

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.1013 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 02.11.2015, passed in O.A.A.No.96 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of Bhanavath Eeswar Naik in an untoward accidental fall from a running train No.352 Repalle-Secunderabad Passenger at Bellamkonda railway station yard while travelling from Repalle to Nadikudi on 02.04.2009, was dismissed.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased was a *bona fide* passenger of train No.352 Repalle-Secunderabad Passenger, he was possessing a valid journey ticket bearing No.20792107 to travel from Repalle to Nadikudi; when the train stopped at Bellamkonda railway station and when it started again, the deceased who was standing at the entrance, fell from the said train and he succumbed to the injuries on 03.04.2009; the Tribunal had not properly considered the evidence on record and erroneously held that the deceased died due to his criminal negligence; the instant case falls under Section 124(a) of the Railway Claims Tribunal Act, 1987; the findings of the Tribunal

are not based on evidence and record and are erroneous; and ultimately, prayed to set aside the impugned order and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways would contend that the deceased was criminally negligent in suffering the injuries and he made an attempt to board the running train and consequently fell down; the Tribunal considering the evidence adduced by both parties, rightly dismissed the claim of the appellants holding that the deceased was criminally negligent; there is no infirmity in the impugned order; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the following points have come up for determination in this appeal:

- 1) Whether the deceased died in an untoward incident of accidental fall from train No.352 Repalle-Secunderabad Passenger at Bellamkonda railway station yard while travelling from Repalle to Nadikudi on 03.04.2009?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 02.11.2015 passed by the Tribunal is liable to be set aside?
- 4) To what relief?

6. Point Nos.1 and 3: There is no dispute with regard to the deceased travelling by the subject train after purchase of Ex.A.1-original journey ticket. In the Divisional Railway Manager's report marked as Ex.R.1 also, there is mention that

the deceased was *bona fide* passenger. Basing on that, it can be held that the deceased was *bona fide* passenger. The only dispute is that whether the deceased died in an untoward incident of accidental fall from the subject train.

7. The case of the applicants is that the deceased after purchase of the journey ticket was travelling between Repalle and Nadikuduru by train No.352 Repalle-Secunderabad Passenger and when the train stationed at Bellamkonda railway station. When again it started, the deceased was at the entrance, he lost balance and fell down from the said train due to jerks, he sustained multiple injuries and died on the spot. To substantiate the case of the applicants, the 1st applicant deposed as A.W.1 and got examined co-passenger as A.W.2 and also got marked Ex.A.1-original ticket, Ex.A.2-attested copy of message, Ex.A.3-attested copy of F.I.R., Ex.A.4-attested copy of inquest report, Ex.A.5-attested copy of post-mortem examination report, Ex.A.6-xerox copy of voter ID card of applicant No.1, Ex.A.7-xerox copy of voter ID card of applicant No.2, Ex.A.8-death certificate, Ex.A.9-Family Members certificate, Ex.A.10-legal notice and Ex.A.11-acknowledgment. On behalf of the respondent-railways, R.W.1 was examined and Ex.R.1-Divisional Manager's Report was marked.

8. As per the evidence of A.W.2, the deceased was on the platform when the train started moving and he tried to catch the running train and in that process, he fell down. Ex.A.4-attested copy of inquest report also reveals that the deceased

got down from the train at Bellamkonda railway station and tried to re-board the train when it started moving, then he fell down.

9. Under these circumstances, 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."

10. In the above decision, the principles of strict liability and all other aspects required to adjudicate the claim under Section 123 of the Railway Claims Tribunal Act, 1987, are dealt with. It is held that the 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 it would not fall under Section

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

124A of the Railway Claims Tribunal Act merely on the plea of negligence of the victim as a contributing factor.

11. Though R.W.1 was examined on behalf of the respondent-railways and Ex.R.1-Divisional Manager's Report was marked, there is no evidence to conclude that the deceased was intentionally and deliberately invited the accidental fall. Even if the deceased made an attempt to board the running train, it cannot be concluded that the injuries suffered by him were self-inflicted injuries. The manner in which the deceased suffered injuries and succumbed to the injuries are only accidental injuries resulted from accidental fall from the train No.352 Repalle-Secunderabad Passenger on 03.04.2009. The instant case does not fall under any exceptions of Section 124A of the Railway Claims Tribunal Act, 1987. No person would invite such a fall. The fall is only an accidental. Under these circumstances, it can be safely concluded that the deceased died in an untoward incident of accidental fall from the train No.352 Repalle-Secunderabad Passenger on 03.04.2009. The Tribunal had not properly appreciated the manner how the deceased suffered injuries. Therefore, the impugned order is liable to be set aside.

12. Point Nos.2 and 4: The applicants are dependents on the deceased. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants-claimants are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

13. In the result, the appeal is allowed, setting aside the order, dated 02.11.2015, passed in O.A.A.No.96 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.96 of 2009 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants are entitled to interest @ 6% per annum from the date of this judgment till realisation. The appellants 1 and 2 are entitled to share the compensation amount equally. On deposit, both the appellants are entitled to withdraw their respective shares. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

13th November, 2018

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