

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.890 OF 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 26.08.2015, passed in O.A.(IIu)No.175 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal') whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 for grant of compensation of Rs.4,00,000/- for the death of the deceased Smt Varalakshmi @ Dhanamma in a railway accident that took place on 28.01.2004, was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellants/applicants would contend that the deceased Smt Varalakshmi @ Dhanamma died in an untoward incident of accidental fall from train No.405 Passenger from Vinukonda to Guntur on 28.01.2004; that the deceased Smt Varalakshmi @ Dhanamma was travelling by the said train having purchased a journey ticket and there is evidence of A.W.1 to that effect; that the Tribunal, relying on the statement said to have been made by applicant No.1 – K. Sambasiva Rao to the railway authorities, dismissed the original application and in fact, K. Sambasiva Rao did not make any statement to the railway authorities; that the statement of K. Sambasiva Rao appears to have been brought into existence more than one year after the

occurrence of the accident and hence, no reliance is required to be placed on that statement 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 Tribunal rightly held that the deceased Smt Varalakshmi @ Dhanamma was not a *bona fide* passenger; of the subject train; that there is specific statement of the son of the deceased Smt Varalakshmi @ Dhanamma - K. Sambasiva Rao, who is applicant No.1, that his mother (deceased Smt Varalakshmi @ Dhanamma) boarded the train without purchasing any ticket; that the Tribunal rightly held that the deceased Smt Varalakshmi @ Dhanamma was not a *bona fide* passenger and rightly dismissed the claim application and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to the accidental fall of the deceased Smt Varalakshmi @ Dhanamma from train No.405 Passenger on 28.01.2004, which resulted in her death. The only dispute is whether the deceased Smt Varalakshmi @ Dhanamma was travelling without purchasing any ticket. Under these circumstances, the only point that is required to be determined here is:

“Whether the deceased Smt Varalakshmi @ Dhanamma was a bona fide passenger travelling in train No.405 on 28.01.2004?”

6. **POINT:-**

The original application was filed by K. Sambasiva Rao, who is the son of the deceased Smt Varalakshmi @ Dhanamma. Subsequently, during the pendency of the claim application,

K.Sambasiva Rao died and his wife, son and daughter were impleaded as applicant Nos.2 to 4. Later, applicant No.5, who is stated to be the another daughter-in-law of the deceased Smt Varalakshmi @ Dhanamma, and applicant No.6, who is the daughter of applicant No.5, were also impleaded.

7. The case and contention of the applicants is that the deceased was travelling in the subject train with valid journey ticket and the journey ticket was lost in the accidental fall. There is specific evidence of A.W.1, who is the wife of applicant No.1. As applicant No.1 died during the pendency of the application before the Tribunal, applicant No.2 deposed as A.W.1. The evidence of A.W.1 reveals that on 28.01.2004, her mother-in-law i.e., deceased in this case, went to Vinukonda Railway Station accompanied by her husband - K. Sambasiva Rao (applicant No.1 herein, who died pending the proceedings before the Tribunal), who purchased II Class journey ticket for travel of his mother from Vinukonda to Guntur and boarded train No.405 Passenger travelling from Vinukonda to Guntur. The deceased Smt Varalakshmi @ Dhanamma was going to Guntur to consult a doctor. During her journey on 28.01.2004, her mother-in-law had accidentally fallen down from the train near Savalyapuram Railway Station and suffered grievous injuries. The railway officials brought her by another train to Vinukonda Railway Station and the said officials shifted her to Government General Hospital, Vinukonda for treatment. Later, the injured was taken to Guntur and was admitted in Government General Hospital, Guntur for better treatment. However, her mother-in-law succumbed to the injuries on the next day i.e., on 29.01.2004 at about 2:00 P.M.

8. It is pertinent to state that under Ex.R-1 – D.R.M’s Report, it has come up that applicant No.1 (son of the deceased Smt Varalakshmi @ Dhanamma) is said to have stated before the railway authorities when his statement was recorded that he boarded his mother without purchasing ticket. As per the records placed before this Court, the application for compensation was filed before the Tribunal on 30.06.2004. The statement of applicant No.1 - K. Sambasiva Rao is said to have been recorded by the railway officials on 28.08.2005 i.e., subsequent to the filing of application before the Tribunal. As per the contention of the learned counsel for the applicants, the statutory enquiry report is required to be filed by the D.R.M. within sixty (60) days as per Rule 7(2) of the Railway Passengers (Manner of Investigation of Untoward Incidents) Amendment Rules, 2007 (for short, ‘the Rules’).

9. Learned counsel for the appellants/applicants placed reliance on a decision of the Apex Court reported in **Kalandi Charan Sahoo and another vs. General Manager, South-East Central Railway**¹ wherein it is held at para No.4 as under:

“It is in these circumstances the appellants are before us in these proceedings via Article 136 of the Constitution. After hearing learned counsel for the parties, we find that it is not even necessary to go into the issue as to whether it was the fault of the deceased or that he accidentally fell down. Learned counsel for appellants has drawn our attention to the provisions of section 124-A of the Railways Act, 1989, which warrants payment of compensation whenever untoward incident occurs whether or not such an incident has occurred by any wrongful act, neglect or default on the part of the railway administration. Going by the aforesaid provisions and

¹ 2018 ACJ 1460

in the peculiar facts of this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the appellants shall be entitled to compensation payable under section 124-A of the Railways Act, 1989. We are informed that at the material time compensation payable under the said provision was Rs.4,00,000.”

In view of the decision rendered in the aforesaid decision and the mandate under Rule 7(2) of the Rules, no value can be assigned to the statement said to have been given by K. Sambasiva Rao (applicant No.1) to the railway authorities. Further, K. Sambasiva Rao is not alive to find out the veracity of the statement said to have been given by him.

10. It is appropriate to refer to a decision of the Hon'ble Supreme Court in **Union of India vs. Rina Devi**², 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."

11. When there is evidence of A.W.1 and also the contention put forth on behalf of the applicants that the journey ticket was lost in

² Civil Appeal No.4945 of 2018 dated 09.05.2018

the subject accident and when as per the records the magnitude of the accident is so high, there is possibility of misplacing or losing of journey ticket. The D.R.M's report and other enquiries conducted by the railway officials, to demonstrate that no journey ticket was found, cannot be given any credibility. The injuries suffered by the deceased Smt Varalakshmi @ Dhanamma are not self inflicted injuries. The mandate given under Section 124-A of the Railways Act, 1989 warrants payment of compensation whenever an untoward incident occurs, whether or not such an incident has occurred by any wrongful act, negligence or default on the part of the railway administration. Going by the above provision and in the peculiar facts and circumstances of the case, when no enquiry, as mandated by the Rules, is conducted in the subject case by the D.R.M. concerned immediately after the incident had occurred, it can be safely concluded that the deceased Smt Varalakshmi @ Dhanamma is a *bona fide* passenger of train No.405 Passenger and died due to an accidental fall from the said train and as such, the applicants are entitled for compensation under Section 124-A of the Railways Act, 1989.

12. Therefore, the applicants being dependants of the deceased, are entitled for a compensation of Rs.8,00,000/- (Rupees eight lakhs only), as per Part I of schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

13. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 26.08.2015, passed in O.A.(IIu)No.175 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.(IIu)No.175 of 2004

stands allowed. The applicants are awarded a compensation of Rs.8,00,000/-. The respondent/Railways shall pay the compensation awarded within three (3) months from the date of receipt of a copy of this order, failing which, interest at the rate of 6% per annum shall be paid on the compensation amount from the date of this order till the date of realisation. Applicant Nos.2 to 6 shall share the compensation amount equally and are at liberty to withdraw their respective shares on deposit. There shall be no order as to costs.

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

Date : 28.11.2018
AMD

DR.JUSTICE SHAMEEM AKTHER



THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



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Date: 28.11.2018

AMD