

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.373 of 2014

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 20.02.2014 in O.A.A. No.247 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition of the appellant-applicant claiming compensation for the injuries sustained by him in an untoward incident of accidental fall from train No.550 Mahaboobnagar-Kacheguda passenger (hereinafter referred to, as 'the subject train') on 27.07.2008 at Gollapalli railway station, 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 the applicant was possessing a valid journey ticket, and when he was trying to board the subject train, he fell down accidentally from the said train, sustained injuries and his both legs were amputated; that there is ample evidence to substantiate possession of journey ticket

and accidental fall from the subject train; that the Tribunal erroneously held that the applicant was not a *bona fide* passenger and suffered injuries on account of his own imprudent and careless act of boarding a moving train and applied proviso (b) to Section 124A of the Railways Act, 1989, and denied the compensation; that the fall is accidental and the applicant was a *bona fide* passenger, and therefore, he is entitled to compensation of Rs.8.00 lakhs as per the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 and ultimately prayed to set aside the impugned order and grant compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that there is no evidence that the applicant was possessing a journey ticket at the relevant time of the incident; that he had fallen down out of his own carelessness by trying to board a moving train; therefore, he is not entitled to compensation under the Railways Act; that the Tribunal rightly appreciated the facts and circumstances of the case and dismissed the claim application; that there is no infirmity and there is nothing to take a different view, 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 applicant was a *bona fide* passenger of train No.550 Mahaboobnagar-Kacheguda passenger on 27.07.2008 travelling from Jadcherla to Kacheguda ?
- 2) Whether the applicant had accidentally fallen from the subject train on 27.07.2008 at Gollapalli railway station ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 3:

7. The case and evidence of the applicant is that he purchased a ticket and tried to board the subject train on 27.7.2008, and while boarding the train, he accidentally fell down from the train, and consequently, both his legs were amputated. To substantiate his case, he filed Ex.A1-original ticket; Ex.A2-control message; Ex.A3-attested copy of treatment certificate; Ex.A4-photograph of the injured; Ex.A5-attested copy of discharge summary; Ex.A6-photo copy of orthopaedically handicapped certificate and Ex.A7-photo copy of concession certificate. On behalf of railways, R.W.1 was examined and Ex.R1-extract of control message book was got marked. The evidence of R.W.1-Assistant Station Master is that the applicant approached him for a

ticket, but as train was moving, he had not issued a ticket; that the applicant ran towards the train and tried to board the train and in that process, fell down and suffered the injuries.

8. In the case on hand, the applicant specifically deposed that Ex.A1 is the journey ticket purchased by him. It is not in dispute that the said ticket is meant for journey to be undertaken by the applicant on the fateful day by the subject train. Even if the applicant was not issued a ticket, he was entitled to pay required fare, etc. to the Ticket Collector and undertake the journey. In this context, 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-

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

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 of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. It is further held that mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger.

9. In the case on hand, the applicant filed journey ticket Ex.A1. Therefore, it cannot be said that the applicant was not a *bona fide* passenger. In view of the direct evidence of A.W.1, no significance can be assigned to the evidence of R.W.1. There is no other evidence from the side of the railways to state that the injury suffered by the applicant 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. The injuries suffered by the applicant 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. Under these circumstances, the points are held in favour of the applicant and against the railways.

Point No.4:

10. There is ample evidence on record to show that the applicant suffered amputation of his two legs consequent on injuries suffered by him in the accidental fall from the subject train on 27.7.2008. The amputation falls under sl.no.3 of Part-II of the Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Hence, the applicant is entitled to compensation of Rs.8,00,000/-.

11. In the result, the C.M.A. is allowed. The impugned order of the Tribunal is set aside. The claim application O.A.A. No.247 of 2008 filed by the applicant is allowed awarding compensation of Rs.8,00,000/- (Rupees eight lakhs) to the applicant. 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 applicants are 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

06.11.2018
DRK

