

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No.1016 of 2014

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JUDGMENT:

This appeal is filed aggrieved by the order dated 28.10.2013 passed by the Railway Claims Tribunal, Secunderabad in O.A.A.No.330 of 2007, wherein the Tribunal directed the appellant herein to pay the respondents herein a sum of Rs.4,00,000/- with interest @ 6% p.a. from the date of application to the date of order and @ 9% from the date of order till the amount is realised.

2. The appellant herein is the respondent and the respondents herein are the applicants before the Railway Claims Tribunal.

3. The brief facts of the case are that the respondents/applicants filed application in OAA.No.330 of 2007 before the Railway Claims Tribunal under Section 16 of the Railway claims Tribunal Act, 1987 read with Section 124-A and 125, claiming compensation of Rs.4 lakhs on account of the death of V.Durga Rao in an untoward incident of accidental fall from train. According to the respondents the deceased V.Durga Rao came to Narasapur railway station to go to Bhimavaram to attend the birthday ceremony of his sister-in-law's daughter and purchased a journey ticket bearing No.49859748 for Rs.7/- dated 27.07.2007 for Ex.Narasapur to Bhimavaram town and boarded train No.482 passenger in general compartment. The train halted at Palakollu railway station and when the train started with a sudden jerk the deceased accidentally slipped and fell down from the said train and sustained severe injuries and died on the spot.

4. The respondent railway filed written statement opposing the

claim and also contending that the claim of the applicants does not fall within the ambit of Sec.123(c) or Sec.124-A of the Indian Railways Act, 1989. It is also stated that as per Divisional Railway manager's report, the deceased committed suicide; as such the applicants are not entitled for compensation. The respondent further disputed that the deceased was not a bonafide passenger of train No.482 passenger.

5. Basing on the evidence of AW1 & AW2 and Exs.A1 to A7 and the evidence of RW1 & RW2 and exhibit R1, the Tribunal granted compensation of Rs.4 lakhs to the applicants with interest @ 6% p.a. from the date of application to the date of order and @ 9% from the date of order till the amount is realised. Aggrieved by the same, the respondent-Railways filed the present appeal.

6. Heard learned counsel for the appellants and respondents.

7. Learned counsel for the appellant-Railways submits that it is not a case of accidental fall from the train, but of suicide; and as the deceased committed suicide, the applicants are not entitled for compensation. He also contends that there is negligence on the part of the deceased and that the deceased was not a bonafide passenger of the train and that no ticket is produced and that it is an act of suicide which attracts provisions of Sec.124(B) and (C) of the Railway's Act.

8. Admittedly, the original journey ticket of the deceased is filed and marked as Ex.A5 and relying on the same, the Tribunal held that the deceased was having valid ticket. The evidence of AW2 who is a friend of the deceased also goes to show that the deceased was travelling in train number 482 passenger. AW2 also

stated that he is an eye witness to the untoward incident. According to AW2, the deceased stood near the door of train on the off side and was waving his hand near the door and due to sudden jerk of the train slipped and fell down from the train and sustained injuries which lead to his death. During his cross-examination, AW2 further described in detail as to how the fall occurred even though the deceased was holding the bars of the coach.

9. Further, the Judgment rendered by the Calcutta High Court in ***Asharani Das v. Union of India and another***^[1] it was held as follows;

“14. As the accident occurred within the premises of the Railway Authority, it was the first and foremost duty of the Railway Authority to produce evidence before the Tribunal indicating the materials those were found with the body of the victim at the time of accident. No person from the side of Railway came forward to disclose such facts. In a Railway accident when the Railway Police admittedly took custody of the dead body of the victim, it is the duty of the Railway to come forward with the specific plea that at the time of accident, the victim had no ticket found with him and the person making such statements must take the responsibility of such allegation. The person who actually made inventory of the articles found with the dead body should come forward to face cross-examination by the claimant. It appears that in paragraph 7 of the claim-application, the claimant specifically pleaded purchase of ticket by the victim but in paragraph 7 of the Written Statements the following averments were made:

“That in reply to paras 7, 8, 9 and 10 and 11 of the application are required to be proved by the applicant producing valid evidence and documents.”

16. We are quite conscious of the position of law that as provided in Section 106 of the Evidence Act, if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in illustration (b) of that section, if a person is charged with travelling on a railway without a ticket, the burden of

proving that he had a ticket is upon him. But such principle is not applicable to a case of a dead person who was proved to have died in course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that he was a bonafide passenger having a valid ticket. In this case, as no person on behalf of the Railway has given any such evidence nor has any person come forward to disclose what articles were found with the victim, we conclude that the initial burden of proving such fact had not been discharged. We cannot lose sight of the fact that one is not entitled to enter even the platform of a railway station without having a valid platform ticket and one takes the risk of criminal prosecution by boarding a train without ticket. In such circumstances, in the absence of any evidence of the Railway Authority asserting absence of a valid ticket, we are of the opinion, there is no just reason for totally discarding the evidence of the PW2 simply because his statement that when he reached the accident spot it was afternoon was found to be not possible having regard to the fact that on March 4 of a year the train left Sainthia at 5.20 p.m. and after reaching the next station and complaining at the said station about the accident, he could not come back to the accident spot by availing a bus before the sunset.

10. In ***Union of India rep. by its General Manager, S.C.Railways, Secunderabad v. Borra Vijayalakshmi and others***

[\[2\]](#), it was held as follows;

“5. 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 travelling by a train

carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

6. 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 travelling 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.

7. 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 PW2 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 this statement and, therefore, the learned Tribunal observed that it cannot be concluded that a person was travelling 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.”

11. Findings of the Tribunal are supported by reasoning given in the Judgments referred to above. In view of the same, I do not see any infirmity in the order passed by the Tribunal.

12. Accordingly, the appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

18.01.2016
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[\[1\]](#) AIR 2009 CALCUTTA 205 (DB)
[\[2\]](#) 2005(2) ALT 86