

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.292 of 2010

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the applicant against the order dated 29.09.2009 passed in OAA No.54 of 2006 by the Railway Claims Tribunal, Secunderabad Bench.

The case before the Tribunal was filed by the applicant stating that on 31.03.2003 he bought a railway ticket and boarded a passenger train No.585 at Malakpet Railway Station. Later, he fell down accidentally after Malakpet railway station and sustained grievous injuries. He was shifted to the Osmania General Hospital and emergency amputations were carried out to his legs. Therefore, he filed an application seeking compensation of Rs.4,00,000/- along with interest and costs.

The Railways denied the entire case and stated that they are not liable at all for payment of compensation.

For the applicant, AW.1 was examined and Exs.A.1 & A.2 were marked. For the opposite parties, RW.1 was examined and Exs.R.1 & R.2 were marked. After considering the oral and documentary evidence, the Tribunal came to a conclusion that there is no proof of the accident and that except the applicant's own evidence, there is no proof filed to show that the accident occurred as mentioned. The ticket was also not produced. This is a factor which went against the applicant in the Tribunal. They concluded that it has not

been established by the applicant that he was a bona fide passenger and that he fell down from the train. On both these grounds, the OAA was rejected by the Tribunal. Questioning the said order, the applicant filed this appeal.

This Court has heard Sri S. Chandra Shekhar, learned counsel for the appellant/applicant and Sri T.C. Venkata Ramana, learned standing counsel for the respondent-Railways.

The facts as can be seen from the record are as follows:

The applicant's oral evidence is in line with the chief examination. In the cross-examination also he states that when the train was about to start and he tried to board the train, he fell down accidentally. He deposed that the railway staff lifted him to platform and later shifted to the Osmania Hospital in a semi-conscious state. Ex.A.1 certificate was issued by the Government Railway Police, Kachiguda, which clearly mentions that the appellant was injured on both his legs in the incident due to falling down from passenger train No.585. The certificate also states that he was also shifted to Osmania General Hospital and a MLC case was registered with IP No.10740.

Ex.A.2 is the discharge ticket of Osmania General Hospital in the name of the applicant with IP No.10740. It also mentions that there was amputation because of train accident and that an emergency amputation was carried out.

In contra distinction to this, Railways have introduced their oral evidence. One witness was examined as RW.1 and he marked Exs.R.1 & R.2. In the cross-examination, RW.1 clearly admits that the platform was curved and that he cannot see the driver of the train and at best he could see four or five compartments only. According to his record, he states that there was no untoward incident in the train in question. However, he also admits that in RW.1-Guard's memo book, there is no mention that the train stopped at Malakpet Station where the accident occurred. Ex.R.2 is DRM report. The Railways version of the accident is that because no complaint was received about the accident, they concluded that the injured was a trespasser and the accident took place due to his negligence only. This report (Ex.R.2) was given by the Security Branch of the Railways, Hyderabad Division. The evidence of this witness makes it clear that he is not an eye witness to the accident. His report-Ex.R.2 is also not conclusive of any fact because it does not even mention the station where the accident took place. RW.1 is not competent to depose about Ex.R.2, which is the enquiry conducted by somebody else.

A reading of the oral and documentary evidence shows that the railways have not discharged their burden of proving that the applicant was not a bona fide passenger. The law on the subject is very clear as was reported in **Shaik Mahaboob**

Basha v. Union of India¹ and other cases. The burden is cast upon the Railways to prove that the injured was not a bona fide passenger. The general presumption as per law is that every passenger is a bona fide passenger and so the Railways have to rebut the same. This case along with a long line of other cases has held that the burden is squarely upon the Railways to prove that the injured was not a bona fide passenger. This Court finds that the said burden was not discharged.

The other question that is urged during the course of arguments that the injured himself was the cause of accident as an alternative argument advanced by the learned counsel for Railways. This Court notices a judgment of the Hon'ble Supreme Court of India in **Union of India Prabhakaran Vijaya Kumar**² wherein the Supreme Court held in para-10 as follows:

“10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.”

The Hon'ble Supreme Court observed that the liability of the Railways is absolute; strict and the submission of the Railways that there was no fault on the part of the Railways

¹ 2016 (1) ALT 1

² (2008) 9 SCC 527

or that there is contributory negligence on the part of the injured only is of no consequence. The Supreme Court further held that once an accident occurred or untoward incident occurred, the Railways have liability for payment of compensation. This was followed by a learned single Judge of this Court in **Balagoni Siva Prasad v. Union of India**³ wherein it is held that it is irrelevant as to who is at fault in cases like this.

In **Union of India v. Baburao Koddekar**⁴, a Division Bench of this Court clearly held that an accidental fall of a passenger both while trying to board train or trying to alight from a train are brought within the ambit of 'untoward incident'. The Division Bench clearly held that it is immaterial whether a passenger tried to board a train or alight from a train. The Division Bench also noticed in para-49 that the burden is on the Railways to prove that the deceased was not a bona fide passenger. The latest pronouncement of the Hon'ble Supreme Court of India in **Rina Devi's** case (in Civil Appeal No.4945 of 2018) also supports the conclusions in this case.

In view of the clear and categorical expression of law by the Hon'ble Supreme Court of India and a Division Bench of this Court, this Court is of the opinion that

- a) the Railways have not discharged the burden of proving that the applicant was not a bona

³ 2008 (5) ALT 605

⁴ 2002 (4) ALD 843 (DB)

fide passenger. The applicant on the contrary has pleaded that he purchased a ticket and also stated the same in the chief-examination. He also states that he has lost the ticket in the course of events after the accident.

- b) it is immaterial whether the applicant was trying to board a train or alight from a train, as it is an 'untoward incident' that occurred in this case.
- c) Exs.A.1 & A.2 prove that the accident occurred in the Railway Station and that the applicant was shifted to Osmania General Hospital.

Therefore, on a review of all the facts and figures, this Court is of the opinion that the applicant is entitled to compensation. The dismissal of OAA by the Tribunal is not correct.

In the result, the Civil Miscellaneous Appeal is allowed. The impugned order dated 29.09.2009 passed in OAA No.54 of 2006 by the Railway Claims Tribunal, Secunderabad Bench, is therefore set aside. The claim for compensation of Rs.4,00,000/- by the applicant as prayed for is granted with interest from the date of application till the date of realization.

There was a delay of 393 days in making the application, which was condoned. In view of the delay and in view of the specific prayer in the application, interest at 9% per annum is awarded on the compensation amount of Rs.4,00,000/- from the date of application till the date of

payment. In the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 06.06.2018

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