

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.822 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act (for short, 'the Act') assailing the order dated 13.06.2016 passed in O.A.II(U) No.447 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal'), wherein and whereby the application filed by the appellants under Section 16 of the Act was dismissed.

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

3. The facts leading to filing of the present appeal are briefly as follows:

One Srinivasa Rao (hereinafter referred to as 'the deceased') boarded the train bearing No.7057 Devagiri Express at Kopergaon Railway Station, after purchasing the ticket bearing No.26083470, to go to Nizamabad. The deceased accidentally fell down from the train at Nizamabad Railway Station and sustained injuries on various parts of the body. Immediately after the incident, the deceased was shifted to hospital in 108 Ambulance, but on the way he died. The deceased died as a result of untoward incident. Applicant No.1 is the wife, applicant No.2 is the daughter, applicant No.3 is the son and applicant No.4 is the mother of the deceased. Hence, the applicants filed the application under Section 16 of the Act claiming compensation of Rs.4,00,000/-.

4. The respondent filed written statement *inter alia* contending that the deceased was not a *bona fide* passenger. It is further

contended that the deceased himself fell down from the train due to his negligence; therefore, the application is not maintainable under law. Hence, the petition is liable to be dismissed.

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

- (1) Whether the applicants are the dependants of the deceased?
- (2) Whether the deceased was a *bona fide* passenger of train No.7057 Devagiri express, while travelling from Kopergaon to Nizamabad on 28.03.2003?
- (3) Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
- (4) Whether the applicants are entitled to the compensation as claimed by them in the application?
- (5) To what relief?

6. Before the Tribunal, on behalf of the applicants, AW.1 was examined and Exs.A.1 to A.7 were marked. On behalf of the respondent, no oral evidence was adduced and Ex.R.1 was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the deceased was not a *bona fide* passenger and de-boarding of the train from offside amounts to criminal act and dismissed the petition.

8. Feeling aggrieved by the order dated 13.06.2016 passed in O.A.II(U) No.447 of 2008, the unsuccessful applicants preferred the present appeal.

9. Sri I.Nageswara Rao, learned counsel for the applicants, submitted that the deceased purchased the valid ticket; therefore, the finding of the Tribunal that the deceased was not a *bona fide* passenger is not sustainable either on facts or in law. He further submitted that the deceased accidentally fell down from the train and that aspect was not considered by the Tribunal in right perspective and dismissed the application on assumptions and presumptions. He further submitted that the findings recorded by the Tribunal are not sustainable either on facts or in law; 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 the deceased while boarding the train at Nizamabad, negligently fell down from the train, which act of the deceased will fall within the ambit of proviso to Section 124-A of the Act and that aspect was rightly considered by the Tribunal. He further submitted that the deceased is not entitled to travel beyond Nizamabad Railway Station. He further submitted that the findings recorded by the Tribunal are based on evidence much less legally admissible evidence; therefore, the appeal is liable to be dismissed.

11. Basing on the rival contentions of both parties, the points that arise for consideration in this appeal are:

1. Whether the deceased died as a result of an untoward incident of accidental fall from the train?
2. Whether the deceased is a *bona fide* passenger?
3. Whether the applicants are dependants on the income of the deceased?
4. Whether the applicants are entitled for compensation, if so, to what amount?

Point No.1:

12. To substantiate the case, the wife of the deceased examined herself as AW.1. As seen from the testimony of AW.1, the deceased fell down from the train at Nizamabad Railway Station. A perusal of Exs.A.1 to A.3 clearly reveals that the deceased died due to injuries sustained by him by falling from the train bearing No.7057 Devagiri Express at Nizamabad Railway Station. There is no much dispute with regard to the nature of death of the deceased on 29.03.2018 at Nizamabad Railway Station.

13. The crucial question that falls for consideration is, whether the deceased died as a result of an untoward incident of accidental fall from the train.

14. To substantiate the argument, learned counsel for the appellants has drawn the attention of this Court to **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 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)

¹ 2018 SCC Online SC 507

15. As per the principle enunciated in the case cited supra, if the death or injury sustained by any passenger in the course of boarding or de-boarding a train will be an 'untoward incident'.

16. Admittedly AW.1 is not an eye witness to the incident. The respondent did not choose to examine any person to prove that the deceased negligently fell down from the moving train at Nizamabad. It is not in dispute that the deceased boarded the train at Kopergaon after purchasing the ticket bearing No.26083470. The ticket bearing No.26083470 is valid to travel from Kopergaon to Nizamabad. For one reason or other, the deceased fell down from the moving train at Nizamabad and died. The Tribunal made an observation that the deceased, while boarding the train from offside, fell down and died, the act of deceased will fall within the ambit of criminal act. Self-inflicted injuries and criminal act presupposes the intention on the part of the deceased. It is not possible to ascertain the intention of the deceased. The intention of an individual can be gathered from the facts pleaded and proved. Absolutely there is no material on record to establish that the act of the deceased will fall within the ambit of criminal act.

17. The material placed before the Court clinchingly establishes that the deceased accidentally fell down from the train and died. 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 deceased died as a result of an untoward incident of accidental fall from the train. The finding recorded by the Tribunal that the act of the deceased will fall within the ambit

of criminal act is not sustainable either on facts or in law. The finding recorded by the Tribunal on this aspect is set aside. Accordingly, point No.1 is answered in favour of the applicants and against the respondent.

POINT No.2:

18. The applicants have taken a specific plea in the application that the deceased purchased the ticket bearing No.26083470 on 28.03.2008 at Kopergaon Railway Station. The said ticket is valid to travel from Kopergaon to Nizamabad. The dead body of the deceased was found in Nizamabad Railway Station.

19. A perusal of Ex.R1 clearly reveals that at the time of inquest, Railway Officials seized the ticket bearing No.26083470 from the deceased; in such circumstances, the finding of the Tribunal that the deceased was not a *bona fide* passenger is not sustainable. The ticket bearing No.26083470 was marked as Ex.A.4. The Tribunal has not considered Ex.A.4 in right perspective. Viewed from any angle, the finding recorded by the Tribunal that the deceased was not a *bona fide* passenger is not sustainable.

20. The oral testimony of AW.1 coupled with Exs.R.1 and A.4 clearly reveals that the deceased was a *bona fide* passenger. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased was a *bona fide* passenger. Hence, this point is answered in favour of the applicants and against the respondent.

Point Nos.3 and 4:

21. Point Nos.3 and 4 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.

22. At the time of argument, learned counsel for the appellants strenuously submitted that the appellants are entitled for compensation Rs.8,00,000/-. To substantiate the stand, he has drawn the attention of this Court to paragraph No.19 of **Rina Devi** (supra 1), 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., 29.03.2008 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/- from the date of 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 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.

26. Applicant No.1 is the wife, applicant No.2 is the daughter, applicant No.3 is the son and applicant No.4 is the mother of the deceased. The applicants are dependants on the income of the deceased. Therefore, in the light of the foregoing discussion, I have no hesitation to hold that the applicants are dependants on the income of the deceased.

27. During pendency of the O.A., applicant No.4 died. Applicant No.1 is the wife and applicant Nos.2 and 3 are the children of the deceased. Taking into consideration the age and future needs of the applicants, this Court is inclined to apportion the compensation in the following manner:

Applicant No.1 is entitled for compensation of Rs.4,00,000/.

Applicant Nos.2 and 3 are entitled for compensation of Rs.2,00,000/- each.

Accordingly, point Nos.3 and 4 are answered in favour of the applicants and against the respondent.

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

29. In the result, the Civil Miscellaneous Appeal is allowed, setting aside the order dated 13.06.2016 passed in O.A.II(U) No.447 of 2008. Consequently, O.A.II(U) No.447 of 2008 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/- and applicant Nos.2 and 3 are entitled to Rs.2,00,000/- each. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 07.09.2018
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