

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.601 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 respondent in O.A.A.No.423 of 2009 on the file of the Railway Claims Tribunal, Secunderabad Bench, challenging the order dated 01.09.2015 wherein and whereby the application filed by the applicants under Section 16 of the Act was allowed, granting compensation of Rs.4.00 lakhs.

2 For the sake of convenience, the parties to this appeal will hereinafter be referred to as they were arrayed in the OAA before the Tribunal.

3 The facts leading to the filing of the present Civil Miscellaneous Appeal, in brief, are as follows:

4 On 18.11.2009, one M. Malleswari (hereinafter referred to as 'the deceased') purchased a train journey ticket and boarded train No.2835 Hatia – Yaswanthpur Express at Vijayawada to go to Nellore. The deceased accidentally fell down from the train at Krishna Canal Railway Station and died on the spot due to multiple grievous injuries. The mother of the deceased filed application claiming compensation of Rs.4.00 lakhs.

5 The respondent filed written statement denying the various averments made in the claim petition inter *alia* contending that the deceased was not a *bona fide* passenger and that she fell down from the train due to her negligent act. Hence the application is liable to be

dismissed as the act of the deceased will fall within the ambit of proviso to Section 124A of the Act.

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

- i. Whether the applicants are dependents on the deceased?
- ii. Whether the deceased was a *bona fide* passenger of the Train in question while travelling from Vijayawada to Nellore?
- iii. Whether the deceased died as a result of an untoward incident of accidental fall from the train?
- iv. Whether the applicants are entitled to compensation as claimed by them in the application?
- v. To what relief?

7 To prove the case of the applicants, the 2nd applicant examined herself as A.W.1 and got marked Exs.A.1 to A.7. On behalf of the respondents, no oral evidence was adduced, but the Divisional Railway Manager's report was marked as Ex.R.1.

8 Basing on the oral, documentary evidence and other material available on record, the Tribunal allowed the application by granting compensation of Rs.4.00 lakhs. Feeling aggrieved by the order of the Tribunal dated 01.09.2015, the respondent filed the present appeal.

9 The learned standing counsel for the respondents submitted that the finding of the Tribunal that the deceased was a *bona fide* passenger is not sustainable in view of the non production of the ticket. He further submitted that the deceased died due to her negligent act which will fall within the ambit of proviso to Section 124A of the Act. He further submitted that the findings of the Tribunal are not sustainable either on facts or in law and hence this is a fit case to allow the appeal.

10 *Per contra*, the learned counsel for the applicants submitted that the findings recorded by the Tribunal are based on evidence; much less legally admissible evidence, therefore, it is not a fit case to interfere with the order of the Tribunal.

11 Now the points that arise for consideration in this Civil Miscellaneous Appeal are **(1)** Whether the deceased is a *bona fide* passenger? **(2)** Whether the deceased died as a result of untoward incident? **(3)** Whether the applicants are entitled to compensation?

Point No.1:

12 As seen from the testimony of A.W.1, her daughter purchased a railway ticket at Vijayawada railway station to go to Nellore in Hatia-Yeswanthpur Express. Her testimony further reveals that her daughter fell down from the train at Krishna Canal Railway station, Vijayawada and died on the spot. In the cross-examination of A.W.1 nothing is elicited to shake her testimony so as to substantiate the stand of the respondent. In the application, the applicants have taken a specific plea that the deceased purchased a railway ticket at Vijayawada railway station. The Tribunal in Para No.8 of the order made an observation that the deceased was dragged to a distance of 20 sleepers. In such circumstances, the possibility of losing the ticket by the deceased in the incident cannot be ruled out. It is the stand of the respondent that the deceased wrongly boarded the train and made an attempt to get down at Krishna Canal Railway station. A perusal of the record reveals that the deceased was working as Lecturer in Krishnaveni Polytechnic College at Vijayawada. In such circumstances, the stand taken by the respondent that the deceased wrongly boarded the train is somewhat improper and unbelievable.

The respondent has not adduced any oral evidence to substantiate that the deceased wrongly boarded the said train and made an attempt to get down from the train at Krishna Canal Railway station, Vijayawada. Absolutely, there is no evidence on record to substantiate the stand of the respondent. Once the applicant has taken a specific plea in the application as well as in the chief examination affidavit that the deceased was a *bona fide* passenger, the burden of proof shifts on to the respondent. In **Union of India v Rina Devi**¹ 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.

13 The Tribunal has assigned reasons much less cogent and valid reasons to its findings. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the deceased was a *bona fide* passenger. I am fully endorsing with the findings of the Tribunal. Hence the Point No.1 is answered in favour of the applicants and against the respondent.

Point No.2:

14 The testimony of A.W.1 coupled with Exs.A.1 to A.4 clearly reveals that the deceased fell down from the Hatia – Yashwanthpur Express and died on platform No.2 of Krishna Canal Railway Station, Vijayawada. The respondent did not examine any one to establish that due to the negligent act of the deceased, she fell down from the

¹ 2018 SCC Online SC 507

train. In order to resolve the issue this court is placing reliance on Rina Devi case (supra) 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. v. 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.

15 By examining A.W.1 and marking Exs.A.1 to A.3, the applicants clearly established that the dead body of the deceased was found on Platform No.2 of Krishna Canal Railway Station, Vijayawada. The respondent has not adduced any rebuttal evidence. The Tribunal considered the material available on record in right perspective and arrived at a conclusion that the deceased died as a result of an untoward incident. I am fully endorsing with the findings recorded by the Tribunal on this aspect. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this court is of the considered view that the death of the deceased was as a result of an untoward incident, as contemplated under Section 123 (c) of the Act. Accordingly, this point is answered in favour of the applicants and against the respondent.

Point No.3:

16 The Tribunal has considered the oral and documentary evidence available on record in right perspective and awarded compensation of Rs.4.00 lakhs to the applicants. The findings recorded by the Tribunal are based on evidence, much less legally

admissible evidence. There are no grounds much less valid grounds to upset the well considered findings of the Tribunal. The appeal lacks merits and *bona fides*.

17 In the result is dismissed. 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: 4th September, 2018
kvsn

