

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.95 of 2009

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 27.01.2009 passed in O.A.A.No.243 of 2003 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: First applicant is wife, applicant Nos.2 to 4 are the children and applicant Nos.5 and 6 are the parents of one B.Yadaiah (hereinafter referred to as 'the deceased'). On 08.04.2003, the deceased along with his girl-friend Ellamma boarded train No.359, Gulbarga - Falaknuma Passenger, at Tandur Railway Station to go to Kachiguda after purchasing ticket. Due to the train jerks, the deceased fell down from the train and sustained injuries on various parts of the body. The deceased died on the same day at about 6:30 p.m., while undergoing treatment in the hospital. The deceased died due to untoward incident. The applicants are the dependants on the income of the deceased. Hence, the applicants filed the application under Section 16 of the Railway Claims Tribunal Act claiming compensation of Rs.4,00,000/-.

4. The respondent filed written statement *inter alia* contending that the deceased himself fell down from the train; therefore the act of the deceased will not fall within the ambit of Section 123(c) of the Railways Act. It is further contended that the deceased was travelling in the train without a valid ticket; therefore, he is not a

bona fide passenger. Therefore, applicants are not entitled to any compensation. Hence, the petition is liable to be dismissed.

5. Basing on the above pleadings, the Tribunal framed four issues.

6. To substantiate the case, applicant No.1 examined herself as AW.1 and AW.2 is the eye witness to the incident and got marked Exs.A.1 to A.7. To dislodge the case of the applicants, on behalf of the respondent, RW.1 was examined and Exs.R.1 and R.2 were marked.

7. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the deceased himself fell down from the train and he is not a *bona fide* passenger and dismissed the petition.

8. Feeling aggrieved by the order dated 27.01.2009 passed in O.A.A.No.243 of 2003, the applicants preferred the present appeal.

9. Ms.Geetha Madhuri N.S., learned Advocate, representing Sri Pottigari Sridhar Reddy, learned counsel for the applicants submitted that the finding of the Tribunal that the case of the applicants will not fall within the ambit of Section 123(c) of the Railways Act is not sustainable either on facts or in law. She further submitted that mere non-recovery of ticket from the deceased by itself is not a valid ground to arrive at a conclusion that the deceased is not a *bona fide* passenger. She further submitted that the findings recorded by the Tribunal are not based on any evidence much less legally admissible evidence; therefore, it is a fit case to allow the appeal.

10. *Per contra*, Sri T.S.Venkataramana, the learned Standing Counsel for the Railways, submitted that AW.2 is not an eye witness to the incident. He further submitted that the findings recorded by the Tribunal are based on evidence; therefore, it is not a fit case to interfere with the order of the Tribunal.

11. 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?
2. Whether the deceased is a *bona fide* passenger?
3. Whether the applicants are entitled to compensation, if so, to what amount?

Point Nos.1 and 2:

12. 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.

13. Admittedly, AW.1 is not an eye witness to the incident. As per the testimony of AW.1, her husband died by falling down from the train and died while undergoing treatment. As seen from the testimony of AW.2, on the date of incident, herself and the deceased boarded the train at Tandur Railway Station, after purchasing the ticket to go to Kachiguda. As per the testimony of AW.2, due to heavy jerks of the train, the deceased fell down from the train and sustained injuries. Her testimony further reveals that the deceased died while undergoing treatment in the hospital. A perusal of Ex.A.3-inquest report reveals that the Railway Police conducted inquest over the dead body of the deceased. Ex.A.4 is the post-mortem examination report. As per the recitals of Exs.A.3 and A.4, the deceased died due to injuries sustained by falling

down from the train. It is not in dispute that the dead body of the deceased was found in Tandur Railway Station. As per the recitals of Ex.A.1-F.I.R., the deceased sustained injuries by falling down from the train in Tandur Railway Station. As per the recitals of Ex.A.2-Memo, the deceased, while catching the train, fell down and sustained injuries. Ex.R.1 is the copy of the message and Ex.R2 is the extract of Train Signal Register.

14. By examining A.W.1, A.W.2 and R.W.1, and marking Exs.A1 to A.4, R.1 and R.2, the applicants proved that the deceased died due to falling down from the train.

15. The next question that falls for consideration is whether the death of the deceased is an untoward incident, as contemplated under Clause (c) of Section 123 of the Railways Act, 1989, or the facts of the case on hand fall within the ambit of Proviso to Section 124A of the Railways Act. The Tribunal arrived at a conclusion that the deceased fell down from running train; therefore, the alleged accident falls within the ambit of Proviso to Section 124A of the Railways Act. The learned counsel for the appellant submitted that the finding recorded by the Tribunal is not sustainable in view of the judgment 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

¹ 2018 SCC Online SC 507

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.

(emphasis supplied)

17. Absolutely there is no evidence on record that the deceased fell down from the train due to his negligence so as to absolve the liability of the respondent. 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 will fall within ambit of Section 123(c) of the Railways Act.

18. The Tribunal, basing on the material available on record, arrived at a conclusion that the deceased is not a *bona fide* passenger. There is no dispute that the applicants have not produced the ticket purchased by the deceased. The question that arises for consideration is, whether non-production of the ticket itself disentitles the applicants to claim compensation. To substantiate the argument, 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.

(emphasis supplied)

19. A.W.1 has taken a specific plea, in the petition, that her husband purchased the ticket at Tandur Railway Station before boarding the train. During the course of evidence, A.W.2 categorically stated that she is the family-friend of the deceased and A.W.1. She further stated that the deceased purchased tickets for both of them at Tandur Railway Station to go to Kacheguda. The factum of travelling of A.W.2 along with the deceased is not disproved by the respondent. The material on record *prima facie* reveals that the deceased purchased the tickets, before boarding the train, at Tandur Railway Station. On the other hand, no contrary evidence was adduced by the respondent.

20. 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:

21. 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 applicants are entitled to Rs.8,00,000/- if the incident occurred on or after 01.1.2017. Admittedly, in this case, the deceased died on 08.4.2003. By the date of accident, the compensation amount, as fixed by the Railway Authorities, is Rs.4,00,000/-.

22. At the time of argument, learned counsel for the appellants strenuously submitted that the appellants are 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.

23. As per the principle enunciated in the case cited supra, the applicants are 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 applicants.

24. Coming to the facts of the case on hand, as on the date of the accident i.e., 08.4.2003, 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 interest at 6% per annum is calculated on Rs.4,00,000/- for a period of six (6) years, 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 applicants are entitled to the compensation of Rs.8,00,000/-.

25. 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 applicants are 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.

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

27. In the result, the civil miscellaneous appeal is allowed, setting aside the order dated 27.01.2009 passed in O.A.A.No.243 of 2003. Consequently, O.A.A.No.243 of 2003 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. Out of the compensation, applicant No.1 is entitled to Rs.4,00,000/-, applicant Nos.2, 3 and 4 are entitled to Rs.1,00,000/- each, and applicant Nos.5 and 6 are entitled to Rs.50,000/- each. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 31.08.2018
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