

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.412 OF 2016

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 12.02.2016, in O.A (IIU) No.54 of 2008 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 Section 124-A of the Railways Act, 1989, with regard to grant of compensation for the injuries sustained by him in an untoward incident of accidental fall was dismissed.

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

3. Learned counsel for the appellant/applicant would submit that the appellant/applicant had accidentally fallen from Passenger Train No.DMU 231 at Cheepurupalli Railway Station on 31.01.2005 when he got down from the train to collect his luggage bag which was kept and forgot at platform when the subject train was moving slowly; that there was no intention or contribution on the part of the appellant/applicant for his accidental fall; that the finding of the Tribunal that the deceased himself inflicted the injuries, for which the respondent/railways cannot be held liable, is incorrect and ultimately prayed to set aside the order.

4. On the other hand, learned Standing Counsel for respondent/Railways would submit that the appellant/applicant had criminal negligence for his accidental fall; that the benefit contained in Section 124-A of the Act is meant for the genuine victims who suffered injuries in an untoward incident, but not the persons, who indulged in doing misadventures and misdeeds; that the case of the appellant/applicant does not fall under Section 124-A of the Act; that the Tribunal elaborately dealt with this issue and rightly answered the same; that there is no infirmity in the impugned order and ultimately prayed to dismiss the appeal.

5. In view of submissions made by both sides, the following point arises for determination:

1. Whether the appellant/applicant was a *bona fide* passenger of the Passenger Train No.DMU 221 on 31.01.2005?
2. Whether the appellant/applicant sustained injuries as a result of an untoward incident of accidental fall from Passenger Train No.DMU 221?
3. Whether the appellant/applicant is entitled to claim compensation as prayed for?
4. To what relief?

6. There is no dispute with regard to the journey and validity of pass of the appellant/applicant to travel from Vizianagaram to Cheepurupalli by the subject train. The only dispute in this appeal is whether the appellant/applicant himself was responsible for the accident or not. The finding of the Tribunal is that the appellant/applicant himself responsible for the injuries suffered by him and came to the conclusion that the benefit under Section 124-A of the Act cannot be extended in his favour. The Tribunal

while dealing with the subject matter of the appeal at para No.11 of its order held that compensation payable from the public exchequer is not meant for misdeeds and misadventures of the passengers who do not abide by law. The said paragraph is extracted as under:

“Though the provisions contained in Sec. 124 A of the Railways Act are beneficial in nature they are made to sub serve the interest of the kith and kin of genuine victims of an untoward incident but not to benefit the kith and kin of those passengers who indulge in misadventure and abortive attempts to board or deboard which ultimately prove fatal. Compensation paid from the public exchequer is not meant to compensate for the misdeeds and misadventures of the passengers who do not abide by law.”

7. The Tribunal had placed reliance on Ex.A.2-statement given by the appellant/applicant to the police. Ex.A.2 reveals that the appellant/applicant boarded Passenger Train No.DMU 231 at 7:30 hours on 31.01.2005 along with his wife and when the train was moving slowly, he got down from the running train, as he forgot to take his luggage bag, which was kept on the platform. In that process, he slipped and fell down on the platform and was dragged to some distance. Basing on the statement, it was held that the appellant/applicant had indulged in doing misdeeds, misadventures and was responsible for the injuries and accordingly, the Tribunal denied the compensation holding that the fall would not amount to untoward incident defined under Section 123-C of the Act.

8. There is no difficulty in holding that the appellant/applicant made an attempt to get down from the moving train at 7:30 PM on 31.01.2005. The appellant/applicant wanted to take his bag,

which he kept and forgot on the platform on that date. It is also stated in the application that there were several passengers on the platform when he forgot his bag and boarded the train. There is no dispute that the appellant/applicant was a retired railway employee. Merely because, he got down from the slowly moving train to collect his bag, it cannot be said that he is criminally negligent and responsible for the injuries suffered by him. There was no intention on the part of the appellant/applicant to suffer injuries nor there was any deliberate attempt on his part to fall down from the running train. The appellant/applicant did not expect the situation that arose. Therefore, it cannot be said that the injuries suffered in the subject accident were self inflicted injuries. The Hon'ble Supreme Court, in **Union of India vs. Rina Devi** decided in Civil Appeal No.4945 of 2018 dated 09.05.2018, observed 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 the same cannot be denied on the plea of contributory negligence of the victim. The relevant paragraph of the said judgment reads as follows:

“Some high courts have held that that injury or death because of negligence of the victim was at par with self inflicted injury. The court took note of a judgment of the Bombay High Court which has held in a case where a hawker died in the course of boarding a train, that he was not entitled to compensation as it was a case of 'self-inflicted injury'. The apex court, disapproving this view, said 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', the bench said.”

Under these circumstances, it can only be held that the appellant/applicant suffered injuries in an untoward incident of accident fall 31.01.2005 from Passenger Train No.DMU 231. Therefore, on this aspect, the findings of the Tribunal are liable to be set aside.

9. As per the medical record, the appellant suffered amputation of elbow joint, which falls under Sl.No.4 of Part III of the Schedule issued by the Ministry of Railways *vide* notification, dated 22.12.2016, and appellant is entitled to compensation of Rs.4,80,000/-.

10. Accordingly, the appeal is allowed setting aside the order, dated 12.02.2016, in O.A (IIU) No.54 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal') and the appellant/applicant is granted compensation of Rs.4,80,000/-. The respondent/railways are directed to deposit the said compensation amount within three (3) months from the date of receipt of a copy of this order, failing which the appellant is entitled for interest at the rate of 6% per annum from the date of Judgment of this Court till realization.

Miscellaneous petitions pending, if any, in this appeal shall stand closed. There shall be no order as to costs.

DR.JUSTICE SHAMEEM AKTHER

NOVEMBER 16, 2018
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Date: 16.11.2018

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