

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.287 of 2010

JUDGMENT:

This appeal is preferred against order dated 02.12.2009 in O.A.A.No.49 of 2004 on the file of Railway Claims Tribunal, Secunderabad Bench (for short, 'the Tribunal'). Respondents 1 to 4 herein submitted an application under Section 125 of the Railways Act, 1989 read with 16 of the Railway Claims Tribunal Act, 1987 contending that the deceased Rushi Mahanti while travelling from Vijayawada to Visakhapatnam by Coromandel express, accidentally slipped and fell down from the train near Sambhunagar (ILTD Junction), sustained severe injuries and succumbed to injuries and that they are entitled for compensation.

2. Railways resisted the claim mainly on the ground that the deceased was not a *bona fide* passenger and Coromandel Express being a super fast train there is restriction for entry into the train as minimum distance should be 600 KMs. As the distance between Vijayawada and Visakhapatnam is less than 600 KMs, no ticket would be given for Coromandel express to travel from Vijayawada to Visakhapatnam and therefore, the contention of the claimants is not tenable and railways has no liability to pay any compensation. Tribunal on a consideration of evidence has not accepted the plea of the railways and granted compensation. Aggrieved by the same, present appeal is preferred.

3. Heard arguments.

4. Advocate for the appellant submitted that since there is a restriction for super fast train with regard to entry into the train as the minimum distance is 600 KMs, the claim of the claimants that the deceased boarded Coromandel express at Vijayawada to go to

Visakhapatnam, cannot be accepted and Tribunal has not considered this aspect and finding of the Tribunal to that extent is to be set aside. He placed reliance on the judgment of this Court in **Union of India rep.by its General Manager, S.C.Railways, Secunderabad V. Borra Vijayalakshmi and others**^[1], wherein this Court held at paras 5, 6 and 8 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 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.

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:

5. On the other hand, advocate for the claimants submits that from the evidence on record, the fact remains that the deceased fell down from Coromandel express near Sambhunagar (ILTD Junction), Rajahmundry and it is established that the deceased was a passenger in the train, therefore, burden is on the railways and as there was no evidence on behalf of railways, the Tribunal has rightly negatived the

plea of the railways and that there are no grounds to interfere with the findings of the Tribunal.

6. Now the point that would arise for my consideration is:

Whether the order of the Railway Claims Tribunal, Secunderabad Bench is legal, proper and correct?

7. I have perused the material papers including the impugned order dated 02.12.2009. It is the specific plea of the railways that there is a restriction for issue of general unreserved ticket from Vijayawada to Visakhapatnam for Coromandel express and therefore, the claim of the claimants that the deceased was a *bona fide* passenger cannot be accepted. This objection was dealt by the railway claims Tribunal in para 10 of its order. From the evidence, it is clear that the injured person was first noticed by the gateman by name Sri S.Radhamadhva Rao at Sambhunagar L.C.Gate No.398, but as injured was not in a position to give any particulars, the gateman informed the same to GRP by message. As GRP police could not trace the relatives of the deceased after completing formalities, postmortem was conducted on 08.12.2003. It is also clear from the evidence that wife of the deceased after noticing the photo published in the newspaper, approached police and identified the deceased as her husband on the basis of wrist watch that was found on the dead body of the deceased. From this part of evidence, it is clear that the deceased travelled by Coromandel express on the fateful day i.e., on 07.12.2003. It is also clear that the deceased fell down from running train near L.G.Gate No.398 of Rajahmundry and therefore, the burden is on the railways to show that deceased was unauthorized passenger and not a *bona fide* passenger. Even the decision referred to above supports this principle. Admittedly, no one is examined on behalf of railways to support the plea that was taken in the written statement. It is well established principle that any plea without evidence is of no

8. For these reasons, the appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUNE 16, 2016
YVL

1

100