

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.498 OF 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 12.04.2016, passed in O.A.(IIU) No.130 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal') whereunder and whereby, the claim of the appellant/applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989 with regard to grant of compensation of Rs.2,00,000/- for the injuries suffered by him in a railway accident that took place on 25.06.2000, was dismissed.

2. Heard the learned counsel for the appellant/applicant and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellant/applicant would contend that the applicant was a Teacher in Government School at Aler; that the applicant was holding a II Class monthly season ticket and he used to travel in between Secunderabad and Aler Railway Stations to attend his duties; that on 25.06.2000, the applicant had an accidental fall from train No.7046 Hyderabad – Howrah East Coast Express and in that untoward incident, he suffered crush injury to his left leg along with other injuries and his left leg was amputated below the knee; that the Tribunal held that the injuries suffered by the applicant were self inflicted injuries and it would not amount to an untoward incident of accidental from a train, which is erroneous, and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that the appellant/applicant was a Government Teacher and he ought to have boarded the train after it was stationed; that the injuries suffered by the applicant were self inflicted ones; that the Tribunal rightly dismissed the claim application; that there is no untoward incident, as contended by the applicant, and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to the applicant possessing II Class monthly season ticket bearing No.04209285 valid from 12.06.2000 to 11.07.2000 to travel between Secunderabad and Aler Railway Stations.

6. In view of the submissions made by the learned counsel for both sides, the points that arise for determination are:-

“1. Whether the applicant suffered amputation of left leg below the knee due to an untoward incident of accidental fall from train No.7046 Hyderabad – Howrah East Coast Express while travelling from Secunderabad to Aler on 25.06.2000? and

2. Whether the order, dated 12.04.2016, passed in O.A.(IIIU) No.130 of 2008 by the Tribunal is liable to be set aside?”

7. **P O I N T No.1:-**

The accidental fall of the applicant in this case is on 25.06.2000 in the morning hours. The evidence and the documents placed before the Tribunal establish that the applicant made an attempt to board moving train No.7046 Hyderabad – Howrah East Coast Express in II Class general compartment and in that process, he slipped and fell down accidentally from the said train in between the platform and the train, as a result of which

his left leg was crushed and thereafter, it was amputated below the knee.

8. It is appropriate to refer the decision of the Hon'ble Supreme 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."

The above decision squarely applies to this case. There was no intention on the part of the applicant to inflict such an injury in the subject accident. The Apex Court, in the above decision, held that death or injury in the course of boarding or de-boarding the train would be only an 'untoward incident' of accidental fall. Victims falling from the train while boarding or de-boarding are entitled to lay a claim against the Railways and such acts would not fall under the exceptions laid in Section 124-A of the Railways Act.

9. The facts and circumstances clearly substantiate that the applicant lost his left leg in an untoward incident of accidental fall

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

from train No.7046 Hyderabad – Howrah East Coast Express. Therefore, the said injury suffered by the applicant falls at serial No.22 of Part III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 issued by the Ministry of Railways *vide* notification, dated 22.12.2016. The compensation payable for the said injury is Rs.3,20,000/-. Therefore, the applicant is entitled for a compensation of Rs.3,20,000/- (Rupees three lakhs twenty thousand only).

10. **P O I N T No.2:-**

Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 12.04.2016, passed in O.A.(IIU) No.130 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.(IIU) No.130 of 2008 stands allowed. The applicant is awarded a compensation of Rs.3,20,000/-. The respondent/Railways shall pay the compensation awarded within three (3) months from the date of receipt of a copy of this judgment, failing which, interest at the rate of 6% per annum shall be paid on the compensation amount from the date of this judgment till the date of realisation. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 30.11.2018
AMD

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