

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.799 of 2016

ORDER:

1 This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'the Act'), is filed by the applicants in O.A (IIU) No.554 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench, challenging the order dated 16.08.2016 where under and whereby the application filed by the applicants under Section 16 of the Act was dismissed.

2 For the sake of convenience, parties to this appeal will hereinafter be referred to as they were arrayed in the O.A. before the Tribunal. The facts leading to the filing of the present Civil Miscellaneous Appeal, in brief, are as follows:

3 On 10.12.2008, one Ch.Sampath (hereinafter referred to as 'the deceased') and his friend by name Krishna purchased railway ticket at Moula Ali railway station to go to Jangaon. On the same day they boarded Train No.325 – Kakatiya Passenger at Moula Ali and when the train reached Aleru railway station the deceased fell down from the train and sustained multiple injuries. Immediately after the incident, the deceased was shifted to Government hospital, Jangaon and from there to MGM hospital, Warangal where he succumbed to the injuries while undergoing treatment. The GRP Secunderabad registered a case in Cr.No.628 of 2008 and issued FIR. The applicants, who are parents of the deceased, filed the application seeking compensation of Rs.4.00 lakhs. The respondent filed written statement denying all the averments made in the application *inter alia* contending that the deceased was a hawker, on the date of incident the deceased was travelling in the train without valid ticket

and hence he was not a *bona fide* passenger. The deceased fell down from the train due to his own negligence, therefore, the incident will not fall within the ambit of Clause (c) of Section 123 of the Act i.e. 'untoward incident'. Hence the application is liable to be dismissed.

4 Basing on the above pleadings, the Tribunal framed the following issues:

- i. Whether the application is maintainable?
- ii. Whether the applicants are dependents on the deceased?
- iii. Whether the deceased was a bona fide passenger of the Train No.325 Kakatiya Passenger while travelling from Moula Ali to Jangaon on 10.12.2008? Whether the deceased died as a result of an accidental fall from the train?
- iii. Whether the applicants are entitled to the compensation as claimed by them in the application?
- v. To what relief?

5 To prove the case of the applicant, the first applicant examined himself as A.W.1 and got marked Exs.A.1 to A.4. To disprove the case of the applicant, on behalf of the respondent, R.W.1 was examined and Ex.R.1 was marked.

6 Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the deceased was not a *bona fide* passenger and consequently dismissed the application. Aggrieved by the order of the Tribunal dated 16.08.2016, the unsuccessful applicants preferred this appeal.

7 The learned counsel for the applicants submitted that the Tribunal failed to consider that the burden of proof lies on the respondent to prove that the deceased was not a *bona fide* passenger. He further submitted that the deceased died as a result of an

untoward incident, therefore, the applicants are entitled to compensation and it is a fit case to allow the appeal.

8 *Per contra*, the learned standing counsel for the respondents submitted that the applicants failed to produce the ticket of the deceased. He further submitted that due to the negligent act of the deceased, he fell down from the train, therefore, there are no grounds much less valid grounds to allow the appeal.

9 Now the points that arise for consideration in this Civil Miscellaneous Appeal are **(1)** Whether the deceased died as a result of untoward incident? **(2)** Whether the deceased was a *bona fide* passenger? **(3)** Whether the applicants are entitled to compensation? **(4)** If so, to what amount?

Point No.1:

10 As seen from the testimony of A.W.1, their son fell down from the train at Aleru railway station and died in MGM hospital, Warangal on 10.12.2008 while undergoing treatment. As per the recitals of Ex.A.1- FIR, the deceased died on 10.12.2008. As per the recitals of Ex.A.2 – Inquest report and Ex.A.3 – Post-mortem examination report the deceased died due to the injuries sustained by falling down from the train. As per the testimony of R.W.1 also the deceased died on 10.12.2008. There is no much dispute with regard to the cause and nature of the death of the deceased.

11 Now the crucial question that falls for consideration is ‘whether the death of the deceased will fall within the ambit of untoward incident or not’?

12 There is no whisper in the testimony of R.W.1 that the deceased negligently fell down from the train and died. The oral and documentary evidence produced before the court clinchingly establishes that the deceased fell down from the moving train in Aleru railway station. In the cross-examination of A.W.1, nothing is elicited to substantiate the stand of the respondent that due to his own negligence the deceased fell down from the train and died. In the instant case there is no evidence much less legally admissible evidence to establish that the deceased died due to self inflicted injuries so as to exonerate the liability of the respondent in view of proviso to Section 124A of the Act. In order to resolve the issue, this court is placing reliance on ***Union of India vs. Rina Devi***¹ wherein the Hon'ble apex Court held at para No.25 as follows:

25 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) SCALE 652} laying down that plea of negligence 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.

16 As per the principle enunciated in the case cited supra, death or injury in the course of boarding or de-boarding a train will be an 'untoward incident'. Therefore, in the instant case, the death of the deceased will fall within the ambit of 'untoward incident' as contemplated under Section 123(c) of the Act. The findings recorded by the Tribunal are not sustainable either on facts or in law and hence they are liable to be set aside. Having regard to the

¹ 2018 SCC Online SC 507

facts and circumstances of the case and also the principle enunciated in the case cited supra, the death of the deceased was as a result of an untoward incident as defined under Clause (c) of Section 123 of the Act. Accordingly the point is answered in favour of the applicants and against the respondent.

Point No.2:

17 The fact remains that the deceased boarded the train No.325 Kakatiya Passenger at Moula Ali railway station and fell down from the train at Aleru railway station. The applicants have not produced the railway ticket of the deceased. In the application the applicants have taken a specific plea that the deceased along with his friend Krishna purchased the ticket at Moula Ali railway station to go to Jangaon. In the chief examination A.W.1 in unequivocal terms deposed that their son purchased a ticket at Moula Ali railway station. The Tribunal, basing on Ex.R.1 arrived at a conclusion that the deceased was travelling in the train without valid ticket and hence is not a *bona fide* passenger. The stand of the applicants that the deceased purchased ticket is also reflecting in Ex.R.1. Mere non-production of the ticket by itself is not sufficient to arrive at a conclusion that the deceased was not a *bona fide* passenger. In order to resolve the issue, this court is placing reliance on the observations on ***Rina Devi*** case (supra) wherein the Hon'ble apex Court held at para No.29 as follows:

29. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a *bona fide* passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a *bona fide* passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to

be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.

18 In the instant case, the respondents have not produced any rebuttal evidence. On the other hand, as observed earlier, the applicants have taken a specific plea in the application that the deceased purchased ticket. Having regard to the facts and circumstances of the case and the principle enunciated in the case cited supra, this court is of the considered view that the deceased was a *bona fide* passenger. Therefore, the finding of the Tribunal that the deceased was not a *bona fide* passenger is not sustainable either on facts or in law and hence the said finding is hereby set aside. This Point is answered in favour of the applicants and against the respondent.

Point No.3:

19 In view of the findings given on Point Nos.1 and 2 above, the applicants being parents of the deceased, they are entitled to claim compensation. The learned counsel for the applicants submitted that the applicants are entitled to claim compensation of Rs.8.00 lakhs in view of the notification issued by the Railway authorities, which came into force with effect from 01.01.2017. The learned standing counsel for Railways also in all fairness admitted that the Railway authorities have issued a notification on 01.01.2017 revising the compensation amount from Rs.4.00 lakhs to Rs.8.00 lakhs. In ***Rina Devi*** case (supra) the Hon'ble apex Court held at para No.19 as follows:

19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in ***Rathi Menon*** {(2001) 3 SCC 714} and ***Kalandi Charan***

Sahoo vs. General Manager, South-East Central Railway, Bilaspur {2018 ACJ 1460} stands explained accordingly. The 4-Judge Bench judgment in ***Pratap Narain Singh Deo*** {(1976) 1 SCC 289} holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

20 As per the principle enunciated in the case cited supra, the applicant is entitled to claim compensation fixed by the railway authorities as on the date of incident with interest from the date of application or under the revised scheme as on the date of award, whichever is beneficial to the applicant.

21 In the instant case the deceased died on 10.12.2008. If the date of incident is taken into consideration, the applicants are entitled to compensation of Rs.4.00 lakhs with interest at 6% p.a. from the date of application till the date of award. Even if Rs.4.00 lakhs amount was awarded with interest @ 6% p.a. the same will be less than Rs.8.00 lakhs. In view of the principle enunciated in the case cited supra, the applicants are entitled to claim compensation of Rs.8.00 lakhs. Therefore, the applicants are entitled to Rs.8.00 lakhs towards compensation. Accordingly, this point is answered in favour of the applicants and against the respondents.

22 In the result, the appeal is allowed, setting aside the order dated 16.08.2016 passed in O.A (IIU) No.554 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad. Consequently O.A (IIU) No.554 of 2008 is allowed granting compensation of Rs.8.00 lakhs to the applicants. The respondent is hereby directed to deposit the compensation amount within three months from today to the credit of the O.A., failing which the

claimants are entitled to claim interest at 9% p.a. from today till the date of deposit. Since the applicants are parents of the deceased, this Court is apportioning the compensation equally to the applicants Rs.4.00 lakhs each. No order as to costs. As a sequel, miscellaneous petitions if any pending in this Civil Miscellaneous Appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 5th September, 2018
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