

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.838 of 2008

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JUDGMENT:

Union of India, the unsuccessful respondent/Railways, had preferred this Civil Miscellaneous Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity) assailing the order dated 31.03.2008 of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad passed in O.A.A.No.20 of 2002 filed by the injured/applicant claiming compensation for the loss sustained by him due to the injuries sustained and disability suffered due to his involvement in an untoward incident viz., an accidental fall from a running train.

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

3. The case of the applicant, in brief, is as follows:

The applicant who is of 27 years of age is a sports person. He had participated in State level and other sports meets and had completed his Physical Education Training (PET) course. Having purchased a valid journey ticket, he had boarded Machilipatnam Express on 10.03.2001 at Khammam Railway Station to go to Dornakal. Due to the sudden jerks of train, he had fallen down from the train at KM No. 474/17-19 when the train had reached Mallemadugu Railway Station and became unconscious. He had suffered fracture injuries and disfiguration of face; and, about 10 teeth were broken. This fall had happened when he was returning from the toilet after attending a nature's call. The key man of the Railways who had noticed the petitioner at 8.00 hours had reported about the incident to his authorities. The applicant was admitted in Cure Hospital, Khammam. He had incurred an expenditure of more than one lakh of rupees on his treatment and surgeries

including 'facio maxillary surgery'. He had paid Rs.25,000/- towards surgeon's fee. He was treated as an inpatient from 10.03.2001 to 23.03.2001 and was advised bed rest for 90 days from 24.03.2001 onwards. The injuries sustained in the accident had badly affected his bright future and caused mental agony. He became physically very weak and mentally depressed. He is suffering frequent headaches and is not able to run and play football as in the past. Hence he is entitled to claim a compensation of Rs.4,00,000/-.

4. The case of the Railways, in its reply, is as follows:

The material averments in the application are false. The averments that the applicant had fallen down from Machilipatnam Express-T.No.7049 on 10.03.2001 while traveling from Khammam to Dornakal due to sudden jerks of train is denied. According to a message relied on by the applicant, it is seen that the message was issued by the Station Superintendent, Mallemadugu to the Sub-Inspector, Government Railway Police Station ('GRP' for brevity), Khammam stating that on 10.03.2001 at 9.45 hours one male person aged 25 years had fallen down from train at KMs 474/17-19 as reported by Keyman George at 8.00 hrs. The applicant had stated in his application that he was traveling on 10.03.2001 in Machilipatnam Express from Khammam to Dornakal and the said train had departed Khammam at 23.26 hours whereas the message relied upon by the applicant was issued at 9.45 hours on 10.03.2001. From the above facts, it is clear that the applicant was trying to foist a false case. The applicant had fallen down from Machilipatnam Express is denied as he could not have travelled by the said train at all. The drivers of the trains, while approaching stations, follow all safety measures and speed regulations and the trains moving on tracks will not have jerks of any nature. Whenever a person falls from a train there will be some commotion among co-passengers and there will be chain-pulling and stoppage of train. No such incidents had taken place in the present case. Even according to the guard of the said train, no untoward incident had happened on 10.03.2001. The case of the applicant is, therefore, not an accidental fall from the train. Hence, his application is not maintainable. The applicant is a *bona fide* passenger of the train is denied. The enquiries revealed that the incident was caused by the acts of the applicant. Hence he is disentitled to any compensation. The Railways are not liable to pay any compensation. Hence, the petition may be dismissed.

5. At trial, the applicant was examined as AW1 and the copy of memo was marked as exhibit A1 on his side. The then Assistant Station Master, Mallemadugu Railway Station was examined as RW1. The control message copy was exhibited as exhibit R1 on the side of railways.

6. On merits, the Tribunal had allowed the application of the applicant and had awarded a compensation of Rs.4,00,000/- with interest.

7. Feeling aggrieved, the Union of India/Railways have preferred this Civil Miscellaneous Appeal.

8. The learned Standing Counsel for the Railways had contended as follows:

The Tribunal ought to have seen that the injuries were sustained by the applicant on account of his own negligence and criminal acts as he was standing near the door of the compartment of a moving train without taking any precautions and without seeing to it that the door of the compartment is kept closed. The Railways ensures that all the doors of the compartments of the running trains would be closed during night hours. Therefore, the fall of the applicant from the running train is only on account of his negligence and the injuries, if any sustained, by him are self-inflicted injuries and come within the exceptions of Section 124 of the Act. The Tribunal ought to have seen that there was no eye-witness to the incident. Any co-passenger had neither noticed the falling of the applicant from the train nor was the incident brought to the notice of the train guard. There was no chain pulling to stop the train at the place of the alleged fall and there was no commotion raised by the co-passengers. Any untoward incident might have happened only due to the negligence and criminal act of the applicant. Admittedly, the journey ticket was not produced. The theory that the ticket was lost at the time of accident or it had remained in the luggage of the applicant, which was not seized by the Railways, is not correct. No untoward incident of accidental fall had taken place while the applicant was allegedly travelling on Machilipatnam express as contended by him. The applicant is not entitled to any compensation. The applicant is put to strict proof that his case falls under the provisions of Sections 124A and 123(c) of the Act. The claim is untenable. Hence the appeal may be allowed and the impugned order may

be set aside.

9. *Per contra*, the learned counsel for the applicant had contended as follows:

The applicant, having pleaded necessary facts and adduced necessary oral and documentary evidence, had sufficiently established his case that he had sustained injuries in an untoward incident, viz., an accidental fall from the running train and that he is entitled to compensation under facts and in law. The Tribunal had framed necessary issues. The Tribunal considered the facts accurately and the evidence in proper perspective before recording findings, supported by valid and cogent reasons and allowing the application and awarding compensation as prayed for. All the contentions of the Railways were considered extensively. The Railways are not entitled to raise the self-same contentions before this Court. No substantial questions of law are involved in this appeal. The Tribunal had recorded findings of fact to the effect that the applicant is a *bona fide* passenger and that his fall from the train is an untoward incident. There are no grounds calling for interference with the well-reasoned and well-considered order of the Tribunal. There are no grounds much less valid grounds to entertain the appeal. The appeal is devoid of merit and is liable to be dismissed.

10. Now the points that arise for determination in this appeal are:

- i) Whether the applicant is a bona fide passenger of T.No.7049 Machilipatnam-Secunderabad Express on 10.03.2001?**
- ii) Whether the applicant had sustained injuries as a result of untoward incident of accidental fall from the said train at KMs. 474/17-19 on the said date?**
- iii. Whether the applicant is entitled to any compensation?**
- iv. Whether the order awarding compensation is unsustainable under facts and in law, as contended by the Railways?**
- v. To what relief?**

11. POINTS:

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

11.2 At the time of enquiry, the applicant was examined as AW1. He had affirmed

his pleaded case in his affidavit filed in lieu of examination in chief. In his cross-examination, he had stated that the ticket fare from Khammam to Dornakal is Rs.18/- and that he had boarded Machilipatnam-Hyderabad express and that the train had arrived at 12.00 midnight and that at 12.10 midnight, the train had reached Mallemadugu Railway Station and that some passengers in the compartment had seen him falling down from the compartment but the train was not stopped at that spot and that till 7.00 am, he was lying on the track of Mallemadugu Railway Station and that at about 7.00 am the railway gang-man came and that ever since his fall, he was unconscious till he was admitted in the Hospital and that the Assistant Station Master of Mallemadugu informed his mother about the incident at Dornakal and that his late father was also a gang-man and that his father had earlier worked at Dornakal and that one B. Raghu, a points-man working at Mallemadugu also came to the spot when gang-man informed the incident to the Assistant Station Master at Mallemadugu Railway Station and that one Amzad was working as Assistant Station Master at Mallemadugu Railway Station and that he (AW1) was first admitted in Government Hospital and that later he was shifted to Cure Hospital, Khammam for better treatment and that in the accident, his clothes were torn-off and that he does not know as to what had happened to his journey ticket. He had further stated that he had sustained injuries to his teeth and face. The line of defence pleaded in the counter of the Railways, is not suggested to him. RW1, the then Assistant Station Master, Mallemadugu had testified that on 10.03.2001 he was on duty from 00.00 hrs to 08.00 hours and that at 8.00 hours the key-man by name George had informed that one male person was lying in injured condition at KMs. 474 /17-19 and that based on that information, he (RW1) gave a message to the Sub-Inspector of GRP and that the copy of the same is exhibit R1. In his cross-examination, he stated that he had received a report from Key-man that he had noticed that one injured was lying by the side of the track at KMs. 474/17-19 on 10.03.2001 at 8.00 hours and that he (RW1) gave the control message in which the incident is noted. He had also stated that he had informed the concerned GRP for taking action. Exhibit R1 reads as under: "One male person, aged about 25 years, had fallen down from train at KMs 474/17-19 as reported by Key-man George at 8.00 hours. Please do needful." Having regard to the pleadings and the evidence brought on record, the Tribunal had held that the applicant had sustained injuries on account of his involvement in an untoward incident viz., an accidental fall from Machilipatnam Express while traveling from Khammam to Dornakal and that this fall had occurred when the train

reached Mallemadugu Railway Station i.e., at KM 474/17-19 and that on his said fall he became unconscious. Dealing with the aspect as to whether the injured was a *bona fide* passenger, the Tribunal had referred to the cross-examination of AW1, wherein it was elicited that the fare of the journey ticket from Khammam to Dornakal is Rs.18/- and the journey ticket is lost in the accident as it was kept in his luggage. The fact established is that on fall from the train the applicant became unconscious. He was found lying by the side of the track by the Key-man who had informed the same to the Station Superintendent, Mallemadugu; he in turn had sent a message to the GRP. Though the Railways contended that, since the ticket is not produced, the applicant cannot be treated as a bona fide passenger, the Tribunal noted that the luggage of the applicant was not seized by the railways and had accepted the theory that the ticket might have been lost in the accident or might have remained in the luggage that was not seized. 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 manpower 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 possesses 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 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 the decisions on this settled legal position. Having regard to the facts and circumstances, this Court finds that the Tribunal is justified in holding that the applicant held ticket and that the ticket was lost due to his involvement in the accident.

11.3 Before proceeding further, 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.

Section 124-A of the Act 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
- 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.”

The learned standing counsel for the railways, as already noted, had contended alternatively that the injured had fallen down from the train as he was standing at the door of the compartment of the running train without keeping the door of the compartment closed; and that therefore, his accidental fall, in any view of the matter, is on account of his own negligence and criminal act and that the injuries are self-inflicted and hence, the Railways are not liable to pay any compensation. In this regard, it is necessary to refer 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 Hon’ble 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 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. Hence, in the facts and circumstances of the case, it cannot be said that the injuries sustained by the applicant are on account of his own criminal act or that they are self inflicted. Therefore, the falling down of the deceased from the train was, thus, clearly accidental, in the facts and circumstances of the case.

11.4 Having regard to the reasons assigned, this Court finds that the Tribunal is justified in allowing the claim of the applicant and that the order impugned is sustainable under facts and in law. The points are thus answered in favour of the injured-applicant and against the Railways.

12. In the result, the appeal is dismissed confirming the order dated 31.03.2008 of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad passed in O.A.A.No.20 of 2002. There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

14th October, 2015

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