

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.150 OF 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 09.01.2017, passed in O.A.A.No.04 of 2009 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal') whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Indian Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- for the death of the deceased Kolha Bhuyya in a railway accident that took place on the intervening night of 11/12.10.2007, was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellants/applicants would contend that the deceased Kolha Bhuyya was travelling by train No.12728 on 11.10.2007 to go to Ranchi from Secunderabad; that the deceased Kolha Bhuyya purchased an excess fare paper ticket from the Ticket Collector by paying penalty and the said ticket was seized from the dead body of the deceased Kolha Bhuyya during the course of inquest; that while travelling, the deceased Kolha Bhuyya accidentally fell down in the intervening night of 11/12.10.2007, thereby suffered injuries and succumbed to those injuries; that there is substantial evidence to hold that the deceased Kolha Bhuyya was a *bona fide* passenger of train

No.12728 and had accidentally fallen from the said train, however, the Tribunal erroneously dismissed the claim application and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that there is no evidence to establish that the deceased Kolha Bhuyya died in an untoward incident of accidental fall from train No.12728 on the intervening night of 11/12.10.2007 and this aspect was elaborately dealt with by the Tribunal; that the Tribunal rightly dismissed the claim application and there is no infirmity in the impugned order and ultimately, prayed to confirm the impugned order and dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, there is no much dispute with regard to finding of excess fare paper ticket in the possession of the deceased Kolha Bhuyya in the course of inquest panchanama. The said ticket establishes that the deceased Kolha Bhuyya had paid Rs.500/-, which includes penalty, to travel from Secunderabad to Ranchi in train No.12728 on 11.10.2007. There is also record to establish that the applicants are the dependants on the deceased Kolha Bhuyya. While dealing with the subject matter, the Tribunal, in para No.20 of its judgment, held as follows:

“In view of the principles laid down in the above decision and there being nothing on record to show that the deceased had an accidental fall from the train at Nidadavolu railway station due to jerks and jolts as claimed by the applicants and on the other hand the material on record showing that the fall has occurred due to attempt by the

deceased to board a running train, the injuries resulting therefrom would amount to self inflicted injuries. By the virtue of exemption contained in the proviso of Section 124-A of the Railways Act, the respondent railways is exonerated from the liability to pay compensation in the event of the deceased dying due to self inflicted injuries. In these circumstances it is held that the death of the deceased is not shown to be due to accidental fall amounting to untoward incident within the meaning of Section 123(C) read with Section 124 of the Railways Act and even otherwise the respondent railway is exonerated from their liability in view of the proviso to Section 124-A of the Railways act. The issues are answered accordingly.”

The finding of the Tribunal is that the applicants failed to establish that the deceased Kolha Bhuyya had accidentally fallen from the train at Nidadavolu Railway Station due to jerks and jolts; that the material on record establishes that the fall had occurred due to an attempt made by the deceased Kolha Bhuyya to board a running train; that the injuries suffered by the deceased Kolha Bhuyya amount to self inflicted injuries and that in view of the exemption laid down in the proviso of Section 124-A of the Railways Act, 1989, the respondent/Railways is exonerated from the liability to pay the compensation.

6. Under these circumstances, it is appropriate to refer to a 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

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

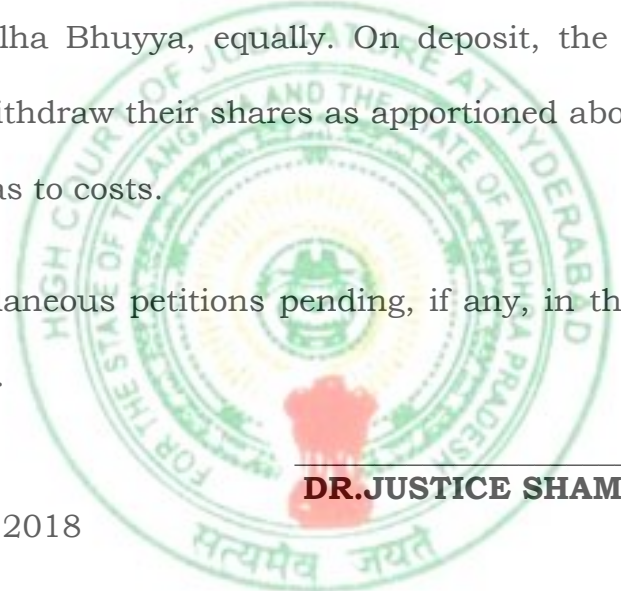
Insurance Co. Ltd. versus Sunil Kumar [2017 (13) SC ALF 652] laying down that plea of negligent of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a 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 aforesaid decision, it is held that death or injury occurred in the course of boarding and de-boarding amounts to an accidental fall from a train. In the instant case, there is inquest report – Ex.A-2 and the criminal case record – Exs.A-1 and A-6 to establish that the deceased Kolha Bhuyya had accidentally fallen from train No.12728 on the intervening night of 11/12.10.2007. There is nothing on record to establish that the deceased Kolha Bhuyya intended or foreseen the accidental fall. Even, there is no criminal negligence on the part of the deceased Kolha Bhuyya in falling from the train. Under these circumstances, it can be safely concluded that the deceased Kolha Bhuyya was a *bona fide* passenger and died in an untoward incident of accidental fall from train No.12728 on the intervening night of 11/12.10.2007 at Nidadavolu Railway Station due to jerks and jolts of the said train and succumbed to the injuries suffered by him. Therefore, the applicants are entitled for a compensation of Rs.8,00,000/- (Rupees eight lakhs only).

7. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 09.01.2017, passed in O.A.A.No.04 of 2009 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A.No.04 of 2009 stands

allowed. The applicants are awarded a compensation of Rs.8,00,000/-. The respondent/Railways shall pay the compensation awarded within three (3) months from the date of receipt of a copy of this judgment, failing which, interest at the rate of 6% per annum shall be paid on the compensation amount from the date of this judgment till the date of realisation. Out of the compensation awarded, applicant No.1, who is the wife of the deceased Kolha Bhuyya, is entitled for 50% of the compensation awarded, and the remaining 50% of the compensation is ordered to be shared by applicant Nos.2 to 4, who are the children of the deceased Kolha Bhuyya, equally. On deposit, the applicants are entitled to withdraw their shares as apportioned above. There shall be no order as to costs.

8. Miscellaneous petitions pending, if any, in this appeal shall stand closed.



DR.JUSTICE SHAMEEM AKTHER

Date : 05.12.2018
AMD

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