

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER  
CIVIL MISCELLANEOUS APPEAL No.786 of 2015

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 18.09.2015, passed in O.A.A.No.246 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the Tribunal dismissed the claim application of the appellants claiming a compensation of Rs.8,00,000/- for the death of K.Rahul (son of the applicants) in an untoward incident of accidental fall from train No.167 Tirupathi-Katpadi Passenger while travelling from Bommasamudram to Katpadi.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased-K.Rahul died in an untoward incident of accidental fall from train No.167 Tirupathi-Katpadi Passenger on 30.06.2009; there is direct evidence of A.W.2 to substantiate the accidental fall; the journey ticket was lost in the accident; though it is alleged by the respondent-railways that the deceased had made an attempt to board the running train in a drunken state, the same is not substantiated by any documentary evidence; the Tribunal erroneously held that the deceased tried to board the subject train in a drunken state and the injuries suffered by the deceased were self-inflicted injuries and the case of the applicants false under proviso (b) and (c) of

Section 124A of the Railway Claims Tribunal Act; the Tribunal erroneously held that the deceased was not a *bona fide* passenger of the subject train; there is infirmity in the impugned order passed by the Tribunal; and ultimately, prayed to set aside the impugned order and grant compensation in favour of the appellant-applicant by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways would contend that no journey ticket was found in possession of the deceased; the deceased made an attempt to board the running train on 30.06.2009; the injuries suffered by the deceased were self-inflicted injuries; the Tribunal held that the deceased was not a *bona fide* passenger and did not die in an untoward incident of accidental fall; the findings of the Tribunal are based on evidence and record; there is no infirmity in the impugned order; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the points that arise for determination in this appeal are as follows:-

1. Whether the deceased-K.Rahul was a *bona fide* passenger of the train No.167 Tirupathi-Katpadi Passenger and died in an untoward incident of accidental fall from the said train while travelling from Bommasamudram to Katpadi on 30.06.2009?
2. Whether the appellants-applicants are entitled to any compensation as claimed?
3. Whether the impugned order dated 18.09.2015 passed by the Tribunal is liable to be set aside?
4. To what relief?

Points 1 to 4:

6. The case of the applicants is that the deceased-K.Rahul died in an untoward incident of accidental fall from train No.167 Tirupathi-Katpadi Passenger while travelling from Bommasamudram to Katpadi on 30.06.2009. To substantiate the claim of the appellants-applicants, the mother of the deceased herself deposed as A.W.1 and examined the friend of the deceased as A.W.2 and also got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of inquest report, Ex.A.3-attested copy of post-mortem examination report, Ex.A.4-death certificate, Ex.A.5-xerox copy of ration card and Ex.A.6-Heirship certificate. On behalf of the respondent-Railways, the Guard of the subject train was examined as R.W.1 and Ex.R.1-Guard's rough journal, Ex.R.2-Combined train report and Ex.R.3-Divisional Railway Manager's report were got marked.

7. A.W.1 is the mother of the deceased. A.W.2 is the friend of the deceased. A.W.1 is not a direct witness to the accidental fall. The evidence of A.W.2 is that the deceased had purchased the ticket and while boarding the train No.167 Tirupathi-Katpadi Passenger on 30.06.2009, accidentally fallen at Bommasamudram railway station. In the cross-examination, A.W.2 denied the suggestion that the deceased and A.W.2 were in a drunken state at that point of time. There is evidence of R.W.1, who is the Guard of the subject train No.167 Tirupathi-Katpadi Passenger. His evidence reveals that the said train arrived at Bommasamudram halt at 13-06 hours and left at 13-

07 hours, in the meantime, some students who were in a drunken state tried to board the running train and one of them had fallen down from the fourth coach from engine. He immediately pressed bell code to stop the train and the driver stopped the train, he rushed to the spot and found the injured person with smell of alcohol and with the help of co-passenger, lifted him from the track, rendered first aid, put him in the coach and informed the incident to the Dy.S.S., Bommasamudram through walkie-talkie. The train was detained for ten minutes at Bommasamudram. Thereafter, he carried the injured to Katpadi railway station and handed over to Station Master and the Government Railway Police shifted him to Government Hospital, Katpadi. R.W.1 denied that he is deposing false.

8. Learned counsel for the applicants relied on a decision of this Court dated 26.08.2010 in C.M.A. No.220 of 2006 in P.Gangaiah Vs. The Union of India, rep., by its General Manager, South Central Railways, Secunderabad, wherein the victim had fallen from train and this Court held that the victim was in an unconscious or in intoxicated condition and he was only smelling alcohol, which itself does not mean that he was responsible for the accident, as such the proviso to Section 124A of the Railway Claims Tribunal Act can be invoked.

9. Here in this case, the deceased made an attempt to board the running train in a drunken state. There is specific evidence of A.W.2 that alcohol smell was emanating from the deceased when he has lifted the deceased from the railway track and put in the rear coach of the train. Learned counsel for the

applicants has also relied on the decision of the Hon'ble Supreme Court in Union of India vs. Rina Devi<sup>1</sup> and contended that the journey ticket was lost in the accident. In Rina Devi's case (1 supra), it is held as follows:

“Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari vs. Union of India [(1993) ACJ 846] referring to the scheme of Railways Act, 1890, it was observed that since traveling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation.”

10. In the instant case, no ticket was recovered from the possession of the deceased. Even in the inquest panchanama, it is mentioned about the purchasing of the ticket by the deceased and his travelling in the subject train. A.W.2 is said to be the friend of the deceased and an eyewitness to the accidental fall and he stated that he was also travelling in the subject train along with the deceased. A.W.2 did not find his ticket also. No ticket details of the deceased were mentioned in the inquest panchanama.

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<sup>1</sup> Civil Appeal No.4945 of 2018 dated 09.05.2018

11. While dealing with the subject matter, the Tribunal held that the injuries suffered by the deceased were self-inflicted injuries and the case falls under Section 124(a) of the Railway Claims Tribunal Act. The injuries suffered by the deceased are not covered under the proviso (b) and (c) of Section 124A of the Railway Claims Tribunal Act in view of the decision of the Hon'ble Supreme Court in Rina Devi's (1 supra), 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 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."

12. The boarding of running train cannot be considered as untoward incident of accidental fall. In the P.Gangaiah's case relied on by the learned counsel for the applicants, the victim had fallen while de-boarding the train and he was in a drunken state. The specific evidence of R.W.1 is that when the train was moving, the deceased made an attempt to get into the train in a drunken state. In these circumstances, it cannot be equated the circumstances appearing in the aforementioned decisions. The provisions of Sections 123(a) and 124A of the Railway Claims Tribunal Act cannot be so liberal to cover the victim/deceased boarding the running train in a drunken state, though the enactment is a social welfare beneficial legislation. The Tribunal had elaborately discussed all these aspects basing on the entire evidence on record. Even there is no legally acceptable evidence to prove that the deceased had purchased valid ticket and possessed the same at the time of accident. The findings of the Tribunal are based on evidence and record. There is nothing to take a different view. Therefore, the appeal is devoid of merit and it is liable to be dismissed. Accordingly, these points are answered.

13. In the result, the appeal is dismissed, confirming the order, dated 18.09.2015, passed in O.A.A. No.246 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

13<sup>th</sup> December, 2018  
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