

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.520 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant-applicant, challenging the order, dated 17.06.2015 in O.A.A. No.189 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellant-applicant claiming compensation for the death of K.Pydi Raju (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.426 Visakhapatnam-Vijayawada passenger (hereinafter referred to, as 'the subject train') on 02.03.2008 while travelling from Duvvada to Anakapalli, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicant would contend that both the deceased and his friend A.W.2-T.Kiran purchased tickets to board the subject train and while the deceased was trying to board the subject train, he fell down accidentally; that it is an untoward incident of

accidental fall from the subject train; that there is specific evidence of A.W.2 to that effect; that the deceased was holding a valid ticket bearing no.60137465 (Ex.A4) to travel from Duvvada to Anakapalli by the subject train; that the Tribunal erroneously held that the deceased was responsible for the injuries while making an attempt to board a running train and dismissed the claim petition, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the deceased made an attempt to board the running train, fell down, sustained injuries and died due to self-inflicted injuries; that the Tribunal rightly dismissed the claim petition and there is no infirmity, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the deceased K.Pydi Raju was a *bona fide* passenger of train No.426 Visakhapatnam-Vijayawada passenger travelling from Duvvada to Anakapalle on 02.03.2008 ?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No. No.426 Visakhapatnam-Vijayawada passenger on 02.03.2008 while boarding the train ?

3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?

4) To what relief ?

Points 1 to 4:

7. To substantiate the claim of the applicant, A.W.1 (applicant, who is mother of the deceased) and A.W.2-T.Kiran were examined and Ex.A1-attested copy of FIR; Ex.A2-attested copy of inquest report; Ex.A3-attested copy of post-mortem examination report; Ex.A4-journey ticket and Ex.A5-copy of ration card were got marked. On behalf of railways, R.W.1-Station Master, R.W.2-Guard and R.W.3-Assistant Sub Inspector, R.P.F. were examined and Exs.R1-station diary copy, Ex.R2-message copy to GRP, Ex.R3-message copy of Guard, Ex.A4-rough journal and Ex.R5-DRM report were got marked.

8. There is no much dispute with regard to possession of a valid journey ticket Ex.A4 by the deceased to travel from Duvvada to Anakapalle by the subject train on the fateful day. Therefore, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train.

9. As regards the untoward incident of accidental fall, it is appropriate to refer the decision of the Hon'ble

Supreme Court in **Union of India vs. Rina Devi**¹, wherein it is held as follows:

"We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in **United India Insurance Co. Ltd. versus Sunil Kumar** [2017 (13) SC ALF 652] laying down that plea of negligent of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

In the above decision, the Hon'ble Apex Court held that death or injury occurred in the course of boarding or de-boarding of a train will be an accidental fall entitling the dependants or the victim, as the case may be, to the compensation under proviso to Section 124A of the Railways Act, 1989. The Hon'ble Apex Court also held that self-inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree, and that doing so would amount to invoking the principle

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

of contributory negligence which cannot be done in the case of liability based on 'no fault theory'.

10. There is specific evidence of A.W.2 that he boarded the subject train and then his friend, the deceased in this case, while making an attempt to board the said train, accidentally fell down, sustained injuries and succumbed to the same. In view of the direct evidence of A.W.2, who was colleague passenger, no significance can be assigned to the evidence of R.W.2-Guard of the train. There is no other evidence from the side of the railways to state that the injury suffered by the deceased is self-inflicted injury and falls under exceptions narrated under Section 124A of the Railways Act, 1989. Principles of strict liability can be applied to the instant case. In view of the aforesaid decision of the Hon'ble Apex court, the injuries suffered by the deceased are not self-inflicted injuries. There was no intention to suffer any injury. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Under these circumstances, the points are held in favour of the applicant and against the railways.

Point No.4:

11. In the result, the C.M.A. is allowed. The impugned order dated 17.06.2015 in O.A.A. No.189 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicant is awarded compensation of Rs.8,00,000/- (Rupees eight lakhs only) in view of the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways is directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicant is entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. On deposit, the applicant is entitled to withdraw the amount with accrued interest.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

08.11.2018
DRK

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