

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.555 of 2012

ORDER:

1 This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the respondents in O.A.A. No.269 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench, challenging the order dated 27.01.2012 whereby and whereunder the Tribunal awarded an amount of Rs.4.00 lakhs to the applicants towards compensation.

2 The parties to this Civil Miscellaneous Appeal will hereinafter be referred to as they were arrayed before the Tribunal in order to avoid confusion.

3 The facts leading to the filing of the present Civil Miscellaneous Appeal, in brief, are as follows:

4 The first applicant is widow and applicant Nos.2 to 4 are sons of one Dulluba Behara (hereinafter referred to as 'the deceased'). On the intervening night of 3/4.09.2004, the deceased along with others, in order to attend Krishna Pushkarams, purchased a railway ticket to go to Vijayawada from Sompeta. While boarding Train No.7045, East Coast Express at Sompeta, the deceased fell down from the moving train and sustained injuries. Immediately the deceased was shifted to Government hospital, Sompeta where he succumbed to injuries. The applicants filed O.A.A. claiming compensation of Rs.4.00 lakhs. The respondent filed written statement denying all the averments made in the application inter *alia* contending that the deceased is not a *bona fide* passenger. It is the further contention of the respondents that the deceased fell down from the train due to his own negligence,

therefore, the death of the deceased will not fall within the ambit of 'untoward incident'. Hence the application is liable to be dismissed.

5 Basing on the above pleadings, the Tribunal framed the following issues:

- i. Whether the applicants are dependents on the deceased?
- ii. Whether the deceased was a bona fide passenger of Train No.7045, East Coast Express, Sompeta to Secunderabad on 03/04.09.2004?
- iii. Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
- iv. Whether the applicants are entitled to claim compensation of Rs.4,00,000/-
- v. To what relief?

6 In order to prove the case of the applicants, the first applicant examined herself as A.W.1 and got marked Exs.A.1 to A.6. To disprove the case of the applicants, on behalf of the respondent, R.Ws.1 and 2 were examined and Exs.R.1 to R.7 were marked.

7 Basing on the oral, documentary evidence and other material available on record, the Tribunal allowed the application by awarding compensation of Rs.4.00 lakhs to the applicants with interest @ 6% p.a. from the date of application till the date of realisation. Hence the present Civil Miscellaneous Appeal.

8 The learned counsel for the respondent submitted that the findings recorded by the Tribunal are not sustainable either in law or on facts. He further submitted that the Tribunal has not properly considered the recitals of Exs.R.6 and R.7 and erroneously arrived at a conclusion that the deceased purchased the ticket on 03.09.2004 and hence it is a fit case to allow the appeal.

9 *Per contra*, the learned counsel for the applicants submitted that the findings recorded by the Tribunal are based on evidence, much less, legally admissible evidence, therefore, it is not a fit case to allow the appeal. He further submitted that the Tribunal considered the recitals of Exs.R.6 and R.7 in right perspective.

10 Now the points that arise for consideration in this Civil Miscellaneous Appeal are **(1)** Whether the death of the deceased will fall within the ambit of untoward incident? **(2)** Whether the deceased is a bona fide passenger? **(3)** Whether the applicants are entitled to compensation?

11 **Point Nos.1 and 2:** These two points are intertwined each other and hence these two points are addresses simultaneously in order to avoid recapitulation of facts and evidence.

12 To substantiate the case, the learned counsel for the respondent has drawn the attention of this Court to the following judgment:

Union of India vs. Rina Devi¹ wherein the Hon'ble apex Court held at para Nos.25 and 29 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. versus 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.

29 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or

¹ 2018 SCC Online SC 507

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.

13 As seen from the testimony of R.Ws.1 and 2, the deceased, while boarding General Compartment in Train No.7045, East Coast Express at Sompet, fell down from the train and sustained injuries. Their testimony further reveals that the deceased died while undergoing treatment in Sompet government hospital. As per the recitals of Ex.A.1 FIR, the incident occurred in Sompet railway station. As per the recitals of Exs.A.2 and A.3, the deceased fell down from the train and sustained injuries. The oral testimony of R.Ws.1 and 2 coupled with Exs.A.2 and A.3 clearly reveals that the deceased died due to the injuries sustained by falling down from the train.

14 The next question that falls for consideration is 'whether the death of the deceased will fall within the ambit of untoward incident'?

15 The contention of the learned counsel for the respondent / appellant is that there was negligence on the part of the deceased while boarding the train. It is a known fact that there would not be sufficient space for passengers in General compartment, more particularly, at the time of festivals. Even as per the testimony of R.Ws.1 and 2, there are number of passengers in General compartment of the train. In such circumstances, there is every possibility for the deceased to fall down while boarding the train. As per the testimony of R.Ws.1 and 2, there is negligence on the part of the deceased while boarding the train. The Tribunal considered the oral and documentary evidence available on record in right

perspective and arrived at a conclusion that the death of the deceased will fall within the ambit of untoward incident. Viewed from any angle, there are no grounds, much less valid grounds to upset the findings of the Tribunal on this aspect. 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 death of the deceased will fall within the ambit of untoward incident.

16 Ex.A.4 is the original railway ticket produced before the Tribunal. The respondents produced Exs.R.6 and R.7 to prove that the deceased purchased the ticket on 04.09.2004 and hence the deceased is not a bona fide passenger. The Tribunal considered Exs.R.6 and R.7 with reference to Ex.A.4 ticket. A perusal of the record reveals that the Tribunal meticulously considered the above three documents and arrived at a conclusion that the ticket produced visibly reveals the impression of the date as 03.09.2004. The Tribunal has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Tribunal. Viewed from any angle I am unable to accede to the contention of the respondents that the deceased is not a *bona fide* passenger. There are no grounds much less valid grounds to interfere with the well considered findings recorded by the Tribunal. The Point Nos.1 and 2 are answered accordingly.

17 **Point No.3:** There is no dispute with regard to the relationship of the applicants with the deceased. The first applicant is widow and applicant Nos.2 to 4 are sons of the deceased. At the time of arguments, the learned counsel for the applicants submitted that during the pendency of the O.A.A. before the Tribunal, 3rd applicant died and during the pendency of the appeal before this Court, 4th

applicant died. In view of the findings given on Point Nos.1 and 2, the applicants are entitled to claim compensation from the respondent. This point is answered accordingly.

18 For the foregoing discussion, this court is of the considered view that the appeal lacks merits and *bona fides*. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the order dated 27.01.2012 passed in O.A.A. No.269 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench. No order as to costs. As a sequel, miscellaneous petitions if any pending in this Civil Miscellaneous Appeal shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 31 August, 2018
Kvsn

