

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.21 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 17.10.2007 in O.A.A.No.231 of 2003 on the file of Railway Claims Tribunal, Secunderabad Bench.

2. Respondent Nos.1 to 5 herein submitted application under Section 16 of Railway Claims Tribunal Act read with Sections 124-A and 125 of Railway Act, (for short, 'Act') alleging that late Shaik Ismail Jaffer Kaazi while travelling from Lokamanya Tilak Terminus to Banaglore on 21.09.2002 in Train No.1013 Kurla Express and he got down at Gooty railway station at about 3.45 a.m. to fetch water and when train started, deceased came running, caught hold of the compartment and while trying to get inside compartment due to jerks and speed of the train he accidentally slipped and fell down, which resulted in serious injuries and instantaneous death. It is further contended that they are entitled for compensation as deceased fell down from the train accidentally, which is an untoward incident.

3. Appellant herein resisted the claim of claimants and contended that the act of deceased in trying to board a moving train amounts to negligence of deceased and appellant is not liable to pay any compensation for such inflicted injuries, which is an exception to Section 124-A of

Act.

4. Railway Claims Tribunal conducted enquiry and disbelieved the objection of appellant and recorded a finding that deceased died in an untoward incident by relying judgment of this Court in **Union of India rep. by its General Manager, S.C. Railways, Secunderabad v. V.Borra Vijayalakshmi and others**^[1] and granted compensation to claimants. Questioning said order, present appeal is preferred.

5. Heard both sides.

6. Advocate for appellant submitted that even according to own case of claimants, deceased while trying to get into a moving train with water bottle in hand, fell down and sustained injuries and that act clearly indicates the carelessness and gross negligence on the part of deceased, therefore incident would fall within exception to Section 124-A of the Act and falls under self inflicted injury, therefore, Railway Claims Tribunal was not right in treating it as untoward incident.

7. On the other hand, advocate for claimants submitted that it is well settled law that even if a person sustained injuries while making an attempt to board a running train, it would fall under untoward incident and Railway Claims Tribunal rightly granted compensation and there are no grounds to interfere with the same. He submitted that the Hon'ble Supreme Court in **Union of**

India v. Prabhakaran Vijaya Kumar and others^[2], clearly held that if a person while trying to get into a moving train or trying to get down from a moving train and falls down resulting to death or injury with a bonafide ticket or not is entitled to compensation.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 17.10.2007 in O.A.A.No.231 of 2003 on the file of Railway Claims Tribunal, Secunderabad Bench, is legal, proper and correct?

POINT :

9. There is no dispute that the deceased Shaik Ismail Jaffer Kaazi died on 21.09.2002 while trying to get into compartment of a moving train. As seen from the record, claimant No.1 is examined as AW.1 and claimant No.5 is examined as AW.2 and they reiterated petition averments stating that deceased got down from the train at Gooty railway station to fetch water, but the train started suddenly, deceased came running and caught hold of compartment and while trying to get into compartment due to jerks and speed of the train, he slipped and fell down and sustained injuries which lead to his death. This part of evidence is not rebutted as no one is examined on behalf of appellant. Considering the same, Railway Claims Tribunal discarded the objection of Railways. As rightly pointed out by advocate for claimants, appellant

except taking a plea did not produce any evidence to substantiate their plea. Further as held by this Court and also by the Hon'ble Supreme Court, if a person falls while trying to get into a moving train or trying to get down from a moving train, resulting to his death is entitled for compensation and the same would come under the definition of untoward incident, therefore, the objection of appellant that this would fall under the exception of Section 124-A of the Act is not tenable. Railway Claims Tribunal has considered every aspect with reference to the law on subject and rightly negated the objection of appellant and I do not find any wrong in the approach of Railway Claims Tribunal in awarding compensation. For these reasons, I am of the view that the appeal is devoid of merits and liable to be dismissed.

10. Accordingly, appeal is dismissed.

11. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

11th July 2016.

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[\[1\]](#) 2005 (2) ALT 286

[\[2\]](#) 2008 (9) SCC 527