

THE HON'BLE SRI JUSTICE A.RAJASHEKER
REDDY
C.M.A.NO.969 OF 2013

JUDGMENT:

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This appeal is filed by the appellant-Union of India against the order, dt.30.08.2015 passed in O.A.A.No.393 of 2008 by the Railway Claims Tribunal, Secunderabad Bench, whereby the Tribunal granted an amount of Rs.4,00,000/- towards compensation to the respondent/claimant with interest at the rate of 6% per annum from the date of application till the date of order and thereafter simple interest at the rate of 9% per annum till the date of realization.

The facts of the case in brief are that the respondent/applicant filed the said application under Section 16 of the Railway Claims Tribunal Act read with Sections 124-A and 125 of the Railways Act, 1989 (for short 'the Act') seeking compensation of Rs,4,00,000/- from the appellant for the death of her husband in an untoward accident which occurred on 18.06.2008. The deceased along with the respondent entered into the platform No.1 duly purchasing a ticket

bearing N0.53397 for Rs.12/- from Tenali to Repalle for two adults. As ample time was available for departure of Tenali-Repalle passenger which leaves by 16.30 hours, the deceased had his lunch first and advised his wife to complete the lunch also on platform No.1. He informed his wife that he has to attend urgent nature call and for that purpose he entered toilet of one of the bogies of passengers of train No.409 from Tenali to Guntur which was on platform No.1 and attended the nature's call. While getting down from the said passenger train, it moved with sudden jerks and due to the said jerks the deceased slipped and fell in between platform No.1 and the train. As a result of the said accident, the left hand of the deceased was crushed at shoulder besides other severe injuries and died instantaneously.

The appellant/respondent filed written statement denying the petition and stating that there is no cause of action for the applicant as the claim does not fall within the ambit of Sections 123 (c) or 124-A of the Railways Act, 1989 and stated that the deceased died due to his self-inflicted injuries and that the deceased

has to go to Repalle but boarded a train going to Guntur and hence, he was not a bona fide passenger and sought for dismissal of the application.

The Tribunal basing on the evidence of AW-1 and Exs.A-1 to A-7 granted compensation to the respondent/claimant at the rate of Rs.4,00,000/- along with interest. Aggrieved by the same, the present appeal is filed.

The learned counsel for the appellant submits that the deceased was not a bona fide passenger of train No.409 and he himself was negligent. Since there is no negligence on the part of the railway administration, it is not entitled to pay compensation to the appellant.

Heard learned counsel for respondent.

In the present case it has to be seen that the defence taken by the appellant is that the deceased was not a bona fide passenger in Train No.409 and there is no negligence on the part of the railway administration.

IN UNION OF INDIA VS. PRABHAKARAN VIJAYA KUMAR AND OTHERS ^[1] Apex Court in

paras 9,10,15 and 55 held as follows:

“In appeal, the Kerala High Court was of the view that the deceased sustained injuries, even according to the respondents, in her anxiety to get into the train which was moving. Hence, the High Court held that the deceased came within the expression ‘accidental falling of a passenger from a train carrying passengers’ which is an ‘untoward incident’, as defined in Section 123 (c) of the Railways Act, 1989.

We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an ‘accidental falling of a passenger from a train carrying passengers’. Hence, it is an ‘untoward incident’ as defined in Section 123 (c) of the Railways Act.

Section 2 (29) of the Railways Act defines ‘passenger’ to mean a person traveling with a valid pass or ticket. Section 123 (c) of the Railways Act defines ‘untoward incident’ to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act with which we are concerned states:

“124-A Compensation on account of untoward incident:- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the

part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- a) suicide or attempted suicide by him;
- b) self-inflicted injury;
- c) his own criminal act;
- d) any act committed by him in a state of intoxication or insanity;
- e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation—For the purpose of this section “passenger” includes—

- i) a railway servant on duty; and
- ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident”.

In view of the above, we are of the opinion that the submission of learned Counsel for the appellant

there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected”.

**In BALAGONI SIVA PRASAD VS. UNION
O F INDIA, REP. BY GENERAL MANAGER,
SOUTH CENTRAL RAILWAY,
SECUNDERABAD^[2]** this Court in para 13 held as follows:

“In the above case also, the Apex Court rejected the contention of the Railways that there was no fault on their part and there was contributory negligence on the part of the deceased in trying to board the running train and therefore, the railways are not liable for compensation. In view of the principles laid down by the Apex Court in the above decision, which are squarely applicable to the facts of the present case, it must be held that the impugned order of the Tribunal rejecting the claim on the ground that the appellant had fallen from the train due to his own negligence while boarding and therefore, the railways are not liable to pay compensation, in view of the exception contained in the proviso to Section 124-A of the Act, is not sustainable and the same is accordingly set aside. As held by the Apex Court in

the above decision, the expression 'accidentally falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e., a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process and in view of applicability of doctrine of strict liability in respect of claims arising under Section 124-A of the Act, it is wholly irrelevant as to who was at fault. The respondent-Railways is therefore held liable to pay the compensation to the appellant for the injuries sustained by him. Hence, the matter is remitted to the Tribunal for the purpose of fixing the appropriate amount of compensation payable to the appellant".

The Tribunal relying on the decision of the Apex Court in C.A.No.1184 of 2000 found that there is no basis for the contention of the learned counsel for the appellant that there is no fault or negligence on the part of the railway administration and the deceased was negligent and also found that the deceased was having ticket. In view of above facts and circumstances and law laid down by Apex Court and this Court in above referred cases I do not find any merit in the appeal.

The appeal is, therefore, dismissed.
Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.18.01.2016
TJS

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[\[1\]](#)) 2008 (2) T.A.C.777 (S.C.)

[\[2\]](#)) 2008(5) ALT 605