

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.131 of 2008
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JUDGMENT:

The Union of India, the unsuccessful respondent, had preferred this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 assailing the order dated 25.10.2007 of the Railway Claims Tribunal, Secunderabad Bench passed in OAA.No.154 of 2004 filed by the applicant claiming compensation for the injuries sustained and disability suffered in an untoward accident, viz., an accidental fall from the train.

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

3. The case of the applicant is this:

On 16.06.2004, the applicant came to Ongole railway station at about 20.45 hours and had purchased a journey ticket by paying a fare of Rs.39/- in order to go to Tenali from Ongole and had boarded the train No.7053 i.e., Hyderabad Express at Ongole railway station. On that day, the train had arrived late at that station and there was a heavy rush of passengers. The train had started with a sudden jerk; and as a result, the applicant, who was near the door of the train had accidentally slipped and had fallen down from the train at about 22.45 hours. His body came in between the platform and the train; and, the wheels of the train ran over his left hand and his left hand was amputated and got separated from the body. He had lost his ticket during the course of the accident. In the circumstances stated, he is entitled to recover a compensation of Rs.4,00,000/- from the Railways.

3.1 On the other hand, the defence of the UOI/Railways is in the nature of general and specific denial. It had *inter alia* contended that the applicant was an unauthorised hawker (seller of omlets) on the platform and that he was not

a *bona fide* passenger and that after selling omlets and while detraining the moving train at Ongole railway station, he had fallen down and that later, a Head Constable of Railway Police Station, Ongole had mentioned the train number and the journey fare, but, did not mention the ticket number in his record and that therefore, the applicant is not a *bona fide* passenger; and, in any view of the matter, the accident had occurred due to the negligence and own criminal act of the applicant, and that, therefore, the applicant is not entitled to claim any compensation.

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

1. Whether the Applicant was a bona fide passenger of train No.7053 Hyderabad Express travelling from Ongole to Tenali on 16-6-04?
2. Whether the Applicant sustained injuries as a result of an untoward incident of accidental fall from the said train?
3. Whether the Applicant is entitled to claim compensation of Rs.4 lakhs?
4. To what relief?

At trial, the applicant was examined as AW1 and exhibit A1-photograph, exhibit A2- copy of a memo, exhibit A3- copy of a statement and exhibit A4- discharge card of the applicant were exhibited. The Station Superintendent of the railway station was examined as RW1; and, the report of the DRM and the copy of a memo were exhibited as exhibits R1 and R2. On merits, the Tribunal had held in favour of the applicant and had awarded a compensation of Rs.2,80,000/-. Therefore, the aggrieved Railways is before this Court.

4. The learned counsel for the appellant/Railways would contend that the applicant is not a *bona fide* passenger and that he was not holding a valid ticket at the time of the alleged untoward incident and that the applicant had failed to produce a valid ticket and that only the fare and the destination were mentioned to the Head Constable, but, not the ticket number and that any

person like a hawker on the railway platform can mention those details and that in the facts and circumstances of the case, the Tribunal had erroneously considered the applicant as a passenger without proof that he is holding a valid ticket at the time of the alleged incident and thus, the applicant had failed to prove that he is a *bona fide* passenger as per the provisions of the Act and that in any view of the matter, the untoward incident is due to the gross negligence of the injured as could be seen from the record and that at the time of the accident there was no alarm chain pulling and that therefore, the order of the Tribunal is erroneous and is not in accordance with the facts and law and that therefore, the appeal may be allowed and the impugned order may be set aside.

5. On the other hand, the learned counsel for the applicant while supporting the order of the Tribunal had urged as under: 'The Tribunal has framed appropriate issues and had accurately considered the facts and the evidence brought on record. Immediately after the accident, the injured was examined by the police concerned of the railways and his statement was marked as exhibit A3. The Tribunal, after properly evaluating the evidence with reference to the facts had held that the applicant had sufficiently proved his case. Except stating that the applicant is a hawker, the railways did not produce any evidence. Even the contents of the documentary evidence filed by the railways do not show that the applicant is a hawker. Therefore, the finding of the Tribunal that the applicant is a *bona fide* passenger does not call for any interference. When the applicant had fallen from a running train and had sustained grievous injuries, the railways cannot absolve its liability simply because the ticket is not produced as there is a presumption generally that every passenger travels with a ticket and that presumption comes to the aid unless the contrary is proved. No rebuttal evidence was adduced to dislodge the said presumption. Considering the manner of accident, there is every possibility of loss of the ticket purchased by the applicant, and hence the said contention of the applicant can be accepted. There is no merit in the contentions of the Railways. 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:

Whether the injured-applicant was a *bona fide* passenger of the train no. 7053 i.e., Hyderabad express on 16.06.2004? And, if so, whether the injured 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?

7. **POINTS:**

7.1 The facts of the matter and the contentions of both the sides are already stated supra, in detail. I have given earnest consideration to the facts and noted the submissions. The applicant, who was examined as AW1 deposed in line with his pleaded case and had maintained his stand in the cross-examination. The statement, which he had given to the police concerned of the railways immediately after the accident was exhibited as exhibit A3. The statement on a perusal would show that he had purchased a ticket up to Tenali and had boarded the Express train no.7054 and that on that day, as the train was over-crowded, he had accidentally slipped and fallen down from the train when it had started with a sudden jerk and that in the said circumstances, his left hand suffered traumatic amputation and was separated from the body and that the ticket, which he had purchased by paying Rs.39/- was lost and that thereafter, he was taken to Ongole railway hospital and was admitted as an inpatient. The said statement, which was given by the applicant, immediately after the accident in which the applicant had suffered a grievous injury, cannot be doubted. There is no evidence, in the well considered view of this Court, to dislodge the evidence on the side of the applicant. Except stating that the applicant is a hawker, the railways did not adduce any evidence. Even exhibit A3 statement, which was given by the co-passenger to the Station Master, also would show that one male person had fallen from the train and his left hand was cut off from below shoulder and was lying at the end of the platform and that the age of that person is about 38 years. Even this statement of the co-passenger does not disclose that at that time, the applicant was selling omlets. The Station Master, who was examined as RW1 had only stated that he had received a report from one Ganesh to the effect that one male person aged 38 years had

slipped from the train and had sustained injuries and on that he had immediately given a message to the Government Railway Police, Ongole for taking necessary action. He did not also state that the applicant is a hawker and not a *bona fide* passenger.

7.2 It is undisputed that a person will not be permitted even on to 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. 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 until the contrary is proved that every person entering onto the platform holds a valid platform ticket and that every person who enters the compartment of a train to undertake a journey holds a valid journey ticket. In support of the view that such a presumption can be drawn, the learned counsel for the applicant 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 show 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. In the said factual background, the Kerala High 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 presumed that the deceased might have travelled with a ticket and not without a ticket. In the said decision, the Kerala High Court having referred to the decisions of the Supreme Court in *Tahazhathe Purayil Sarabi v. Union of India* [2009 ACJ 2444]; 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 spring 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 injured held a ticket and that the ticket was lost at the time of the incident.

7.3 Viewed thus, this Court holds that the injured was a *bona fide* passenger and that he had sustained injuries as a result of an untoward incident of accidental fall from the said train.

7.4 Coming to the contention that the injured/applicant is not entitled to compensation as the incident/accident had occurred only because of the criminal negligence and own criminal act of the applicant, what is to be noted is that this contention was advanced on behalf of the Railways as the applicant who was admittedly standing at the door of the train had fallen from the train, when the train had started with a jerk. In this regard, it is apt to note that the applicant had maintained a stand that on the date of the incident the train had arrived late at the station and that there was heavy rush of passengers and that therefore, when the train had started with a jerk, he had fallen from the train due to accidental slip. Hence, the case of the applicant is that there is no negligence on his part and that the accidental fall was neither on account of his negligence nor was due to his own criminal act. 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^[2]. As per the facts of this cited case, the deceased who was a passenger of a train and who was travelling from Korukkupet 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 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 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 applicant, when once the railways issues tickets to passengers to board trains, it is for the railways to take steps and appropriate measures to provide accommodation in the compartments of trains to all the passengers holding valid tickets and take security measures to close the doors before the trains move from the platform and open on arrival of the train on the platforms. The railways having issued tickets to passengers to board trains, which are over-crowded cannot put the lives of the citizens to risk and shirk its responsibility with regard to safety and security of the passengers and then contend that it is not liable to pay compensation. Therefore, the contention of the Railways cannot be countenanced being devoid of merit.

7.5 Viewed thus, this court holds that the injured/applicant is a *bona fide* passenger and that he had sustained injuries in an untoward incident, viz., accidental fall from the train and that in the facts and circumstances of the case, the Tribunal is justified in awarding compensation to the applicant and that therefore, the order impugned does not call for any interference.

8. In the result, the appeal is dismissed. No costs.

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

M. SEETHARAMA MURTI, J

02nd July 2015
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[\[1\]](#) 2012 Law Suit (Ker) 1545

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

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