

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.934 OF 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 31.10.2014, passed in O.A.II(U) No.165 of 2009 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal') whereunder and whereby, the claim of the appellant/applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124, 124-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- for the injury suffered by him in a railway accident that took place on 13.12.2008, was dismissed.

2. Heard the learned counsel for the appellant/applicant and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellant/applicant would contend that there was rush in train No.561 Passenger travelling from Kamareddy to Nizamabad on 13.12.2008 and so the applicant could not get down at Nizamabad and thereafter, due to sudden jerks, he accidentally slipped and fell down from the train; that there is clear evidence of A.W.1/applicant and there is also other evidence to substantiate the same; that the Tribunal erroneously held that the injury suffered by the applicant is self inflicted injury and denied compensation by dismissing the application, which is erroneous, 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 supported the impugned order and contended that the applicant was responsible for sustaining the injury and the Tribunal rightly dismissed the application; that there are no merits to take a different view and ultimately, prayed to dismiss the appeal.

5. There is no much dispute with regard to the applicant travelling by train No.561 Passenger from Kamareddy to Nizamabad on 13.12.2008 with a valid journey ticket. The only dispute is whether the applicant was responsible and negligent for his fall.

6. In view of the submissions made by the learned counsel for both sides, the points that arise for determination are:-

“1. Whether the appellant/applicant suffered amputation of left leg below the knee due to an untoward incident of accidental fall from train No.561 Passenger travelling from Kamareddy to Nizamabad on 13.12.2008? and

2. Whether the order, dated 31.10.2014, passed in O.A.II(U) No.165 of 2009 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is liable to be set aside?”

7. **P O I N T No.1:-**

To substantiate that the applicant was negligent and responsible for his fall from the subject train, R.W.1 – Guard of the subject train was examined. In his evidence, he clearly admitted that he did not witness the fall of the applicant from the subject train. He stated that the train was stopped by loco pilot since the public was shouting that a person jumped from the train and fell

down and on that, the train was stopped on 13.12.2008. The Tribunal, having recorded a finding that the train actually arrived at Nizamabad on 13.12.2008 at 09.54 hours and started again at 10.00 hours and got further detained upto 10.06 hours for attending the injured, held that the applicant was negligent and responsible for the injury.

8. 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."

The above decision squarely applies to this case. There is specific evidence of A.W.1 that he had accidentally fallen from train No.561 Passenger on 13.12.2008. It establishes that the applicant was not negligent for falling from the said train on that day. Ex.A-1 is the journey ticket of the applicant. There is no dispute with regard to the genuineness of the said document. Under Ex.A-2 – copy of

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

the F.I.R., there is mention that the applicant had fallen from train No.561 on 13.12.2008. There is no mention of negligence on the part of the applicant. The Apex Court, in the above decision, had held that death or injury in the course of boarding or de-boarding the train would be only an 'untoward incident' of accidental fall. Victims falling from the train while boarding and de-boarding are entitled to lay a claim against the Railways and such acts would not fall under the exceptions laid in Section 124-A of the Railways Act. There is no iota of evidence on record to establish that the applicant had contributed in any manner for his fall from train No.561 Passenger. There is nothing to disbelieve the evidence of A.W.1. In such event, the defence set up by the Railways that for the negligence of the victim, compensation cannot be awarded, cannot be accepted. The circumstances and the other evidence placed on record substantiate that the applicant had suffered injury in an untoward incident of accidental fall from train No.561 Passenger. As per Ex.A-4 – case sheet (medical case record), the left lower limb of the applicant was amputated below knee. So, the injury mentioned in Ex.A-4 falls at serial No.20 of Part III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 issued by the Ministry of Railways *vide* notification, dated 22.12.2016. Therefore, the applicant is entitled for a compensation of Rs.4,00,000/- (Rupees four lakhs only) as claimed.

9. **P O I N T No.2:-**

Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 31.10.2014, passed in O.A.II(U) No.165 of

2009 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.II(U) No.165 of 2009 stands allowed. The applicant is awarded a compensation of Rs.4,00,000/-. 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. There shall be no order as to costs.

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

Date : 09.11.2018
AMD

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AMD