

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.143 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railways Act assailing the order dated 03.08.2015 passed in O.A.A.No.130 of 2009 on the file of the Railway Claims Tribunal, Secunderabad Bench (for short, the Tribunal), wherein and whereby the application filed by the applicants was dismissed.

2. The parties to this appeal will be referred to as they were arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: On 09.01.2009, one T.Apparao (hereinafter referred as 'the deceased') along with his family members purchased ticket in Godavari Railway Station, Rajahmundry to go to Eluru in the passenger train bearing No.400 from Rajahmundry to Vijayawada. The family members of the deceased boarded the train in different compartments. The deceased while boarding the train slipped and fell down from the train, due to heavy jerks. The deceased sustained injuries on various parts of the body. Immediately after the incident, the railway officials shifted the deceased to Government General Hospital, Rajahmundry, wherein he died on 10.01.2009 while undergoing treatment. The family members of the deceased got down the train at Eluru Railway Station and waited for some time for the deceased; thereafter handed over the ticket to the Ticket Collector. On 10.01.2009, the applicants received information from Railway Authorities about the death of the deceased. The first applicant is the wife, applicant No.2 is the son and applicant No.3 is the daughter of the deceased. The applicants filed application

claiming compensation of Rs.8.00 lakhs. The respondent filed written statement denying all the averments made in the application *inter alia* contending that the deceased attempted to get into the running train, which clearly indicates negligence on his part. The deceased is not a *bonafide* passenger; therefore, the applicants are not entitled to claim compensation. Hence, the petition is liable to be dismissed.

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

1. Whether the application is maintainable?
2. Whether the applicants are dependants of the deceased?
3. Whether the deceased was a *bona fide* passenger of train in question while travelling from Godavari to Eluru?
4. Whether the deceased died as a result of an untoward incident of accidental fall from the train?
5. Whether the applicants are entitled to compensation as claimed by them in the application?
6. To what relief?

5. To substantiate the case, applicant No.1 examined herself as A.W.1 and got marked Exs.A1 to A9. To dislodge the case of the applicants, R.W.1 was examined and Exs.R1 and R2 were marked. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the deceased is not a *bona fide* passenger and he fell down from the train due to his negligence and accordingly dismissed the application. Hence, the appeal.

6. Learned counsel for the appellants submitted that the finding of the Tribunal that the deceased is not a *bona fide* passenger is not sustainable either on facts or in law. She further submitted that the finding of the Tribunal that the deceased negligently fell down from

the moving train is not sustainable. She further submitted that the death of the deceased is as a result of an untoward incident. *Per contra*, learned Standing Counsel for Railways submitted that the applicants have not purchased the ticket; therefore, the finding of the Tribunal that the deceased is not *bona fide* passenger is sustainable. He further submitted that the deceased has not taken reasonable care while boarding the train; therefore, the applicants are not entitled to claim compensation in view of Proviso to Section 124A of the Railways Act. He further submitted that there are no grounds much less valid grounds to allow the appeal.

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

1. Whether the deceased was a *bona fide* passenger?
2. Whether the death of the deceased is the result of untoward incident?
3. Whether the applicants are entitled to claim compensation from the respondent?

8. **Point No.1:** The respondent has taken a specific plea before the Tribunal that the application is not maintainable under law. A perusal of the record reveals that at the time of arguments, the respondent has withdrawn that plea. In view of the same, the Tribunal arrived at a conclusion that the application is maintainable.

9. As seen from the testimony of A.W.1, on 09.01.2009, they purchased the ticket at Godavari Railway Station to go to Eluru in the train bearing No.400 i.e., Rajahmundry to Vijayawada passenger. As seen from the testimony of A.W.1, herself and her children boarded in one coach whereas her husband boarded in some other coach. As seen from the testimony of A.W.1, they got

down at Eluru Railway Station and searched for the deceased. Her testimony further reveals that they handed over the ticket to the Ticket Collector at Eluru Railway Station and went to the house. Her testimony further reveals that on 10.01.2009 they received information about the death of the deceased through Railway Officials.

10. A perusal of the record reveals that of the report of the Railway Authorities clearly reveals that the deceased purchased the ticket at Godavari Railway Station. The applicants have taken a specific plea in the application that they purchased the ticket at Godavari Railway Station. In the cross-examination of A.W.1, nothing was elicited to shake her testimony so far as purchase of the ticket is concerned. While deciding the cases of this nature, the Court has to take into consideration the ground realities. It is a known fact that after reaching the station, the passengers have to hand-over the ticket to the Ticket Collector. When two or more members of the same family are travelling in a Train, naturally they may purchase common ticket for all the members. In the instant case, the possibility of purchasing the ticket by the deceased for all the family members is more probable and believable. The testimony of A.W.1 remains un-challenged in so far as handing over of the ticket to the Ticket Collector at Eluru Railway Station is concerned. To substantiate the argument that the deceased was a *bona fide* passenger, learned counsel for the appellants has drawn the attention of this Court to **Union of India v Rina Devi**¹, wherein the Hon'ble apex Court held at paragraph No.29 as follows:

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

¹ 2018 SCC Online SC 507

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.

11. As per the principle enunciated in the case cited supra, once the applicants have established that the deceased purchased the ticket, the onus of proof shifts on to the respondent.

12. 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 deceased is a *bona fide* passenger. The finding of the Tribunal is that the deceased is not a *bona fide* passenger is not sustainable either on facts or in law. Accordingly, point No.1 is answered in favour of the applicants and against the respondent.

Point No.2:

13. Admittedly, A.W.1 and R.W.1 are not eye-witnesses to the incident. Even as per the testimony of R.W.1, the deceased sustained injuries when he fell down from the running train. A perusal of Ex.A.1–F.I.R., also reveals that the deceased fell down from the train in Godavari Railway Station. As per the recitals of Ex.A.2–Inquest report and Ex.A.5–Post-mortem report, the deceased died of the injuries sustained by falling down from the train. There is no much dispute with regard to the nature and cause of the death of the deceased. The crucial question that falls for consideration is: whether the death of the deceased will fall within the definition of ‘untoward incident’ as contemplated under Section 123(c) of the Railways Act. In order to substantiate the argument, learned

counsel for the appellants has drawn the attention of this Court to **Rina Devi** case, wherein the Hon'ble apex Court at paragraph No.25 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. As per the principle enunciated in the case cited supra, if any person sustains injuries while boarding or de-boarding the train, the same will fall within the ambit of 'untoward incident'.

15. 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 will fall within the ambit of Section 123(c) of the Railways Act. Accordingly, point No.2 is answered in favour of the applicants and against the respondent.

Point No.3:

16. Applicant Nos.1, 2 and 3 are the wife, son and daughter of the deceased respectively. Being the legal heirs of the deceased, the applicants are entitled to compensation from the respondent.

17. The 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. By the

date of accident, the compensation amount, as fixed by the Railway Authorities, is Rs.4,00,000/-.

18. At the time of argument, 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.

19. 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.

20. Coming to the facts of the case on hand, as on the date of the accident i.e., 09.1.2009, 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 the rate of 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/-.

21. 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. Accordingly, point No.3 is answered in favour of the applicants and against the respondent.

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

23. In the result, the civil miscellaneous appeal is allowed, setting aside the judgment dated 03.08.2015 passed in O.A.A.No.130 of 2009. Consequently, O.A.A.No.130 of 2009 on the file of the Court of Railway Claims Tribunal, Secunderabad Bench, is allowed, granting compensation of Rs.8,00,000/- to the applicants. 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.6,00,000/-, and applicant Nos.2 and 3 are entitled to Rs.1,00,000/- each. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 04.9.2018
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