

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No. 216 OF 2013

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JUDGMENT:

This Civil Miscellaneous Appeal is filed against order passed by the Railway Claims Tribunal Bench at Secunderabad in O.A.A.No.179 of 2004, dated 27.01.2012 wherein the Tribunal awarded compensation of Rs.4,00,000/- in respect of death of Kalagura Raja Kumar in an untoward incident in favour of the respondents 1 to 5.

2. Brief facts which are necessary for disposal of the CMA are as follows:

The respondents filed an application under Section 16 of the RCT Act, 1987 read with the provisions of Section 124-A of the Railways Act, 1989 seeking compensation of Rs.4,00,000/- from the Railways stating that on 10.06.2004 the deceased Kalagura Raja Kumar informed his parents/respondents 1 and 2 that he intends to go to his village by Ramagiri passenger train from Bellampally to Peddapally to see the agricultural activities and further informed that he will return back on the next day. On 11.06.2004, the applicants tried to contact the deceased on his cell phone, but nobody lifted the phone call and when enquired, it is found that the Kalagura Raja Kumar died in train accident in between Bellampally and Mandamarri railway stations. The deceased was traveling as a bonafide passenger in Ramagiri passenger train, accidentally fallen down from the train and succumbed to the injuries and the journey ticket was lost.

3. The appellant filed written statement denying the averments made in the claim application stating that the claim does not fall under the provisions of Section 123(c) or Section 124A of the Railways Act, 1989. It is stated that the deceased was not a *bona fide* passenger and that the alleged incident, if any, was caused by the criminal acts of the deceased and such acts disentitle the applicants from claiming

compensation for such self inflicted injuries.

4. The Railway Claims Tribunal, basing on the evidence of A.Ws.1 and 2 and documents Exs.A1 to A5 granted compensation to the respondents.

5. Heard both sides.

6. Learned Standing Counsel for Railways

Sri T.S.Venkataramana, submits that the deceased was not a *bona fide* passenger and no valid traveling ticket is found. He would further contend that the deceased himself was negligent, as such, the Railways is not responsible for payment of compensation.

7. Ex.A1 is the First Information Registered on the complaint given by the Dy.SS/BPA on the basis of information he received from the Keyman and the body was unidentified. Ex.A2 is inquest report. It is an admitted fact that the dead body was also found lying at Km.244/2-4 in between Bellampally and Mandamarri Railway Stations and in between down track. Ex.A3 is the Postmortem certificate wherein it stated the cause of death is haemorrhage and shock, due to multiple fractures. Ex.A5 is the copy of final report submitted to the Executive Magistrate/Mancherial, by which, the deceased was identified as Kalagura Rajakumar, S/o.Lingaiah by the parents of the deceased. As per the final report, it is found that the deceased left the house on 10.06.2004 to go to Peddapally and while traveling by unknown down train, he fell down in between Bellampally and Mandamarri at Km.244/2-4 sustained injuries and died on the spot and that there was no foul play suspected in the death of the deceased. The 2nd applicant is examined as A.W.1. Though she is not an eye witness, she identified the body of deceased. A.w.2 was also examined to prove that the deceased traveled in Ramagiri passenger train. Though, he was cross-examined, the Railways failed to prove that the deceased not a *bona fide* passenger. Basing on the evidence of A.Ws.1 and 2, it is found that the deceased was a bonafide passenger and died as a result of an

untoward incident of accidental fall. Though the Railways have taken a plea that the deceased was negligent, as observed by the Tribunal, the Railways has not examined any witness to prove the negligence on the part of the deceased or produced any documents. Though the railways has stated that the deceased was not a *bona fide* passenger, they have not established the same by adducing evidence.

In **Asharani Das v. Union of India and another**^[1], the Hon'ble Calcutta High Court held as follows:

“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 bona fide 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 PW-2 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.

19. Once we find that it is a case of death and comes within the purview of untoward incident within the meaning of [Section 124A](#) of the Railways Act, the claimant is entitled to get Rs. 4 lakh as provided in the Schedule to the Railway Accidents and Untoward

(Incidents) Compensation Rules, 1990 and accordingly, we direct the Railway Authority to pay a sum of Rs. 4 lakh to the Appellant within two months from today with interest at the rate of 8% per annum from the date of filing such application till actual payment.”

In Union of India rep. by its General Manager, S.C.Railways, Secunderabad v. Borra Vijayalakshmi and others^[2], wherein this Court 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 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 [Section 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 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 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 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.

8. Insofar as the second submission is concerned the definition of untoward incident as contained in [Section 123\(c\)](#) of the Act does not admit the reading of the provision. The submission is, therefore, rejected. [In Union of India v. Uggina Srinivasa Rao](#), (supra) this Court considered the scope of [Sections 123, 124](#) and [124-A](#) of the Act and dealing with the

question whether accidental fall from a compartment of the train would amount to "untoward incident" laid down as under:

The deceased is bona fide passenger and while travelling 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 [Section 123\(c\)\(2\)](#) of the Act and as such the dependents of the deceased are entitled to compensation in pursuance of [Section 124-A](#) of the Act. It has to be held that the accidental 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 fall from the train. The steps of the compartment cannot be dissociated from the compartment. They are integral part of the compartment. Therefore, the contention that the deceased met with an accident while boarding 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."

In view of above facts and circumstances and law laid down in the above cited judgments, I do not see any error or infirmity in the order of the Tribunal in granting compensation of Rs.4,00,000/-

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Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

25.01.2016

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[\[1\]](#) AIR 2009 Calcutta 205 (DB)

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