

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.880 of 2008

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 25.11.2005 passed in O.A.A.No.24 of 2000 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal')

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in O.A.A. before the Tribunal.

3. The facts leading to filing of the present appeal are as follows:
The applicant, who is the husband of Koutarapu Raja Rajeswari (hereinafter referred to as 'the deceased'), filed application stating that on 25.12.1999, the deceased boarded Repalle - Tenali Passenger Train bearing No.125, after purchasing a valid ticket, at Repalle to go to Bhattiprolu. When the Train reached Bhattiprolu Railway Station, the deceased fell down from the train and her body was dragged to certain distance. Due to the injuries, she died. The appellant being the husband of the deceased is entitled to compensation of Rs.4,00,000/-. Hence, the appeal.

4. The respondent filed written statement denying the averments made in the application *inter alia* contending that deceased herself fell down from the train; therefore the death of the deceased will not fall within the ambit of "*untoward incident*" as contemplated Section 123(c) of the Railways Act. It is further contended that the applicant planted the ticket with an ulterior motive to claim compensation. The dead-body of the deceased was found after crossing of Bhattiprolu Railway Station at KM 22/14-15 by the Keyman. Hence, the application is liable to be dismissed.

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

- (1) Whether the applicant is the sole dependent of the deceased Koutarapu Raja Rajeswari?
- (2) Whether the deceased was a bona fide passenger of train Repalle – Guntur passenger travelling from Repalle to Bhattiprolu on 25.12.1999?
- (3) Whether the deceased died as a result of an untoward incident of accidental fall from the train at Bhattiprolu Railway Station?
- (4) To what relief?

6. To substantiate the case, applicant examined himself as AW.1 and got marked Exs.A.1 to A.6. AW.2 was examined to prove the factum of death of the deceased. To dislodge the case of the applicant, on behalf of the respondent, RW.1 was examined and Ex.R.1 was marked.

7. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the deceased was not a *bona fide* passenger, the deceased was travelling beyond Bhattiprolu Railway Station and accordingly dismissed the petition. Feeling aggrieved by the impugned order, the unsuccessful applicant preferred the present appeal.

8. Ms.Geetha Madhuri N.S., learned Advocate representing Sri Pottigari Sridhar Reddy, learned counsel for the appellant strenuously submitted that the findings recorded by the Tribunal that the dead-body of the deceased-Raja Rajeswari was found 5 KMs away from Bhattiprolu Railway Station is not sustainable either on facts or in law. She further submitted that the finding of the Tribunal that the applicant planted railway ticket is based on assumptions and presumptions. She further submitted that the

findings recorded by the Tribunal are not sustainable either on facts or in law.

9. *Per contra*, Sri T.S.Venkataramana, learned Standing Counsel for the Railways, submitted that the findings recorded by the Tribunal are based on evidence; therefore, it is not a fit case to allow the appeal. He further submitted that the possibility of planting of the railway ticket by the appellant, in order to claim compensation, cannot be ruled out completely.

10. Now, 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 or not?
2. Whether the deceased is a *bona fide* passenger or not?
3. Whether the applicant is entitled to compensation, if so, to what amount?

Point Nos.1 and 2:

11. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

12. On issue No.1, the Tribunal arrived at the conclusion that the appellant is the husband of the deceased; therefore, he is entitled to file application. The respondent did not choose to file appeal or cross-appeal challenging the said finding of the Tribunal; therefore, the finding of the Tribunal that the appellant is entitled to file claim application has become final.

13. As seen from the testimony of AW.1, on the date of the incident, somebody telephoned to him about the death of his wife. Immediately, he rushed to Bhattiprolu Railway Station and found the dead-body of his wife. As seen from the testimony of A.W.2, on

the date of incident, he boarded the Train at Repalle and got down at Bhattiprolu Railway Station. His testimony further reveals that while getting down from the Train, he came to know that one of the passengers fell down while de-boarding from the other door of the coach, thereafter he has seen one woman, who sustained injuries by falling down from the Train. As seen from the testimony of R.W.1-Keyman, he found one dead-body of a female person near Bhattiprolu Railway Station and he informed the same to higher officials. As per the recitals of Ex.A.1-F.I.R., the dead-body was found at the end of Bhattiprolu Railway Station. A perusal of Exs.A.2-Inquest panchanama and A.3-Post-mortem certificate clearly reveals that the deceased died due to the injuries sustained by falling down from the Train. The oral testimony of A.W.1, A.W.2 and R.W.1 coupled with Exs.A.1 to A.3 clearly reveals that the deceased died by falling down from the Passenger Train.

14. The Tribunal dismissed the application on the ground that the dead-body was found 5 KMs away from Bhattiprolu Railway Station. The learned counsel for the appellant submitted that the finding recorded by the Tribunal is not sustainable in view of recent judgment of the Hon'ble apex Court in **Union of India v Rina Devi**¹, wherein the Hon'ble apex Court, after analysing the case-law on the subject, held 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

¹ 2018 SCC Online SC 507

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.

15. If really the dead-body was found 5 KMs away from Bhattiprolu Railway Station, what prompted R.W.1-Kayman to send intimation to his higher officials about the finding of the dead-body near Bhattiprolu Railway Station? As per the recitals of Ex.A.1-F.I.R., and Ex.A.2-Inquest panchanama, the dead-body was found near Bhattiprolu Railway Station. The finding recorded by the Tribunal is quite contrary to the testimony of A.W.1, A.W.2 and R.W.1 and the recitals of Exs.A.1 and A.2. If the Tribunal has perused the evidence and documents carefully, the finding would be otherwise. Viewed from any angle, I am of the considered view that the finding of the Tribunal, on this aspect, is not sustainable and is liable to be rejected. Basing on the material available on record, this Court can safely arrive at the conclusion that the dead-body of the deceased was found near Bhattiprolu Railway Station. The deceased fell down from the train while de-boarding.

16. 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 is the result of the untoward incident.

17. The Tribunal, basing on the material available on record, gave finding that that the applicant planted the railway ticket. In the application itself, the applicant has mentioned the number of railway ticket as 13915. As per the recitals of Ex.A.2-Inquest panchanama, the applicant produced the ticket bearing No.13915.

The said ticket is valid from Repalle to Bhattiprolu. The material available on record clinchingly establishes that the ticket was produced at the time of the inquest. To substantiate the stand that the deceased was a *bona fide* passenger, learned counsel for the appellants has drawn the attention of this Court to paragraph No.29 of **Rina Devi**, which reads as follows:

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

18. The respondent has not produced any evidence much less cogent and convincing evidence that the ticket purchased by the appellant is not a genuine one. The ticket was produced at the time of the inquest; therefore, I am unable to accede to the contention of the learned counsel for the respondent that the ticket was planted to claim compensation.

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 finding of the Tribunal that the deceased was not a *bona fide* passenger is not sustainable either on facts or in law. Accordingly, point Nos.1 and 2 are answered in favour of the appellants and against the respondent.

Point No.3:

20. 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 applicant is entitled to Rs.8,00,000/- if the incident occurred on or after 01.1.2017. Admittedly, in this case, the date of accident is 25.12.1999. By the date of accident, the compensation amount, as fixed by the Railway Authorities, was Rs.4,00,000/-.

21. At the time of argument, learned counsel for the appellant strenuously submitted that the appellant is entitled to Rs.8,00,000/- towards compensation. She has also drawn the attention of this Court to paragraph No.19 of **Rina Devi**, 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.

22. As per the principle enunciated in the case cited supra, the applicant is entitled to the compensation amount fixed by the Railway Authorities as on the date of the incident with interest from the date of the application, or under the revised scheme as on the date of the award, whichever is beneficial to the applicant.

23. Coming to the facts of the case on hand, as on the date of the accident i.e., 25.12.1999, 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 reasonable interest at 6% per annum is calculated on Rs.4,00,000/- from the date of the application, 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 applicant is entitled to the compensation of Rs.8,00,000/-.

24. 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 applicant is 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.

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

26. In the result, the civil miscellaneous appeal is allowed, setting aside the order dated 25.11.1999 passed in O.A.A.No.24 of 2000. Consequently, O.A.A.No.24 of 2000 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is allowed, granting compensation of Rs.8,00,000/-. 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.

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

T.SUNIL CHOWDARY, J

Date: 31.08.2018
YS

