

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.120 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 19.06.2015 passed in O.A.A.No.241 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal')

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

3. The applicants 1 to 3 are the sons and applicant No.4 is the daughter of one Kakarla Jayamma (hereinafter referred to as 'the deceased'). On 06.09.2004 the deceased purchased the ticket at Gudur to go to Nellore in the passenger train from Tirupathi to Ongole. By mistake, the deceased while boarding train No.530 Gudur to Tirupathi passenger fell down and sustained multiple injuries. Immediately after the incident, the deceased was shifted to Government Hospital, Gudur and from there to Government General Hospital, Nellore. The deceased died on 10.09.2004 while undergoing treatment. The applicants are the dependants on the deceased. Hence, the applicants filed the application under Section 16 of the Railway Claims Tribunal Act claiming compensation of Rs.4,00,000/-.

4. The respondent filed written statement *inter alia* contending that the deceased fell down from running train; therefore the applicants are not entitled to claim any compensation. It is further contended that the death of the deceased is not the result of untoward incident. Hence, the petition is liable to be dismissed.

5. Basing on the above pleadings, the Tribunal framed four issues.

6. To substantiate the case, applicant No.1 examined himself as AW.1 and got marked Exs.A.1 to A.10. To dislodge the case of the applicants, on behalf of the respondent, RW.1 was examined and Exs.R.1 to R.4 were marked.

7. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the applicants are the legal representatives of the deceased and the deceased is a *bona fide* passenger. The Tribunal dismissed the petition on the sole ground that the death of the deceased is not the result of untoward incident, as she herself negligently fell down from the moving train.

8. Feeling aggrieved by the order dated 19.06.2015 passed in O.A.A.No.241 of 2004, the unsuccessful applicants preferred the present appeal.

9. Ms.Geetha Madhuri N.S., learned Advocate, representing Sri Pottigari Sridhar Reddy, learned counsel for the applicants submitted that the finding of the Tribunal that the death of the deceased is not result of untoward incident is not sustainable either on facts or in law. She further submitted that the Tribunal having arrived at a conclusion that the deceased is a *bona fide* passenger ought to have allowed the petition, therefore, it is a fit case to allow the appeal.

10. *Per contra*, Sri T.S.Venkataramana, the learned Standing Counsel for the Railways, submitted that the findings recorded by

the Tribunal that the death of the deceased is not the result of untoward incident is sustainable either on facts or in law, therefore, it is a fit case to dismiss the appeal.

11. The points that arise for consideration in this appeal are:

1. Whether the deceased died is a result of untoward incident or not?
2. Whether the applicants are entitled for compensation and if so, to what amount?

Point Nos.1 and 2:

12. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

13. The Tribunal arrived at a conclusion that the deceased is a *bona fide* passenger. The finding recorded by the Tribunal became final in view of non-filing of appeal by the respondent. Having regard to the facts and circumstances of the case, this Court is of a considered view that the deceased is a *bona fide* passenger. A.W.1 is the son of the deceased. If the testimony of A.W.1 is taken into consideration, the deceased fell down from the train due to heavy jerks and sustained injuries. His testimony further reveals that the deceased died in Government General Hospital, Nellore while undergoing treatment. As per the recitals of Ex.A1, First Information Report, the deceased fell down from a passenger train and sustained injuries. As per the recitals of Ex.A2 inquest panchanama and Ex.A3 post-mortem report, the deceased died due to the injuries sustained by falling down from the passenger train.

14. By examining A.W.1 and R.W.1, and marking Exs.A1 to A.10, R.1 to R.4, the applicants proved that the deceased died due to fell down from the train.

15. The next question that falls for consideration is whether the act of the deceased will fall within the ambit of Proviso to Section 124A of the Railways Act. The Tribunal placed reliance on the testimony of R.W.1 to arrive at a conclusion that the act of the deceased fall within the ambit of Proviso to Section 124A of the Railways Act. This Court carefully scanned the testimony of R.W.1, who is the guard of the train bearing No.530. There is no whisper in the testimony of R.W.1 that the deceased jumped from a running train. If the cross-examination of R.W.1 is taken into consideration, he has seen the deceased in the Gudur railway station. There is no whisper in the testimony of R.W.1 on seeing the deceased jumping from the train, he stopped the train. If the chief and cross-examination of R.W.1 is taken into consideration, he came to the spot after the incident. One way R.W.1 is not an eye witness to the incident. The oral testimony of R.W.1 and recitals of Ex.R1 no way helpful to the respondent to establish that the deceased negligently fell down from a running train in order to absolve its liability. The fact remains that the deceased fell down from a running train. To substantiate the argument, learned counsel for the appellants has drawn the attention of this Court to the decision in **Union of India v Rina Devi**¹, wherein the Hon'ble apex Court, after analysing the case-law on the subject, held at paragraph No.25 as follows:

¹ 2018 SCC Online SC 507

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.

(emphasis supplied)

16. As per the principle enunciated in the case cited supra, if a passenger fell down from the train while getting in or getting down, the railways has to pay compensation. 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 is the result of untoward incident and will fall within the ambit of Section 123(c) of the Railways Act. Viewed from any angle, the act of the deceased will not fall within the ambit of Proviso to Section 124-A of the Railways Act. Having regard to the facts and circumstances of the case, the finding recorded by the Tribunal is not sustainable either on facts or in law. Therefore, the applicants are entitled to claim compensation. Accordingly, point Nos.1 and 2 are answered in favour of the appellants and against the respondent.

17. The incident was occurred on 06.09.2004 and the deceased died on 10.09.2004. At the relevant point of time, as per the notification issued by the Railways, the applicants are entitled for compensation amount of Rs.4,00,000/-. Learned counsel for the appellants submitted that the appellants are entitled for

compensation amount of Rs.4,00,000/- with interest at 6% per annum. To substantiate the argument, learned counsel for the appellants has drawn the attention of this Court to paragraph No.19 of **Rina Devi**, which reads as follows:

19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon v. Union of India*, (2001) 3 SCC 714, (supra) and *Kalandi Charan Sahoo v. General Manager, South East Central Railway, Bilaspur*, Civil Appeal No.5608 of 2017, dated 25.4.2017, stands explained accordingly. The 4-Judge Bench judgment in *Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 SCC 289, holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

18. As per the principle enunciated in the case cited supra, the applicants are entitled to the compensation amount fixed by the Railway Authorities as on the date of the incident with interest from the date of the application, or under the revised scheme as on the date of the award, whichever is beneficial to the applicants.

19. Coming to the facts of the case on hand, as on the date of the accident i.e., 06.09.2004, the compensation payable is Rs.4,00,000/- with interest from the date of application.

20. Taking into consideration the facts and circumstances of the case, I have no hesitation to hold that the applicants are entitled for compensation of Rs.4,00,000/- with interest at 6% per annum from the date of application till the date of award. During

pendency of the application, claimant No.1 died. Claimants 2 and 3, who are sons of the deceased, and claimant No.4, who is the daughter of the deceased, are entitled for compensation amount equally. Accordingly, point No.3 is answered in favour of the applicants and against the respondent.

21. In the light of the foregoing discussion, I am of the considered view that it is a fit case to allow the appeal.

22. In the result, the civil miscellaneous appeal is allowed, setting aside the order dated 19.06.2015 passed in O.A.A.No.241 of 2004. Consequently, O.A.A.No.241 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is allowed, granting compensation of Rs.4,00,000/- with interest @ 6% per annum from the date of application till today. The respondent is directed to deposit the compensation within a period of three months from today, failing which the applicants are entitled to interest at the rate of 9% per annum from the date of the award till the date of deposit. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Dt: 04.09.2018

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