

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.433 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 18.02.2016, passed in O.A.II(U)No.377 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal dismissed the claim application of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of Chintha Krishna in an untoward incident while travelling from Bobbili to Chennai on 04.06.2007 by train No.3351 Dhanbad-Alappunzha Express at Korukonda. The appellants are the wife, children and mother of the deceased.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased was accidentally hit by a pole situated by the side of railway track while travelling from Bobbili to Chennai by train No.3351 Dhanbad-Alappunzha Express on 04.06.2007; the deceased did not intend for contributory negligence; the journey ticket was lost in the accident; the Tribunal erroneously held that the deceased himself was criminally negligent for occurrence of untoward incident while travelling by the subject train and the injuries suffered by the deceased are self-inflicted injuries; the finding of the Tribunal is not based on evidence and record; and ultimately, prayed to set

aside the impugned order and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways would contend that the deceased Chintha Krishna was criminally negligent while travelling by the train No.3351 Dhanbad-Alappunzha Express; the friend of the deceased who was alleged to have purchased the ticket for the deceased and travelled along with him, was not examined; the Tribunal rightly dismissed the claim application of the applicants holding that the conduct of the deceased in standing on the footboard of the subject train, exposing his body outside the bogie was a criminal act, which was a misadventure; the findings of the Tribunal are based on evidence and record; there are no circumstances to interfere with the findings of the Tribunal; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the following points have come up for determination in this appeal:

- 1) Whether the deceased was a *bona fide* passenger of train No.3351 Dhanbad-Alappunzha Express and he died in an untoward incident of hitting against a signal pole while travelling from Bobbili to Chennai on 04.06.2007?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 18.02.2016 passed by the Tribunal is liable to be set aside?
- 4) To what relief?

6. Point Nos.1 and 3: The case of the applicants is that the deceased-Chintha Krishna was a *bona fide* passenger of train No.3351 Dhanbad-Alappunzha Express and he died in an untoward incident of hitting of his head against a signal pole while travelling from Bobbili to Chennai. To substantiate the case of the applicants, the 1st applicant-wife of the deceased deposed as A.W.1 and got examined one P.Venkataramana as A.W.2 and also got marked Ex.A.1-Family Member Certificate, Ex.A.2-attested copy of F.I.R., Ex.A.3-attested copy of inquest report, Ex.A.4-attested copy of post-mortem examination report, Ex.A.5-attested copy of Final Report and Ex.A.6-attested copy of Case Diary Part II. On behalf of the respondent-railways, no witness was examined, but Ex.R.1-Divisional Manager's Report was marked.

7. In Ex.R.1-Divisional Railway Manager's Report, it is specifically mentioned that one L.Kameswar, Khalasi Helper, who was on duty on 04.06.2007, had noticed some passengers travelling in general compartment standing at the door/footboard and he shouted and warned them to go inside the compartment, however, the deceased in the instant case did not listen and, as a result of which, he was hit by the signal pole, sustained injuries and died on the spot; the Tribunal had considered the recital in the Divisional Railway Manager's report marked as Ex.R.1 and concluded that the deceased was travelling in the subject train, standing on the footboard exposing his body outside the bogie, which is a criminal act, misadventure and abortive attempt made by the deceased and

the injuries suffered by the deceased are self-inflicted injuries and it fall under the proviso (b) and (c) of Section 124A of the Railway Claims Tribunal Act. The Tribunal ultimately was pleased to dismiss the claim application of the applicants. The only question that falls for consideration in this case is that whether the injuries suffered by the deceased are self-inflicted injuries. It is mentioned in Ex.R.1-DRM's report as follows:

"Under the facts and circumstances, it is revealed during enquiry the deceased was not a bonafide passenger of train No.3351 (Dhanbad – Allepy Exp) on 04.06.07 as because the possession of the journey ticket could not be came to light during preparation of inquest by GRP/Vizianagaram. As per the statement of eye witness Sri L.Kameswar, it could be proved that the deceased was travelling on the foot board by exposing his whole body outside the compartment and dashed with the railway signal pole resulting sustained grievous injury and fell down from the running train at Km.No.829/9-11. The petitioner herself also alleged that her husband was travelling in train No.3351 and due to heavy crowd in the general compartment, the deceased was standing at the door so dashed with signal pole caused to the death. The death caused due to negligence and carelessness on the part of the deceased cannot be ruled out. A passenger is not supposed to travel on the foot board or at the gate of the coach while in running motion which is an offence U/S.156 of Railway Act. The accident did not occur due to any lapse from railway administration and the claim preferred by the party could not be concurred during the enquiry."

8. In Ex.R.1-DRM's report, it is mentioned that one L.Kameswar made a statement in the course of inquest that the deceased was travelling on the footboard of the subject train by exposing his whole body outside the compartment and was dashed with the railway signal pole resulting grievous injuries and fallen down from the running train at Km.No.829/9-11. Admittedly, A.W.1 and A.W.2 are not eyewitnesses to the untoward incident on 04.06.2007. Even if the statement of L.Kameswar is taken as true, he was not examined by the respondent-railways to substantiate that the deceased was negligent while travelling by the subject train. L.Kameswar also mentioned in his statement that he warned the person who was on the footboard/door to get inside the compartment. Even then the deceased did not listen and then ultimately it resulted in the subject death of the deceased on being hit by the signal pole. When the train was moving, it generates lot of sounds. Whether the deceased heard the caution given by the Khalasi is a question. Had the deceased was heard the utterance of L.Kameswar, he would have gone inside immediately. Further it goes to show that there were other passengers at the door as well as on the footboard of the subject train at the time of accident. In such event, it is difficult to notice the signal pole and immediately get into the train. When there are number of persons standing at the door and some of them are travelling by the train on the footboard, it establishes that so many tickets were issued, i.e., more than the general capacity of the general compartment and then the passengers were made to travel on footboard as well as by standing at the door of the train. It is

also relevant to state that the deceased did not intend to suffer any injury in the course of his travel. When there are so many passengers at the door of the train and when the deceased was hit by a signal pole, neither it can be a criminal act nor misadventure is on the part of the deceased. Further, there was no intention on the part of the deceased to invite any trouble for him or other passengers.

9. It is appropriate to refer the decision of the Hon'ble Supreme Court in Union of India vs. Rina Devi¹, wherein it is held as follows:

“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.

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

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

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."

10. Here in this case, no case is made out that the deceased was criminally negligent or the injuries suffered by him are self-inflicted injuries. Thus, the injuries suffered by the deceased are not covered under the proviso (b) and (c) of Section 124A of the Railway Claims Tribunal Act.

11. There is evidence of A.W.2 with regard to purchase of journey ticket by the deceased. So, the initial burden with regard to the purchase of the journey ticket by the deceased was discharged. Under these circumstances, it can safely concluded that the deceased was *bona fide* passenger of train No.3351 Dhanbad-Alappunzha Express and died in an untoward incident of accidental fall on 04.06.2007 while travelling from Bobbili to Chennai. The findings of the Tribunal are not in consonance with Ex.R.1-DRM's report placed before the Court and also the evidence lead by the applicants. Therefore, the impugned order is liable to be set aside. Accordingly, these points are answered.

12. Point Nos.2 and 4: The applicants are dependents on the deceased. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants-claimants are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

13. In the result, the appeal is allowed, setting aside the order, dated 18.02.2016, passed in O.A. II(U) No.377 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.II(U) No.377 of 2007 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants are entitled to interest @ 6% per annum from the date of this judgment till realisation. The 1st applicant-wife of the deceased is entitled to half of the compensation awarded and the remaining half of the compensation shall be apportioned among appellants 2 to 4 equally. On deposit, all the applicants are entitled to withdraw their respective shares. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

29th November, 2018

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