

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.831 of 2015

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 31.8.2015 passed in O.A.A.No.100 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal'), wherein and whereby the application filed by the applicants was dismissed.

2. The facts leading to filing of the appeal are as follows: On 05.9.2006, Vanthala Ramalaxmi (hereinafter referred to as, the deceased) along with her family members, after purchasing the ticket at Tanguturu Railway Station, Prakasam District, to go to Anakapalle, boarded Tirupathi-Puri Express Train bearing No.7480. When the train reached Anakapalle Railway Station, the deceased, while getting down from the train along with her daughter accidentally fell and died on the spot. Applicant No.1 is the husband, applicant No.2 is the daughter and applicant No.3 is the mother-in-law of the deceased. The applicants filed the application under Section 16 of the Railways Act, claiming compensation of Rs.4,00,000/-.

3. The respondent filed written statement *inter alia* contending that the deceased, because of her negligence only, fell down from the moving train and the act of the deceased will fall within the ambit of Proviso to Section 124A of the Railways Act; therefore, applicants are not entitled to any compensation. Hence, the petition is liable to be dismissed.

4. Basing on the above pleadings, the Tribunal framed following issues:

1. Whether the applicants are dependents of the deceased?
2. Whether the deceased was a bona fide passenger of the train in question?
3. Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
4. To what relief?

5. To substantiate the case, applicant No.1 examined himself as A.W.1 and got marked Exs.A.1 to A.7. To disprove the case of the applicants, on behalf of the respondent, R.W.1 was examined and Exs.R.1 to R.3 were marked.

6. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the deceased, who is not a *bona fide* passenger, himself fell down from the train and accordingly dismissed the petition.

7. Feeling aggrieved by the order dated 31.8.2015 passed in O.A.A.No.100 of 2007, the unsuccessful applicants preferred the present appeal.

8. Learned counsel for the applicants submitted that the act of the finding of the Tribunal that the death of the deceased will not fall within the ambit of Proviso to Section 124A of the Railways Act is not sustainable either on facts or in law. *Per contra*, Sri T.S.Venkataramana, the learned Standing Counsel for the Railways, submitted that because of the negligent act, the deceased fell down from the moving train and died; therefore, the applicants are not entitled to compensation.

9. Basing on the rival contentions, the points that arise for consideration in this appeal are:

1. Whether the death of the deceased will fall within the ambit of an untoward incident?
2. Whether the applicants are entitled to compensation, if so, to what amount?

Point No.1:

10. The Tribunal has given a specific finding that the deceased is a *bona fide* passenger. The said finding recorded by the Tribunal became final in view of non-filing of appeal or cross-appeal by the respondent.

11. As seen from the testimony of A.W.1, on the date of the incident, himself, deceased along with the family members boarded the Train bearing No.7480 Tirupathi – Puri Express at Tanguturu Railway Station to go to Anakapalle. His testimony further reveals that when the deceased along with her daughter getting down from the train at Anakapalle, due to jerks of the train, fell down from the train and died on the spot. As per the recitals of Ex.A.1-F.I.R., A.2-Inquest report and A.3-Postmortem report, the deceased died due to the injuries sustained by falling from the Train at Anakapalle Railway Station. There is no much dispute so far as the factum of death of the deceased is concerned.

12. The crucial question that falls for consideration is, *whether there was criminal negligence on the part of the deceased*. The material available on record clearly reveals that the deceased fell down from the train along with her daughter. Absolutely there is no material on record to establish that the deceased intentionally

and wilfully fell down from the Train so as to bring the act of the deceased within the definition of criminal negligence or self-infliction of the injuries. While deciding the cases of this nature, the Court shall not lose sight of the human conduct. No mother will make an attempt to inflict injuries to her daughter. Viewed from any angle, the act of the deceased will not fall within the definition of criminal negligence or self-infliction of the injuries. The fact remains that the deceased accidentally fell down from the moving train.

13. To substantiate the argument, learned counsel for the appellants has drawn the attention of this Court to paragraph No.25 of **Rina Devi** case, which reads 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. 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.

14. 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 is as a result of an untoward incident. The finding recorded by the Tribunal is not sustainable either on facts or in law. Accordingly, point No.1 is answered.

Point No.2:

15. The next question that falls for consideration is, *whether the applicants are entitled to compensation of Rs.4,00,000/- or Rs.8,00,000/-*. It is not in dispute that the applicants are entitled to Rs.8,00,000/- if the incident occurred on or after 01.1.2017. Admittedly, in this case, the deceased died on 06.9.2006. By the date of accident, the compensation amount, as fixed by the Railway Authorities, is Rs.4,00,000/-.

16. The learned counsel for the appellants strenuously submitted that the appellants are entitled to Rs.8,00,000/- towards compensation. She has also drawn the attention of this Court to paragraph No.19 of **Rina Devi** case, 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.

17. 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 at

the rate of 6% per annum from the date of the application, or under the revised scheme as on the date of the award, whichever is beneficial to the applicants.

18. Coming to the facts of the case on hand, as on the date of the accident i.e., 06.9.2006, the compensation payable is Rs.4,00,000/- with interest. The Railway Authorities enhanced the compensation amount to Rs.8,00,000/- with effect from 01.1.2017. If the interest at 6% per annum is calculated on Rs.4,00,000/- for a period of six (6) years, it will come to less than the compensation payable as on the date of award i.e., Rs.8,00,000/-. In such circumstances, the applicants are entitled to the compensation of Rs.8,00,000/-.

19. 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 applicants are entitled to the compensation of Rs.8,00,000/- exclusive of any interest thereon. Applicant Nos.1 and 2, being the husband and daughter of the deceased, are entitled to compensation. Viewed from any angle, applicant No.3, who is the mother-in-law of the deceased, is not entitled to compensation. Accordingly, point No.3 is answered in favour of the applicants and against the respondent.

20. In the light of the foregoing discussion, I am of the considered view that it is a fit case to allow the appeal insofar as applicant Nos.1 and 2 are concerned. Insofar as applicant No.3 is concerned, the application shall stand dismissed.

21. In the result, the civil miscellaneous appeal is allowed, setting aside the order dated 31.8.2015 passed in O.A.A.No.100 of 2007. Consequently, O.A.A.No.100 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is allowed, granting compensation of Rs.8,00,000/- to applicant Nos.1 and 2. The appeal by applicant No.3 is dismissed. 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. Out of the compensation, applicant No.1 is entitled to Rs.1,00,000/- and applicant No.2 is entitled to Rs.7,00,000/-. The compensation awarded to applicant No.2 shall be kept in fixed deposit till she attains the majority. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 04.9.2018
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T.SUNIL CHOWDARY, J