

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No.279 of 2014

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JUDGMENT:

This appeal is filed aggrieved by the order dated 14.11.2012 passed by the Railway Claims Tribunal, Secunderabad in O.A.A.No.91 of 2005, 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 till the date of order and thereafter @ 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.91 of 2005 before the Railway Claims Tribunal under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A and 125 of the Railways Act, 1989, claiming compensation of Rs.4 lakhs from the respondent-railways for the death of Ginjupalli Rangaiah in an untoward incident of accidental fall from train. According to the respondents/applicants, on 13.06.2004 the deceased Ginjupalli Rangaiah left the house informing his family members that he was going to Dendukuru to meet Malladi Chinna Venkateswarlu and would stay there for night and on the next day i.e. on 14.06.2004, he would attend his duty in Dendukuru. Accordingly, the deceased after attending the duty in Dundukuru, went to Madhira along with his brother-in-law Malladi Chinna Venkateswarlu on scooter and in the presence of his brother-in-law the deceased boarded the train by a valid ticket to Yerrupalem stating that he is going to Primary health Centre,

Banigandlapadu, under which he is working. While travelling by train No.171, in between 10.00 a.m. to 11.00 a.m., accidentally he fell down from the said running train between Thondalagopavaram and Yerrupalem railway stations and died on the spot, due to the grievous injuries sustained in the accident.

4. The appellant-Railways opposed the claim application stating that the claim does not fall under the provisions of Sec.123(c) or Sec.124 A of the Railways Act, 1989; and pleaded that the deceased was not a bonafide passenger and further submitted that a male dead body was found lying at K.M 543/20-22 on DN line as per the FIR by the gateman of Yerrupalem and also pleaded that this is not a case of fall from the train No.171; that the death was as a result of self inflicted injuries and for his own criminal act the respondent-Railway is not liable to pay any compensation.

5. Basing on the evidence of AW1 & AW2 and Exs.A1 to A6 and the evidence of RW1 and exhibits R1 and R2, 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 the deceased died due to his own negligence; that the deceased travelled between Thondalagopavaram and Yerrupalem on seasonal ticket which covers only Bonakal to Madhira and as such he cannot be treated as a bonafide passenger and that the accident does not come under 'untoward incident', as such, the appellant-Railways is

not responsible. He also stated that there is no valid ticket found at the dead body of the deceased and there is no corroborative evidence.

8. Even as per the written statement filed by the appellant-Railways, a male dead body was found lying at K.M. 543/20-22 on DN line as per the FIR by the gateman of Yerrupalem at about 16.00 hours of 14.06.2004 and the dead body of the deceased is identified. The petitioners also filed Ex.A1- attested copy of FIR, Ex.A2- attested copy of inquest report, Ex.A3-attested copy of Post Mortem Examination report, Ex.A4-Legal heir certificate issued by the Panchayat Secretary, Ravinuthala, Ex.A5-attested copy of final report and Ex.A6-Family member Certificate issued by M.R.O., Bonakal.

In Ex.A5-attested copy of final report, it is stated that the deceased might have slipped from down train and received multiple fracture injuries and died. The Tribunal also stated that as per Sec.138 of the Railways Act, if any passenger travel beyond authorized distance, such a person was liable to pay penalty only if he was found out and a bonafide passenger who travel beyond the destination cannot be labelled as a malafide or fraudulent passenger since the provision is crystal clear that he can be subjected to penalty only. The Tribunal also held that there is every possibility of losing the ticket in an untoward incident and that the respondent-Railways has failed to prove that the deceased was not a bonafide passenger.

9. Further, in N.Buchilingam and others v. Union of India^[1] wherein at para-13 it is stated as follows;

“13. The other issue touches the question is as to whether the death of the deceased occurred on account of accidental fall. The fact that the dead body was

noticed and recovered by the Railway Staff near railway track *prima facie* discloses that the death of the deceased occurred on account of an accident. The nature of incidents that may result in injuries or death of bona fide passengers, involving a train is elaborately dealt with in Section 123 of the Railways Act. The term 'accidental fall' referred to in clause (c) thereof, does not require that the accident shall be of a particular nature. Once an individual receives injuries or succumbs to them, the liability of the railways arises. It is saved only under certain circumstances referred under Section 124-A of the Act. As long as the circumstances stated therein are not pleaded or proved, the liability against the respondent to pay compensation subsists. Being the provisions intended for the welfare of the victims of accident or their dependants, Sections 123 and 124-A need to be given a liberal construction. There are no factors to indicate that there was any attempt on the part of the appellants to present a fictitious claim. The fact that the dead body was found at a place hundreds of kilometres away from their residence, the deceased was seen of by PW2 at the Railway Station and that tickets were recovered from his body, clearly disclose that the death occurred only on account of accidental fall from the train. Therefore, the appellants are entitled to be paid the compensation as provided for under the relevant provisions. The compensation provided for such instances under the relevant provisions as they stand now is Rs.4,00,000/-.

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. In view of the aforesaid facts and circumstances of the case and in view of the law laiddown in the aforesaid Judgments and

since the appellant-Railways denied the liability without discharging the burden of proof that the deceased was not a bonafide passenger, I do not see any merits in the appeal. Findings of the Tribunal are supported by 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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[\[1\]](#) 2004(6) ALD 302

[\[2\]](#) 2005(2) ALT 86