased to AW1 but there was no money in the purse. He had denied the suggestion that he did not accompany the deceased to Berahampur and that the deceased had not boarded the train on the night by purchasing a journey ticket.

8.3 On the side of the Railways, a court witness was examined. He was the then Head Constable of Palasa Government Railway Police Station since six years prior to his giving evidence. According to him, on 15.03.1997, at 1600 hours while he was in the police station as in-charge Station House Officer, he had received a message from the Station Master, Summadevi Railway Station that a male dead body aged about 35 years with head separated was lying by the side of the up line between Mandasa and Summadevi stations at KM 667/14-15 and that on that he had registered a case in Crime No.20 of 1997 under Section 174 of the Criminal Procedure Code and had issued an FIR and had reached the spot at 5.30 PM and found a male body between up-down line at KM 667/14/15 facing upwards and that he had posted a guard at the dead body and that he had held inquest over

the dead body in the morning hours between 7 and 9 on the next day in the presence of mediators. He had testified that he did not examine any witnesses either during the inquest or before the inquest and that they had found that the head was crushed and was hanging to the body and that the left foot was also crushed and that the body was woollen and was in a decomposed state and that rigor mortis has set in and that they had also found black pant, brown shirt with white strips, black waist thread, green drawer, hawai chappals etcetera and that later, the dead body was referred for post mortem examination and that after conducting post mortem, he had got taken photograph of the dead body and got published a news item in the District Edition of Eenadu Telugu newspaper and that he could not trace out the relatives of the deceased in spite of his efforts and that therefore, he had taken steps to dispose of the dead body and that the brother of the deceased and his friends had identified the clothes, the chappls and hand written chit found on the dead body and that they had stated that the same belong to the deceased and that he had recorded their statements and that on 18.03.1997, the father of the deceased (AW1) and his brother came to the police station and that he had also recorded their statements. In his evidence exhibit A6, the certificate was marked. In his cross examination for the Railways, he had admitted that the message issued by Station Master, Summadevi appears to have been issued at 07.20 hours, but had stated that he had received the said message at 16.00 hours and had denied the suggestion that the message was sent at 07.20 hours on 15.03.1997 and that they had registered the case at 1600 hours. When it was further suggested to him that the deceased did not fall from the train and that he did not conduct proper investigation, he had denied the said suggestions. **RW1** was the then Commercial Inspector in the office of the Chief Commercial Manager (Law), South Eastern Railway, Kolkotta. According to him, in view of the evidence of AW2 that the deceased had booked luggage at the time of undertaking the journey, he (RW1) had made enquiries about the case and had verified the records at Berahampur parcel office and had found that no such luggage either with the owner or in the brake van was booked from Berahampur to Palasa on 14.06.1997 by any passenger train. He had hence, stated that the

statement of AW2 is not true. He had further stated that AW2 had not mentioned in his evidence the luggage ticket number. He had further testified that as AW2 had stated that he along with the deceased had stayed in a lodge at Berahampur on 14.03.1997, he had made further enquiries at Berahampur city and had found that no such Lodge by name Ramakrishna Lodge was existing in that city by that time and that to that effect he had also obtained a certificate from the Berahampur Municipality and that his enquiries disclosed that there was no such Lodge registered in the records of the Municipality. He had exhibited exhibits R1 to R3. In his cross-examination, he had maintained his stand.

8.4 Having regard to the above evidence on record, the Tribunal had held against the applicants on all the issues and had dismissed their claim application. In fact, the Tribunal had recorded a finding to the effect that the inquest report and the post mortem examination report would show that the deceased had sustained only three injuries and that when the deceased had fallen down from the running train, he ought to have sustained more injuries and that the injuries sustained by the deceased are probable on account of committing suicide by putting the head on the track and that the applicants could not establish that an accident had occurred and that the deceased is a victim of an untoward incident and that the deceased is a *bona fide* passenger at the time of the accident.

8.5 In this backdrop, I have carefully gone through the pleadings of both the sides and cautiously analysed the evidence brought on record. AW1 had deposed to the effect that his son is a businessman in kirana goods and that he went to Berahampur with some cash to purchase certain krana articles for his business. The evidence reveals that the deceased had left the house on 14.03.1997 in order go to Berahampur to purchase fancy and kirana items at wholesale prices, but, did not return home and that later, on enquiries with AW2 and his friends and on seeing newspaper item, AW1 had suspected that his son might have died in an untoward incident and that, therefore, he went to the Railway Police Station at Palasa and later came to know that his son had died in an untoward incident, i.e., an accidental fall from a running train

at K.M.No.667/14/15,bBetween Mandasa and Summadevi Railway Stations while undertaking journey from Berahampur to Palasa by 5 DMU Balugaon-Palasa passenger on 14.03.1997. It was not pleaded in the defence of the Railways that the deceased might have committed suicide. It is not even suggested to AW1 that his son had committed or might have committed suicide. AW2, who is the friend of the deceased and a businessman in electrical goods at Palakonda, where the deceased used to also do business in fancy items, had testified about his accompanying the deceased to Berahampur Railway station on the evening of that day and about the deceased purchasing a journey ticket and boarding the train and he and his other friends seeing off the deceased at the railway station. It is not even suggested to this witness in the cross-examination that the deceased might have committed suicide and that the death was not due to any untoward incident. Admittedly, the dead body of the deceased was found at KM 667/14/15 between Mandasa and Summadevi railway stations and on receiving a message from the Station Master, through Head Train Clerk, Palasa stating that a male dead body aged about 30 years was lying at that place, the police constable who was examined as a Court witness had registered a case, investigated into the matter and had conducted inquest on the dead body of the deceased during the course of his investigation. However, he did not record any statements at that time according to his evidence. The inquest report shows that at the scene of accident/incident i.e., between KM 666/14-15 railway posts between up-down lines and between Summadevi and Mandal Roads Railway Stations, the dead body was lying in supine position with the head towards North and legs towards South and that on the Eastern side of the corpse at a distance of one foot there is up line, and afterwards, there is a cashew garden and that on the western side of the corpse at a distance of one foot there is down line and after wards there is a garden with eucalyptus trees and cashew nut trees and that on the Northern side of the corpse at a distance of 4 posts there is an L.C gate bearing No.667/11 and that on the Southern side there is a railway post bearing no.667/1. Further, in the cross-examination of RW1, he had also stated that he could not even take the thumb impression of the dead body on his records

as the fingers were crushed. The inquest paanchas did not express any opinion as to the cause of death. However, the Sub Inspector of Police of the Government Railway Police Station, Palasa has given exhibit A6 certificate certifying that the deceased had slipped and fallen down while travelling from Berahampur to Palasa by DMU 5 Balegaon passenger. In view of the facts peculiar to the case, the contention that the journey ticket might have been lost at the time of the accident is highly probable and deserves acceptance.

Though a railway officer who was examined as RW1 had stated that he had made enquiries about the case and had verified the records at Berahampur parcel office and had found that no such luggage either with the owner or in the brake van was booked from Berahampur to Palasa on 14.06.1997 by any passenger train and that his enquiries had also revealed that there was no lodge by name Ramakrishna Lodge in Berahampur where the deceased and his friends had stayed for some time, that evidence is not sufficient to come to a safe conclusion that the deceased did not purchase a ticket at Berahampur railway station and had not boarded the train at Berahampur railway station on 14.03.1997.

8.6 Dealing further with the contention of the Railways that the deceased had not purchased a journey ticket and that the applicants had failed to prove that the deceased was a *bona fide* passenger, 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 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 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^[1]. 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 referred to the decision of the Supreme Court in *Tahazhathe P Urayil 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 the decisions on this settled legal position.

8.7 Having regard to the facts, the evidence 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 accident. Viewed thus, this Court holds that the deceased is a *bona fide* passenger.

8.8 In order to further appreciate the vital and material aspects of the case, it is necessary to refer to some of the provisions of the Railways Act.

Section 2 clause 29 of the Railways Act, 1989 defines 'passenger' to mean "a person travelling with a valid pass or ticket". Chapter XIII of the Act deals with liability of Railway Administration for death and injury to passengers due to accidents. Under the said Chapter, Section 123 provides for definitions. Clause (a) of Section 123 defines 'accident' to mean an accident of the nature described in Section 124. Clause (c) of Section 123 defines untoward incident, thus:

(c) "untoward incident" means -

- (1) (i) the commission of a terrorist act within the meaning

of sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson;

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or (2) the accidental falling of any passenger from a train carrying passengers.

8.9 Before dealing with the 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. When it is not the case of the Railways that the deceased had committed suicide by putting his head on the railway track, the Tribunal is not expected to make out a case which is not pleaded and established by the Railways by going outside the pleadings and evidence. Therefore, the finding of the learned Tribunal that the deceased might have committed suicide by putting his head on the track is liable to be over turned. 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 or suicide. Therefore, this Court holds that falling down of the deceased from the train was, thus, clearly accidental.

When once this court has recorded a finding on issue no.1 that the deceased was a *bona fide* passenger and further holds 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.

9. In the result, the appeal is allowed awarding a compensation of Rs.4,00,000/- with interest at 9% PA simple from the date of the application till the date of deposit. The respondent/railways are 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.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

30th September, 2015
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[\[1\]](#) 2012 Law Suit (Ker) 1545