

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.958 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 16.09.2016 in O.A.A. No.364 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellants-applicants claiming compensation for the death of one Meda Upender (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train no.170 UP push-pull passenger (hereinafter referred to, as 'the subject train') on 29.11.2007 on the platform no.2 of Mahaboobabad railway station while travelling from Mahaboobabad to Ramagundam, 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 applicants would contend that the deceased accidentally slipped and fell down on the platform of Mahaboobabad railway station while boarding the subject train on 29.11.2007, which is

an untoward incident of accidental fall, suffered injuries, was admitted in Government Hospital, Mahaboobabad by 108 ambulance and succumbed to the said injuries on the same day at about 23.30 hours while undergoing treatment; that the journey ticket was lost in the accidental fall; that there is evidence of A.Ws.1 and 2 and Exs.A.1 to A.8 to establish the accidental fall; that the Tribunal did not advert to the oral and documentary evidence placed on record by the applicants, and erroneously relied on the statements of the Guard and the Driver of the train in Ex.R1, who stated that there was no untoward incident of accidental fall on 29.11.2007, and discarded the evidence adduced on behalf of the applicants, and was pleased to dismiss the claim application; that the impugned order of the Tribunal is not on proper appreciation of the evidence on record, and ultimately prayed to allow the appeal granting the 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 are specific statements of the Driver and the Guard of the subject train that no untoward incident occurred at Mahaboobabad railway station on the fateful day; that there is consistency and corroboration in their statements; that there is no reason for them to give false statements; that the Tribunal

rightly placed reliance on their statements in Ex.R1-DRM report and discarded the evidence adduced on behalf of the applicants, and dismissed the claim application; that there is no infirmity, 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 deceased was a *bona fide* passenger of the subject train on 29.11.2007 ?
- 2) Whether the deceased died in an untoward incident of accidental fall from the subject train on 29.11.2007 ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 4:

7. To substantiate their claim, applicant no.1 deposed as A.W.1 and examined A.W.2-Jagan, and got marked Exs.A1 to A8. On behalf of railways, no oral evidence was adduced, but Ex.R1-Divisional Railway Manager's report was got marked.

8. It is the case of the applicants that the deceased, being a *bona fide* passenger, died in an untoward incident of accidental fall from the subject train on 29.11.2007 on platform no.2 of Mahaboobabad railway station. To substantiate their claim, A.Ws.1 and 2 were examined. In

Ex.R1-DRM report, there are statements of the Guard and the Driver of the subject train, who stated that there was no untoward incident on 29.11.2007 in Mahaboobabad railway station. In Ex.A1-FIR, there is mention of 'accidental fall' in col.no.2 (ii). In inquest panchanama Ex.A2, there is specific mention that the deceased had slipped and fell down from the subject train at Mahaboobabad railway station. Immediately, he was taken to Government Hospital at Mahaboobabad by 108 ambulance and admitted there, and while undergoing treatment, he succumbed to the injuries on the same day at 22.30 hours. In Ex.A4-copy of Station Superintendent message, there is mention that the deceased was taken to Government Hospital by 108 Ambulance. In Ex.A6-criminal case record prepared by police, there is mention that the deceased had accidentally fallen on 29.11.2007 at Mahaboobabad railway station while boarding the subject train.

9. Apart from the above documentary evidence, there is specific evidence of A.W.2, which reveals that on 29.11.2007, on receipt of phone call that the deceased had fallen from the train and was admitted in Government Hospital, Mahaboobabad, he went and saw the deceased in the hospital; that he also spoke about the injuries suffered by the deceased. There is also evidence of A.W.1, wife of

the deceased, that on 29.11.2007 at 3.00 PM, she talked to her husband, who informed her that he wanted to go by the subject train from Mahaboobabad to Khajipet and thereafter her husband wanted to go to their village by bus; that on 30.11.2007, she received a call from her sister-in-law about her husband falling down from the train. When there is documentary evidence as discussed above and also post mortem examination report to substantiate that the injuries suffered by the deceased are possible by fall from a train, coupled with evidence of A.W.1, the Tribunal ought not to have acted upon the recitals in Ex.R1-DRM report. Merely because the Driver and the Guard of the subject train did not state about occurrence of untoward incident at Mahaboobabad railway station on 29.11.2007, it cannot be said that there was no untoward incident occurred. The applicants established and discharged the initial burden that the deceased was a *bona fide* passenger of the subject train and while boarding the said train on platform of Mahaboobabad railway station, slipped and accidentally fell down, suffered injuries and succumbed to the same.

10. On this aspect, it is pertinent to refer to a decision of the Hon'ble Apex Court in **Union of India vs. Rina Devi**¹, wherein it is held thus:

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

“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.”

The Apex Court held that mere absence of ticket with the injured or deceased does not lead to conclusion that he was not *bona fide* passenger, and that the claimants can discharge their burden by filing an affidavit of relevant facts. In the case on hand, the applicants discharged the burden lying on them by filing an affidavit of applicant no.1 of the relevant facts. There is also evidence of A.W.2 in support of the case of applicants. As per the evidence on record, the journey ticket of the deceased was lost in the accidental fall. When there is accidental fall, there is every possibility of the journey ticket being lost. No contra evidence was adduced by railways to disbelieve the evidence adduced on behalf of applicants. Therefore, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train.

11. In **Rina Devi's case (1 supra)**, it is further 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-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'.

12. In the case on hand, there was no negligence on the part of the deceased in falling down from the train. Even if it is assumed that while boarding the moving train, the deceased fell down, suffered the injuries and succumbed to the same, it cannot be held that the injuries suffered by the deceased are self-inflicted. In the aforesaid decision, the Hon'ble Apex court held that the concept of self-inflicted injury would require intention to inflict such injuries and not mere negligence of any particular degree. There is no deliberate or wilful attempt on the part of the deceased to fall down from the train and suffer injuries. There is no contribution on the part of the deceased in suffering the injuries. So also, there was no negligence on his part. Under these circumstances, it cannot be held that the injuries suffered by the deceased are self-inflicted injuries. The act of the deceased would not fall under any of the exceptions laid down under Section 124A of the Railway Act, 1989.

13. From the aforesaid discussion, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train and died of the injuries sustained by him in an untoward incident of accidental fall from the subject

train. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Under these circumstances, the points are held in favour of the applicant and against the railways.

Point No.4:

14. In the result, the C.M.A. is allowed. The impugned order dated 16.09.2016 in O.A.A. No.364 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicants are awarded compensation of Rs.8,00,000/- (Rupees eight lakhs only) in view of the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. 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. Applicant no.1 is entitled to 50% of the amount awarded as compensation and the remaining amount shall be shared equally by the other applicants. On deposit, the applicants are entitled to withdraw their respective shares along 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

30.11.2018
DRK



THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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30.11.2018

DRK