

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.3211 OF 2012

K.Raju

... Appellant /Applicant

Vs.

The Union of India Owning
Southern Railway
Rep. by its General Manager
Chennai.

... Respondent /Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 23(1) of Railway Tribunal Act, against fair and decretal order passed in O.A.(II-U) No.176 of 2012 dated 03.10.2012 by the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.M.T.Arunan
ACGSC for Railways

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order dated 03.10.2012 passed in O.A.(II-U) No.176 of 2012 by the Railway Claims Tribunal, Chennai Bench.

2. According to the appellant, he travelled in Kanyakumari Express on 07.03.2012 with journey ticket no.701929811 from Chennai Egmore to Virudhachalam. Due to heavy rush, he was travelling at door way and sustained crush injury on his right leg. He was admitted in Government Hospital, Virudhachalam and suffered crush degloving wound measuring 15x10x3 cm size present over the lateral aspect of right ankle exposing the ankle joint lateral malleolus and calcaneum. He had taken treatment in MIOT Hospitals for the crush injuries suffered by him. He filed a claim petition before the Railway Claims Tribunal.

3. The Railway Claims Tribunal denied the liability on the ground that the appellant has suffered self inflicted injury due to his negligence. The appellant travelled by sitting on the foot board hanging his legs. He suffered injuries knowing well

the risk of getting hit in the platform. The injury is not due to negligence on their part. But it is due to the negligent act of the appellant and therefore, the Railway is not liable to pay any compensation and accordingly, dismissed the claim petition.

4. Heard the submissions made on either side and perused the materials available on record.

5. The case of the appellant is that on 07.03.2012, he boarded Kanyakumari Express for going to Virudhachalam with a valid journey ticket and accidentally fell down from the train at Virudhachalam Railway Station due to heavy crowd in the said time. To prove the claim, the appellant has let in evidence as A.W.1 and marked Exs.A1 to A7. On the side of the respondent, the report of the Divisional Railway Manager, Tiruchirappalli, dated 03.09.2012 was marked as Ex.R1 and no witnesses were examined. The Tribunal, after considering the oral and documentary evidence, has held that the appellant had travelled on the step of the footboard. Travelling on the footboard of any carriage amounts to criminal negligence and following the judgment of the Delhi High Court reported in SH. SUKHDEV KAMLANI & ORS.VS. UNION OF INDIA [AIR 2011 DELHI 206] has held that he is not entitled to get compensation and accordingly, dismissed the claim petition.

6. From the perusal of the materials available before this Court, it can be clearly elicited that there was heavy rush in the train. Ex.A4 - journey ticket goes to show that the appellant was a bonafide passenger. Ex.A2 - accident report reveals that the appellant suffered injuries on his legs that his legs were hit at the platform. Ex.A3 - discharge summary reveals that accidental crushing of both legs in between the train and platform while getting down. The appellant has examined himself as A.W.1 and stated that while he was travelling in the foot steps, he had accidentally hit by platform of Virudachalam Railway Station and fallen down from the running train due to heavy crowd in the said train. There is no contra evidence to show that there was no rush in the train and the appellant deliberately avoided to travel following the safety norms. Even though the Railway has stated that the appellant was negligently travelled sitting on the footboard, they failed to prove the same by letting in evidence before the Tribunal.

7. In a judgment of the Hon'ble Supreme Court JAMEELA AND OTHERS VS. UNION OF INDIA [AIR 2010 SC 3705] it is observed as under:

"9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of

the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124 A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.

"

8. The Andhra Pradesh High Court in UNION OF INDIA, SOUTH CENTRAL RAILWAYS VS. KURUKUNDU BALAKRISHNAIAH AND OTHERS [2004 ACJ 529] has held that whether injuries is proved on death occasioned by his negligence, carelessness, wrongful act or prohibited conduct, disregard of the requisite standard of care obligated by a person travelling on a train or any such conduct of a passenger, invited the disaster to himself. In such cases, the liability is on the Railways to prove the same.

9. In the instant case, the Railways have not proved that the accident had happened due to the negligence on the part of the appellant. In any case, there is no proof that the appellant had suffered injuries on his wilful negligence or criminal negligence. The cogent evidence of the appellant would go to show that there was heavy rush in the train and he was compelled to travel in the train in the foot board.

10. Railways issue tickets unmindful of the availability of the seats or the seating capacity. In such circumstances, the passengers are forced to travel standing on the foot board also. The negligence cannot be attributed to the appellant. More so, when the Railways have not discharged the burden of proving the negligence on the part of the appellant.

11. Considering the judgments on this aspect, this Court is inclined to set aside the order passed by the Railway Claims Tribunal and award compensation to the appellant.

12. The appellant has suffered crush degloving wound measuring 15x10x3 cm size present over the lateral aspect of right ankle exposing the ankle joint lateral malleolus and calcaneum and underwent Flap Debulking, right ankle illizarov ring compression arthrodesis. As per the notification issued by the Ministry of Railways, dated 22.12.2016, the injuries

prescribed in Serial No.33, Part - III of the Schedule, under Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, compensation needs to be awarded. The compensation for the said injuries is specified as Rs.80,000/-.

13. Therefore, the order dated 03.10.2012 passed by the Railway Claims Tribunal, Chennai Bench, in O.A.(II-U) No.176 of 2012 is set aside and a sum of Rs.80,000/- (Rupees Eighty Thousand Only) is awarded as compensation to the appellant. The respondent Railway is directed to deposit the entire amount within a period of four weeks from the date of receipt of a copy of this order.

14. The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

TK

To

The General Manager
Union of India
Southern Railway
Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Parthasarathy, Advocate SR.No.11064
+1cc to Mr.M.T.Arunan, Advocate SR.No.10903

C.M.A.NO.3211 OF 2012

SV(CO)
GN(05/04/2018)