

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA No. 743 OF 2011

-

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the appellant/Union of India against the order passed by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad in O.A.A.No.562 of 2006, dated 05.04.2011, wherein the Tribunal has granted compensation of Rs.4,00,000/- in favour of the respondent/claimant, who was the wife of the deceased Kilari Subbaiah, who died in train accident.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the O.A.A.

It is the case of the applicant that she is the wife of deceased Kilari Subbaiah of Ganugapenta village in Nellore District. She filed the OAA before the Railway Claims Tribunal (for brevity 'the Tribunal') stating that her husband was a daily wage earner (cook) at Jagityal in Karimnagar District. That on 28.07.2006, he came to Warangal Station, purchased a ticket for Kavali (ticket No.16062755) costing Rs.11/- and boarded Tamilnadu Express train no.2622, although he intended to board the Charminar Express, train no.2760. That when the train did not stop at Kavali, the deceased probably realized his mistake and at Gudur station, when the train was moving slowly, he tried to get down, fell down and died and that the ticket was stated to be seized by the GRP. Hence, the claim.

3. The respondent filed written statement denying the averments in the application about the accidental fall.

Since Tamil Nadu Express did not have a scheduled stop at Kavali, the deceased was not a *bonafide* passenger of that train and that applicant herself, inquest and final reports stated that the deceased tried to get down from the train at Gudur when the train was moving slowly, the deceased was negligent and careless, as such he was responsible for his own death and the railway is not liable to pay compensation. It is further stated that since the ticket was up to Kavali, the deceased traveled up to Gudur, which is further than Kavali, as such, he was not a bonafide passenger.

4. Basing on the evidence of A.W.1 and documents Exs.A1 to A9, the Tribunal granted Rs.4,00,000/- towards compensation for the death of the deceased Kilari Subbaiah.

5. Learned Standing Counsel for the appellant submits that the deceased himself was negligent while getting down from the moving train and that he was traveling beyond the destination. As such, he was solely responsible for inflicting injuries and instantaneous death, as such, the Tribunal is not liable to pay compensation.

6. On the other hand, learned counsel for the respondent/claimant submits that the deceased was having a valid ticket and boarding of another train will not make him as unauthorized passenger. He also submits that just because the deceased was traveling beyond the destination point, it cannot be said that the deceased was not a *bona fide* passenger. In support of his contention, he relied on the judgments reported in

Smt. Vinodamma & others v. Union of India^[11], Union of

India v. Anuradha and another^[2] and Judgment of this Court in CMA No.20 of 2003.

7. Admittedly, in the instant case, the deceased was a *bona fide* passenger as the original ticket Ex.A4 is filed to prove the same. Ex.A1, the First Information Report shows that the deceased had a valid ticket bearing No. 16062755 for Rs.111/- to travel up to Kavali from Warangal for Superfast trains on 28.07.2006. The Tribunal, basing on the evidence of A.W.1 along with Exs.A1 to A9, came to the conclusion that the deceased was traveling by Tamil Nadu Express and fell down from the train at Gudur Railway Station. Though, it is contended by the learned counsel for the appellant/Railways that the deceased was not a *bona fide* passenger, it has not lead any evidence to prove the same.

In **Smt. Vinodamma & others v. Union of India (supra)**, the Hon'ble Karnataka High Court held as follows:

“The use of the expression in explanation “by a train carrying passengers” would imply that person holding a valid ticket can travel in any train which takes him to his destination and use of indefinite article “a” and not definite article “the”, therefore, would imply that framers of Act or legislation had in view possibility of a person holding a valid ticket to travel by any train that takes him to his destination.”

In CMA No.20 of 2003, a learned Single Judge of this Court held as follows:

“In fact, no evidence, both oral and documentary, was adduced by the respondent. In the absence of any rebuttable evidence of B.Krishna Murthy, brother of the deceased, or even otherwise, in view of the valid railway ticket recovered from the body of the deceased, simply because he traveled, during the night, little more distance than Giddalur, it cannot be said that he was not a *bona fide* passenger of the train, and therefore, he could not have been denied compensation as claimed by the appellants.

16. Further, in view of Section 138 (2)(b) of the

Railways Act also, deceased cannot be said to be an unauthorized passenger, as he was holding valid railway journey ticket bearing No.5573 for Guntur to Giddalur and as he is liable to pay any difference between the fare paid by him and the fare payable in respect of the excess journey he has made beyond the Station to which he has valid ticket."

In view of law laid down in the above judgments, the deceased Kilari Subbaiah cannot be said to be not a *bona fide* passenger since he was holding a valid ticket, though he boarded Charminar Express instead of Tamil Nadu Express to go to Kavali. More so, the railway administration had not lead any evidence to prove that the deceased was not a *bona fide* passenger. As far as negligence aspect is concerned, when once accident is proved and deceased was a *bona fide* passenger, the plea of the railway administration that the deceased himself was negligent, cannot be a ground for absolving the Railways from payment of compensation to the claimant. The railway administration cannot set up a plea of negligence on the part of the deceased when once the deceased was a *bona fide* passenger as held by a Division Bench of this Court in **Union of India rep. by its General Manager, S.C.Railway v. Uggina Srinivasa Rao and others**^[3], wherein this Court held as follows:

"14. A plain reading of [Section 123\(c\)\(2\)](#) says that the "untoward incident" means the accidental falling of any passenger from a train carrying passengers. [Section 124-A](#) of the Act says that when in the course of working a railway an untoward incident occurs and then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, the injured or the legal heirs of the deceased entitle for compensation.

15. In this case on hand whether the injured person, who purchased a valid ticket to travel in the train, and the deceased person, who was working with the railways, come within the meaning of "passengers". Explanation (i), (ii) to [Section 124-A](#) of the Act says the "passenger" as

railway servant on duty and 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.

16. The injured person has purchased a valid season ticket bearing No.38028 and actually in possession of the same and while attempting to board the train carrying passengers fallen from the train and received injuries and in the case of the deceased person, during course of working in the Railways, while attempting to enter into the train carrying passengers accidentally fallen down from the passenger train and died in the accident. Therefore they come within the meaning of explanation (i) and (ii) to [Section 124-A](#) of the Act and they can be held as passenger.

17. The deceased is a 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 dependants 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 a fall from the train. The steps of the compartment cannot be disassociated from the compartment. They are integral part of the compartment. Therefore the contention that the deceased met with an accident while boarding on 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 Union of India v. Prabhakaran Vijaya Kumar and others ^[4], wherein the Hon'ble Supreme Court held as follows:

"14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in [Section 123\(c\)](#) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the [Railways Act](#). Hence, in our opinion, the expression 'accidental 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. In other words, a purposive, and not literal, interpretation should

be given to the expression.”

The Hon’ble Apex Court in the above citation, after discussing about several provisions of Railways Act, Indian and Foreign case laws on the subject held as under:

“In view of the above, we are of the opinion that the submission of learned counsel for the appellant that 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 view of above facts and circumstances, I do not see any merit in the appeal and same is liable to be dismissed.

Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

A.RAJASHEKER

REDDY, J

25.01.2016
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA.No.743 OF 2011

Date:25.01.2016

kvs

[\[1\]](#) AIR 2010 Karnataka 174

[\[2\]](#) 2014 ACJ 856

[\[3\]](#) 2001 (3) ALT 429 (D.B)

[\[4\]](#) (2008) 9 Supreme Court Cases 527