

HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.204 of
2008

JUDGMENT:

This appeal is preferred questioning order dated 14.09.2005 in O.A.A.No.229 of 1998 on the file of Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

2. Appellants herein are claimants before Railway Claims Tribunal (for short "claims tribunal"). First appellant filed application before claims tribunal under Section 16 of Railway Claims Tribunal Act, 1987 read with Section 124 A and 125 of Indian Railways Act (for short "the Act") claiming compensation for the death of Ch.Surya Prakash Rao, who died on 27.08.1998 contending that the deceased went to Chinaganjam to get fruit stock from Karawadi, and boarded Train No.424 at Chinaganjam and that he slipped and fallen down from running train, as a result, he was dragged for about 100 sleepers and succumbed to injuries and the sole applicant claimed compensation as dependant being mother of the deceased, and on her death, other dependants i.e., wife and son were brought on record as claimants No.2 and 3, as per orders in I.A.Nos. 304 to 306 of 2004 dated 15.12.2004. Railways opposed the claim and contended that the deceased was not a bonafide passenger and that there was no untoward incident and railways is not liable to pay any compensation. On these contentions, claims tribunal

conducted enquiry, and on the basis of oral and documentary evidence produced on behalf of both parties, held that deceased was a bonafide passenger but denied the compensation on the ground that claimants failed to produce any proof that they are dependents of the deceased and that there was no untoward incident and facts of this case do not fall under Section 124 A of the Act, and on these two grounds, dismissed the claim petition. Aggrieved by the dismissal order, claimants preferred the present appeal.

3. Heard both sides.

4. Advocate for appellants submitted that the findings of claims tribunal are contrary to law and facts and the tribunal grossly erred in not properly appreciating the material on record. He further submitted that claims tribunal was grossly erred in holding that col.No.15 of the inquest report is not in favour of claimants and that the incident was not an untoward incident.

5. In support of his argument, he relied on a decision of Hon'ble Supreme Court reported in ***Union of India v. Prabhakaran Vijay Kumar and others***^[1] wherein, it was held that even if a person who was inside the train fell down while trying to get down or getting in, would also fall under untoward incident as defined under Section 125(c) of the Act, therefore, the findings of claims tribunal on this aspect is not correct. He also relied on a decision of Supreme Court in

Jameela and others v Union of India^[2]. He submitted that claims tribunal accepted appellants No.2 and 3 herein as legal representatives of the deceased/applicant only on the basis of certificate produced by them, which was filed along with I.A.Nos.304 to 306 of 2004, but without looking into that certificate, tribunal recorded a findings that appellants have not placed any proof to show that they are legal representatives of the deceased, which is an erroneous finding.

6. On the other hand, learned Standing Counsel for Railways submitted that claims tribunal has rightly dismissed the claim of appellants as they have not produced any material to show that they are legal representatives of the deceased and that they would come under the definition of 'dependants'. He further submitted that as there is no material to show that petitioner is a bonafide passenger for train No.424, claims tribunal rightly held that there was no untoward incident and that there are no grounds to interfere with the findings of claims tribunal.

7. Now the point that would arise for my consideration is:

Whether the order of Claims Tribunal is legal, proper and correct?

POINT:

8. Evidently, Ch Vinuthamma, mother of the deceased alone filed claim petition, and after her death, wife and son of the deceased were brought on record as

legal representatives. Advocate for appellants submitted that as per Section 125(2), petition can be filed by any one of the dependants on behalf of other dependants also, and in this case, mother representing other dependants filed claim petition, and after her death, the other dependants came on record, therefore, there is no bar to file application by one of the dependants. This proposition is not opposed by learned Standing Counsel for Railways. As seen from the provisions i.e., Section 125(2) of the Act, the submission of advocate for appellants has to be accepted.

9. According to appellants, on 27.08.1998, deceased went to Chinaganjam to get fruit stock from Karawadi and that he boarded train No.424 at Chinaganjam and that he slipped and fell down from running train. Admittedly, journey ticket was not produced before claims tribunal. But from the evidence on record, it is clear that the deceased was a passenger for train No.424 and as the entire body was cut into pieces, the tribunal recorded a finding that ticket might have been lost, therefore has drawn a presumption in favour of appellants and recorded that the deceased was a bonafide passenger for train No.424. Having recorded that the deceased was a bonafide passenger, claims tribunal held that it was not an untoward incident and it is only negligence of criminal act by passenger himself.

10. I n ***Union of India vs Prabhakaran's*** (1

supra) case, the deceased therein has fallen down while he was trying to enter into a running train and considering those facts, Hon'ble Supreme Court held that it would fall within the meaning of untoward incident. Hon'ble Supreme Court in that case observed as follows:

14. 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 railway 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 bonafide 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."

11. In ***Jameela and others***'s (2 supra) case, where the passenger was standing at the open door of the train and fell down from the compartment, Hon'ble Supreme Court held that it would also fall under untoward incident under Section 123(c) of the Indian Railways Act, and observed as follows:

“12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause(c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.”

12. From the above two decisions, it is clear that the case on hand would fall within the meaning of untoward incident attracting Section 123(c) of the Indian Railways Act. Therefore, claims tribunal was not right in recording that the incident was not an untoward incident and it was due to negligence of the passenger falling under the criminal act.

13. Relying on the above two decisions, I am of the view that the findings of claims tribunal has to be set aside and held that the incident is an untoward incident attracting Section 123 (c) of the Railways Act.

14. The other ground on which claims tribunal refused to grant any compensation to the appellants is that appellants failed to place any material to show that they are dependants of the deceased. As seen from the record, along with I.As to implead the appellants No.2 and 3 herein as legal representatives of the

deceased/first appellant they filed a certificate issued by MRO, Bapatla dated 05.09.2001, according to which, appellants No.2 and 3 are certified as wife and son of the deceased. Appellant No.2 is certified as wife of deceased Surya Prakash Rao, who died on 27.08.1998 and certified that certificate is issued to recover compensation amount from Railway authorities and when such a documentary evidence is produced and considered by the claims tribunal and also given a marking as Ex.A2 recording a finding that no material is produced to show that the appellants No.2 and 3 are the dependants of the deceased is unwarranted and cannot be sustained.

15. As rightly pointed out by advocate for appellants, if the appellants No.2 and 3 have not produced any material they cannot be allowed to come on record and when they are allowed to come on record as legal representatives of the deceased and when that order was not challenged by the railways again examining that aspect in the main case, in my view, it is not correct and therefore, the findings of claims tribunal on issue No.3 are liable to be set aside.

16. On a scrutiny of the material, I am of the view that claims tribunal erred in refusing compensation to appellants and that appellants are entitled for compensation of Rs.4 lakhs with interest @ 6% from the date of accident till the date of order and thereafter @ 9% from the date of order till the date of realization.

17. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 20-04-2016.
gvl

[\[1\]](#) (2008) 9 Supreme Court Cases 527
[\[2\]](#) (2010) 12 Supreme Court Cases 443