

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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C.M.A.NO.820 OF 2012

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JUDGMENT:

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This appeal is filed by the appellant-Insurance Company against the judgment passed in O.A.A.No.75 of 2003, dt.16.04.2012 on the file of the Railway Claims Tribunal, Secunderabad awarding a sum of Rs.4,00,000/- towards compensation along with interest at the rate of 6% per annum from the date of application, till the date of realization, in favour of the second respondent, for the death of Mohd.Rabbani (for short 'the deceased') who is the son of second respondent, died on 10.10.2002 for the injuries sustained by him in an untoward incident.

The facts of the case in brief are that the respondents herein who are legal heirs and dependants of the deceased filed O.A.A.No.75 of 2003 under Section 16 of the Railway Claims Tribunals Act, 1987 compensation, against the appellant herein, for payment of compensation on account of the death of the deceased, who was traveling in a train running from Pune to Hyderabad and accidentally fell down from the running train at Vikarabad and succumbed to injuries and was holding his ticket.

The appellant/respondent contested the claim of the respondents/applicants by filing written statement, stating that the said accident is not an untoward incident and as such, the incident does not fall within the provisions of Section 123 (c) (2) of the Act, as the dead body was found lying nearby the railway track.

During the pendency of O.A.A., the first respondent, who is the father of the deceased died.

Basing on the evidence of applicant No.2, who was examined as AW-1 has placed on record Exs.A-1 to A-6 and also the evidence of RW-1 and RW-2, the Tribunal granted an amount of Rs.4,00,000/- with interest at the rate of 6% per annum, in favour of the second respondent herein. Aggrieved by the same, the present appeal is filed.

The learned counsel for the appellant submits that there is no fault on the part of the railway administration and it should be exonerated from the liability of payment of compensation, as the deceased himself was negligent. He also submits that the dead body of the deceased was lying on the railway track and as such, appellant is not liable to pay compensation. He also submits that the deceased is not a bona fide passenger and no journey ticket was found with the deceased in his pocket.

Accidental fall does not fall within the meaning of 'untoward incident' as per Section 123 (c) or Section 124-A of the Act.

**I n UNION OF INDIA REP. BY ITS GENERAL
MANAGER, S.C.RAILWAYS, SECUNDERABAD^[1], it was
held as follows:**

"A plain reading of the above provision and a true consideration of the same would show that when any person is a victim of "untoward incident", the railway administration shall be liable to pay compensation. In such an event, the wrongful act, negligent or default on the part of railway administration or any defence available in any other Law would not exempt railway administration from paying the compensation. The Explanation below Section 124-A of the Act clarifies that "passenger" is a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or an valid platform ticket and becomes a victim of an untoward incident.

The learned Counsel would place considerable stress on the Explanation to seek except (sic.exception) from the rigour of law in payment of compensation. To my mind though a person traveling by a train carrying passengers without ticket is not entitled for compensation, the burden to prove that railway administration is exempted from paying compensation for untoward incident on the ground of a person not buying a ticket would heavily lie on the railway administration. There are two reasons for this. First, it is well settled that when a person seeks exemption from any liability, the burden in justification of such exemption would certainly lie on the person seeking such exemption. Secondly, under Section 137 read with 55 of the Act, ticketless travel is made a culpable offence attracting imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Needless to point out that unless the statute so (sic.otherwise) requires when an offence is alleged against a person the burden lies on the prosecution to show that such person has violated law by not buying the ticket.

In overruling objection by appellant, learned tribunal correctly drawn an inference that at the time of inquest on the dead body of the deceased the ticket might have been lost and that P.W.2, who is the person accompanied the deceased to the railway station, spoke that he saw Subrahmanyeswara Rao buying the railway ticket. There was no rebuttal of the statement and, therefore, the learned Tribunal observed that it cannot be concluded that a person was traveling without a ticket in a situation as was presented before it. For this reason, the submission of the learned Counsel for the appellant must be held as without merit”.

In **UNION OF INDIA REP. BY ITS GENERAL MANAGER,**

S.C.RAILWAY^[2], this Court held as follows:

“A plain reading of Section 123 (c) (2) says that the “untoward incident” means the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Act says that when in the course of working a railway an untoward incident occurs and then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, the injured or the legal heirs of the deceased are entitled for compensation.

In this case on hand whether the injured person, who purchased a valid ticket to travel in the train, and the deceased person, who was working with the railways, are come within the meaning of “passengers”. Explanation (i) and (ii) to Section 124-A of the Act says the “passenger” as railway servant on duty and 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.

The injured person has purchased a valid season ticket bearing No.38028 and actually in possession of the same and while attempting to board the train carrying passengers fallen from the train and received injuries and in the case of the deceased person, during course of working in the Railways, while attempting to enter into the train carrying passengers accidentally fallen down from the passenger train and died in the accident. Therefore they come within the meaning of Explanation (i) and (ii) to Section 124-A of the Act and they can be held as passengers.

The deceased is a bona fide passenger and while traveling on a train accidentally fallen down from the running train and received grievous injuries resulting in his death. Hence this is an "untoward incident" as defined under Sec.123 (c) (2) of the Act and as such the dependants of the deceased are entitled to compensation in pursuance of Section 124-A of the Act. It has to be held that the accident fall from any part of the compartment is covered by untoward incident. If there is a fall from the steps leading to the compartment, it is a fall from the train. The steps of the compartment cannot be disassociated from the compartment. They are integral part of the compartment. Therefore the contention that the deceased met with an accident while boarding on a running train is not an untoward incident, cannot be accepted. Also the contention that the person who is trying to board a train is not a passenger, cannot be accepted."

The Tribunal relied on the decision of the Apex Court in case of in Civil Appeal No.1184 of 2003 decided on 27.08.2010, wherein it was held in para-9 as follows:

"The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he

fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon of Indian trains is not the same thing as a criminal act mentioned in clauses (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 railway must fall even after assuming every thing in its favour”.

The Tribunal basing on the evidence of RW-2 and Ex.A-2 held that as the deceased fell down from the train, the incident squarely falls within the definition of untoward incident under Section 123 (c) (2) of the Act and basing on the material, the Tribunal also held that the death of the deceased is clearly not covered by the proviso to Section 124-A of the Act and that the incident does not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A and that the present case is clearly covered by the main body of Section 124-A of the Act, not by its proviso. Tribunal also relied on judgments of Apex Court in **MEHAR PARVEEN & ANR. VS. UNION OF INDIA AND OTHERS**^[3] and **JAMEELA AND OTHERS VS. UNION OF INDIA** (Civil Appeal No.1184 of 2003) and judgment of this Court reported in **JETTY NAGALAKSHMI PARVATHI AND OTHERS VS. UNION OF INDIA**^[4].

In view of law laid down in above decisions and facts and

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

Dt.18.01.2016
TJS

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[\[1\]](#)) 2001 (3) ALT 429

[\[2\]](#)) 2001 (3) ALT 429 (D.B.)

[\[3\]](#) 1 (2008) ACC p. 422

[\[4\]](#) 2012 (1) ALD 331