

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.446 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 21.9.2015 passed in O.A.II(U) No.565 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal'), wherein and whereby the application filed by the applicants under Section 16 of the Railway Claims Tribunal Act was allowed, granting compensation of Rs.4,00,000/- to the applicants.

2. The facts leading to filing of the present appeal are briefly as follows: On 19.1.2008, one M.Seetaramanjaneyulu (hereinafter referred to as, the deceased) boarded Train No.2712-Chennai-Vijayawada Pinakini Express, at Nellore Railway Station to go to Tenali, with a valid ticket. While getting down from the train at Tenali Railway Station, the deceased accidentally fell down from the train and sustained injuries. Immediately after the incident, the deceased was shifted to Government General Hospital (GGH), Tenali in 108-Ambulance. While undergoing treatment in GGH, Tenali, the deceased died. The applicant Nos.1, 2, 3 and 4, who are wife, mother and sons of the deceased, filed the application under Section 16 of the Railway Claims Tribunal Act claiming compensation of Rs.4,00,000/-.

3. The respondent filed written statement denying the averments made in the application *inter alia* contending that the deceased, who is not a *bona fide* passenger, negligently fell down

from the train and died; therefore, the applicants are not entitled to claim compensation.

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

1. Whether the application is maintainable?
2. Whether the applicants are dependents of the deceased?
3. Whether the deceased was a bona fide passenger of train No.2712 Chennai-Vijayawada Pinakini Express while travelling from Nellore to Tenali on 19.1.2008? Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
4. Whether the applicants are entitled to the compensation as claimed in the application?
5. To what relief?

5. To substantiate the case, applicant No.1 examined herself as A.W.1 and got marked Exs.A.1 to A.5. To disprove the case of the applicants, on behalf of the respondent, no witness was examined but Ex.R.1 report of the Divisional Railway Manager was marked.

6. Basing on the oral and documentary evidence available on record, the Tribunal allowed the application granting compensation of Rs.4,00,000/- to the applicants.

7. Feeling aggrieved by the order dated 21.9.2015 passed in O.A.II (U) No.565 of 2008, the respondent preferred the present appeal.

8. Learned counsel for the appellant herein submitted that the finding of the Tribunal that the death of the deceased is an untoward incident is contrary to the evidence produced before the Tribunal. He further submitted that the finding recorded by the Tribunal is not sustainable either on facts or in law; therefore, it is

a fit case to allow the appeal. None appeared on behalf of the respondents.

9. Now, the point that arises for consideration in this appeal is:

Whether the death of the deceased will fall within the ambit of an untoward incident?

10. The Tribunal has given a specific finding that the deceased is a *bona fide* passenger. The appellant did not choose to challenge said finding recorded by the Tribunal; hence, the said finding became final.

11. As seen from the testimony of A.W.1, on the date of the incident, her husband fell down from the train and sustained injuries. Her testimony further reveals that the deceased died while undergoing treatment in GGH, Tenali. As per the recitals of Ex.A.1-F.I.R., A.2-Inquest report and A.3-Postmortem report, the deceased died due to the injuries sustained by him by falling from the train. The factum of receiving of the injuries is not disputed by the appellant. Equally the factum of death is not disputed by the appellant.

12. It is the contention of the appellant that the deceased has not taken reasonable care while getting down from the train. To put it in a different way, due to his negligent act only, the deceased fell down from the train and died. The act of the deceased will fall within the ambit of Proviso to Section 124A of the Railways Act. The appellant did not choose to examine any one of the co-passengers of the deceased to substantiate its stand. Mere pleading itself would not amount to proof of the same. To resolve the issue, this Court is placing reliance on the judgment in **Rina**

Devi, wherein the Hon'ble apex Court held at paragraph 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.

14. As per the principle enunciated in the case cited supra, if any person falls down from the train while boarding or de-boarding and succumbed to the injuries sustained in the incident, such an act of the deceased will fall within the ambit of an untoward incident. The material placed before the Tribunal clinchingly established that the death of the deceased was as a result of an untoward incident. Viewed from any angle, the act of the deceased will not fall within the ambit of Proviso to Section 124A of the Railways Act.

15. There is no dispute with regard to the relationship between the applicants and the deceased as well as the entitlement of the applicants to the compensation.

16. 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 findings recorded by the Tribunal are supported by evidence much less cogent and convincing evidence. I am fully agreeing with the findings recorded by the Tribunal.

There are no grounds much less valid grounds to upset the findings recorded by the Tribunal. The appeal lacks merits and *bona fides*.

17. Hence, the appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 04.9.2018
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