

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.M.A No. 1096 OF 2009

JUDGMENT:

This appeal is filed by the appellant-Union of India against the order, dt.31.09.300 passed in O.A.A.No.94 of 2004 by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad against the grant of compensation of Rs.2,40,000/- to the respondent for the injuries sustained by him in the accident that occurred on 16.02.2009.

The facts of the case in brief are that the respondent filed an application in O.A.A.No.94 of 2004 stating that on 16.02.2004 while he was travelling in a train from Vijayawada to Ramagundam at Pulai Village he accidentally slipped and fell down at Kothapalli Village limits and the villagers took him to Singareni Area Hospital, Ramagundam, where his right leg was amputated. The respondent/applicant claimed an amount of Rs.4,00,000/- as compensation.

The appellant filed counter before the Tribunal stating that as per the guard of the train, there is no ACP and no untoward incident happened and therefore, the police report was imaginary and the applicant was put to proof regarding the

averments in the application.

Basing on the evidence of AW-1 and Exs.A-1 to A-4 on behalf of the applicant and the evidence of RW-1 and Ex.CW-1 on behalf of the respondent and also Ex.C-1 case sheet, the Tribunal granted an amount of Rs.2,40,000/- towards compensation together with interest at the rate of 6% per annum from the date of application, till the date of award and thereafter, at the rate of 9% per annum from the date of actual payment, till the date of realization.

The learned counsel for the appellant submits that the respondent is not a bona fide passenger, as he has not reported to the Railway authorities about the injuries sustained by him and he was straight away sent to area hospital. He also submits that since there is negligence on the part of the injured, the appellant is not liable to pay compensation.

The learned counsel for the respondent seriously opposed the contentions of the learned counsel for the appellant and states that the respondent was having valid ticket and the appellant has not examined any witnesses for discharging their burden that the respondent is not a bona fide passenger.

It is to be seen that the respondent/applicant examined

himself as AW-1 and stated in the application that he had fallen from the train and villagers had taken him to the hospital. Ex.C-1 clearly shows that the respondent received injury, as he fell from the train while he was travelling from Vijayawada to Ramagundam and it also shows the ticket number of the respondent and that his son brought him to the hospital. Ex.A-4 original ticket and the letter of Senior DSC/RPF/SC to CCO/SC of 28.07.2005 (part of DRM report) shows that the respondent was a bona fide passenger. Basing on the report of DRM, the Tribunal found that as per Ex.C-1, the applicant was brought to the hospital stating that he had fallen from the train. Basing on this, the Doctor intimated the medico-legal case to the GRP. Ex.A-3- GD entry was corroborated by medical document Ex.C-1. Basing on the said documents, the Tribunal held that the deceased is a bona fide passenger. Ex.A-2 intimation with regard to Medico Legal case shows the nature of injuries such as “amputated lower limb (RT) below knee” and Ex.A-1 Discharge Card shows that A/K amputation was done on 18.02.2003.

As observed by the Tribunal, the respondent has fallen from the train and received injuries, for which his right leg was amputated,

The appellant has not examined any witnesses to show that the respondent is not a bona fide passenger.

In UNION OF INDIA VS. PRABHAKARAN VIJAYA

KUMAR AND OTHERS ^[1] the Apex Court held as follows:

“[11] No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332 etc.

[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

traveling 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 traveling 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.

[15] Section 2 (29) of the Railways Act defines 'passenger' to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states :

"124A. 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 killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be 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 purposes of this section, "passenger"

includes -

- (i) a railway servant on duty; and
 - (ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".
- (emphasis supplied)

[16] The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.

[44] In various social welfare statutes the principle of strict liability has been provided to give insurance to people against death and injuries, irrespective of fault.

[52] In view of the above, we are of the opinion that the submission of learned counsel for the appellant that there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected."

In view of above facts and circumstances and law laid down by the Apex Court in the judgment referred to supra, the contentions of the appellant cannot be accepted and order of the Tribunal cannot be interfered with. I do not see any merit in the appeal,

Hence, the appeal is dismissed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHAKER REDDY, J

Dt.25.01.2016
TJS

[\[1\]](#)) (2008) 9 SCC 527