

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.383 of 2018

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 28.02.2018 in O.A. II (U) No.204 of 2014 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 S.Yadaiah, s/o. late S.Mallesha, (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.77681 Falaknuma-Medchal MMTS (hereinafter referred to, as 'the subject train') on 13.02.2014 while travelling from Dabirpura halt to Secunderabad junction, 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, while travelling in the subject train on 13.02.2014 from Dabirpura to Secunderabad junction, had accidentally fallen from the said train at the end of platform of Dabirpura railway station; that there is

ample evidence to substantiate the same; that the Tribunal erroneously held that the deceased made an attempt to board the running train and was pleased to dismiss the claim application, 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 is ample evidence on record, particularly the statement of Home Guard given to the railway authorities in the course of statutory enquiry that the deceased made an attempt to board speeding train and accidentally fallen down from the said train, suffered injuries and died, to substantiate that the deceased was negligent in boarding the train; that the act of the deceased amounts to criminal negligence and the injuries suffered by him fall under exception to Section 124A of the Railways Act, 1989; that the Tribunal rightly dismissed the claim petition and there is no infirmity, and ultimately prayed to dismiss the appeal.

6. There is no dispute that the applicants are dependants of the deceased. There is also no dispute with regard to a valid journey ticket being found in the shirt pocket of the deceased to travel by the subject train on 13.02.2014 from Dabirpura to Secunderabad railway

station. The only point that arises for consideration in this appeal is whether boarding of the deceased in the subject train and falling down from the said train, would amount to an untoward incident as defined under Section 123 (c) of the Railways Act, 1989. 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 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

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

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'.

7. Ex.R1-Divisional Railway Manager's report and the statement of Home Guard enclosed to it, reveal that the deceased made an attempt to board the subject train on 13.02.2014 at 8.45 hours when the said train was moving and fell from it, suffered injuries and succumbed to the same. There is no mention in the statement of B.Ravinder, Head Constable that the train had gained speed. The Tribunal, in concluding para of the impugned order, held that the train had picked up speed. This finding is not supported by any evidence either oral or documentary evidence. The evidence on record establishes that the deceased had made an attempt to board moving train and accidentally fell down therefrom in between the train and platform, suffered injuries and succumbed to the same. So, there was no deliberate attempt on the part of the deceased or there was no criminal negligence in making an attempt to board the subject train. The deceased could not read the momentum of the train and accidentally fell from

it, while boarding therein. The above decision squarely applies to the instant case. Therefore, it can be safely concluded that the deceased accidentally fell down from the subject train, which amounts to an untoward incident defined under Section 123 (c) of the Railways Act, 1989. Therefore, the finding recorded by the Tribunal on this aspect is liable to be set aside.

Point No.4:

8. In the result, the C.M.A. is allowed. The impugned order dated 28.02.2018 in O.A. II (U) No.204 of 2014 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. On deposit, the applicant no.1 is entitled to withdraw an amount of Rs.5,00,000/- and the remaining amount of compensation shall be shared by the other applicants equally.

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

19.12.2018
DRK

