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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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CMA No.350 of 2012

JUDGMENT ::

This appeal is filed by the Union of India represented by the General Manager, South Central Railways, Secunderabad, against the order dated 10-08-2011 passed in OAA No.138 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

2. The respondents herein filed the above OAA seeking compensation of Rs.4-00 lacs for the death of their son Yaddalapuri Ravikumar, Sepoy (Driver) in the army, posted in the base hospital Jammu Tawi, in an untoward incident while getting down from the running train and accidentally fell on the southern end of the platform and run over by the train Tamil Nadu Express.

3. Facts of the case are:-On the fateful day the deceased having purchased a general class ticket boarded train no.2622, Tamil Nadu Express and when the train was passing Gudur station, he accidentally slipped and fell down due to the jerks of the train and died. The deceased had a ticket from Jammu to Renigunta. While it is the case of the appellant-Railways that the deceased jumped out of the train at Gudur station when the train was moving and he came between the train and the

platform and died due to his own imprudent and careless act, which was an act of self inflicted injury and, therefore, not entitled for any compensation.

4. The Tribunal having considered the evidence of AW-1 who is the father of the deceased and Exts.A1 to A-8 came to the conclusion that the death of the deceased caused in the train accident is an untoward incident and the applicants are entitled to compensation. Aggrieved by the same, this appeal is filed by the Railways.

5. Heard the learned standing counsel for the appellant-railways and the learned counsel for the respondent-applicants. Perused the impugned order passed by the Tribunal.

6. Point that arises for consideration is whether the deceased was bona-fide passenger and; whether the deceased died on account of his own volitional and careless act or it is an train accident within the meaning of “untoward incident” ?

7. It is the contention of the learned standing counsel for the appellant-railways that the deceased was not a bona-fide passenger and he died due to his own volitional and conscious conduct. On the other hand, learned counsel for the

applicants-respondents contended the deceased was having a valid ticket and he accidentally fell down from the running train, which comes within sweep of the term “untoward incident”, and that being so, the Tribunal rightly allowed the claim of the applicants. In support of his contention, learned counsel for the respondents-applicants placed reliance on the Division Bench decision of this Court in **UNION OF INDIA (UOI) vs. B. KODDEKAR (2002 (4) ALT 310.)**

8. There is no dispute as to the date and nature of the accident and the deceased falling down from the moving train at Gudur station and died having come in between the train and the platform. There is also no dispute that the applicants are the parents of the deceased. Now, what is to be examined is whether the deceased was a bona-fide passenger and died in an untoward incident while getting down from a moving train at Gudur railway station.

9. Division Bench of this Court in *B. Koddekar's case* (supra) examined the terms “passenger” and “untoward incident” used in clause (29) of Section 2 & clause 'c' of Section 123 and sub-clause (2) of Section 123 of the Railways Act, respectively. Division Bench of this Court endorsed the view expressed by the Madhya Pradesh High Court in **RAJ KUMARI vs. UNION OF INDIA** wherein the Division Bench of that

High Court while dealing with Sections 82-A and 68 of the Railways Act, 1890 (old) observed thus:-

"Normally, under Sections 101 and 102 of the Evidence Act, the burden to prove such facts, on which the legal right or liability depends, is on such person who asserts existence of these facts. But the question before us is whether the burden of proof that the deceased held a valid ticket, pass or permission during his journey, in which he died in accident, can be placed on his dependants. Obviously, such burden of proof is impossible to be discharged by the dependants, who can have no means of knowledge, whether the deceased, before boarding the train had purchased a valid ticket, pass or permission from the railway authority. It is likely that such a deceased passenger held a valid ticket, pass or permission, but the same is lost in the accident with the death of person and loss of his belongings, if any."

"In our opinion, when a person is found dead as a result of accident in a railway carriage, in which he was traveling, a presumption may be drawn under Section 114 of the Evidence Act, keeping in view of the prohibition under Section 68 of the Act against boarding a train without ticket that the deceased was a bona-fide passenger. Since ticket less travel is an illegal act and exposes such traveler to penal action, the presumption is of innocence in favour of such one of the travelers or passengers in a train. It is for the railway administration to prove contrary and the burden in such circumstances that the deceased was a ticket less traveller or was not a bona-fide passenger should be on the railway administration which has special means of knowledge as to whether any ticket was issued to that deceased or whether at any point, before or at the end of journey, he was checked and detected by staff of the railway as an unauthorized person without ticket, pass or permission."

10. Following the said decision in Raj Kumari's case, this Court in B. Koddekar's case (1 supra) at paras 51 & 52 of the judgment observed thus:

"51. Therefore, what is deducible from the above pronouncement of the Division Bench of the Madhya Pradesh High Court is that the burden does not lie on the dependants of the deceased to prove that the deceased was a bona-fide passenger and the burden is on the railway administration to prove that the deceased was a ticket less traveller or was not a bona-fide passenger. We entirely agree with this view of the

Madhya Pradesh High Court. We may also say this view of the Madhya Pradesh High Court is prior to the amendment brought to Section 123 of the Railways Act. Now, as a result of the amendment brought to Section 123 and 124 of the Act, the burden is on the railways to prove that the deceased is not a bona-fide passenger with a valid ticket and the nature of death falls within any of the exceptions to Section 124 of the Act.

52. Under sub-clause 2 of clause (c) of Section 123 of the Act, after the incident of accidental falling of any passenger from a train carrying passengers is also brought within the ambit of 'untoward incident'. That being so, the accidental falling of a passenger shall include a passenger trying to board a train and also trying to alight a train and in that process loses control and falls down and sustain injuries which results his/her death."

11. In this case, in inquest report marked as Ext.A-2 it was noted that the deceased had purchased a ticket from Jammu to Renigunta issued on 11-05-2007 and another ticket from New Delhi to Vijayawada. The GRP officials who deposed before the Tribunal stated that they attended the inquest and found photocopies of the two tickets, but they could not trace the original tickets. Nothing has come in the evidence of officials examined on behalf of the Railways to show that the said tickets (photocopies) were not issued by the Railway department and that the tickets were not genuine. From the photocopies of the tickets found by the GRP officials, it is clear that the deceased was having a valid ticket upto Gudur, notwithstanding the fact that Tamil Nadu Express did not have a schedule stop at Gudur station. In the absence of any evidence to the contrary, it is to be presumed that the deceased was a bona-fide passenger. When two views are possible, a

view which is clinging in favour of the applicants-claimants have to be adopted, more particularly having regard to the scheme of the Railways Act.

12. Coming the issue of whether the death of the deceased in the said accident is an untoward incident or not, none of the witnesses examined are eye witness to the incident. The Dy. Station Superintendent of Gudur station in his evidence stated that Tamil Nadu Express, in which the deceased was travelling has no schedule stop at Gudur. The duty constable examined in the case also did not state that he saw the deceased trying to get down from the moving train, but he only stated that he was informed by the passengers on the station, whom he could not identify. The allegation of the appellant-Railways that the deceased died on account of his own imprudent and careless act could not be substantiated, hence the accidental fall of the deceased from the moving train at Gudur Station shall have to be considered as an “untoward incident”. Excepting stating that Tamil Nadu Express in which the deceased was travelling has no schedule stop at Gudur station, nothing has come in evidence to show that the deceased really intended to get down at Gudur station which has no schedule stop. It is not denied that the deceased died having come in between the train and the platform at Gudur station. It has come in

evidence that the deceased was on casual leave for 20 days w.e.f. 10-05-2007 and the address during the leave period was shown as Chandragiri to the army authorities. AW-1, father of the deceased deposed that his son informed him that he was coming home via Chennai. All this evidence goes to show that the deceased was bona-fide passenger having valid ticket in his possession and died in an untoward incident. Therefore, I am of the considered view that the reasoning adopted by the Tribunal in holding that the deceased was a bona-fide passenger and he died in an untoward incident and, thereby, entitled for compensation under the scheme of the Railways Act, does not warrant any interference by this Court. The appeal is devoid of merits and it is accordingly dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No order as to costs.

A.RAJASHEKER REDDY, J

Dated:07-01-2016
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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