

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.816 of 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant-applicant, challenging the order, dated 03.07.2014 in O.A.A. No.187 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellant-applicant claiming compensation for the injuries sustained by him in an untoward incident of accidental fall near Raghava Cine Complex before reaching Nellore, from train No.175 Chennai-Nellore MEMU passenger (hereinafter referred to, as 'the subject train') while travelling from Naidupeta to Nellore on 06.01.2007, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicant would contend that the Tribunal, on the ground that there is inconsistency in the evidence given by the applicant before the Tribunal and the statement given by him to police under Ex.A2, held that the applicant is responsible for the fall and that the applicant did not involve in any untoward

incident, and dismissed the claim application; that the Tribunal did not consider the evidence in right perspective and arrived at perverse findings, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the Tribunal rightly held that the case of the applicant is concocted one; that the applicant failed to prove that he was a *bona fide* passenger of the subject train and suffered amputation of left leg above knee in an untoward incident of accidental fall from the subject train; that the Tribunal rightly dismissed the application and there is no infirmity, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the applicant was a *bona fide* passenger of train No. 175 Chennai-Nellore MEMU passenger travelling from Naidupeta to Nellore on 06.01.2007 ?
- 2) Whether the applicant sustained injuries leading to amputation of his left leg above knee in an untoward incident of accidental fall from running train No. 175 Chennai-Nellore passenger on 06.01.2007 ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 4:

7. To substantiate the claim of the applicant, he himself deposed as A.W.1 and examined A.W.2-Ch.Srinivasulu, and Ex.A1-attested copy of FIR; Ex.A2-attested copy of statement of injured; Ex.A3-attested copy of medical record; Ex.A4-photo copy of orthopaedically handicapped certificate; Ex.A5-photo copy of concession certificate; Ex.A6-attested copy of injured person intimation; Ex.A7-photographs of the injured, and Ex.A8-case diary were got marked.

On behalf of railways, no oral evidence was adduced, but Ex.R1-Divisional Railway Manager's report was got marked.

8. It is the case of the applicant that on 06.01.2007, while he was travelling by the subject train from Naidupeta to Nellore, he accidentally fell down from the said train near Raghava Cine Complex before reaching Nellore and sustained injuries resulting in amputation of his left leg above knee. The Tribunal mainly placed reliance on the oral evidence of A.W.1 and the contents in Ex.A2-statement given by A.W.1-injured before police and held that the evidence of A.W.1 is contradicting the statement given by him before police under Ex.A2. Under Ex.A2, the applicant admitted that he had fallen down from the train when he was trying to get down from the train

which was in running condition. In the evidence given before the Tribunal, A.W.1 stated that he was standing at the door and due to jerks and applying sudden brakes, he fell down and suffered injuries. As regards the untoward incident of accidental fall, 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."

In the above decision, the Hon'ble Apex Court held that death or injury occurred in the course of boarding or de-boarding of a train will be an accidental fall entitling the dependants or the victim, as the case may be, to the

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

compensation under proviso to Section 124A of the Railways Act, 1989. The Hon'ble Apex Court also held that self-inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree, and that 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'.

9. In the case on hand, a small inconsistency has come up in the manner in which the applicant had fallen down from the subject train. It is stated before the Tribunal that he had fallen due to high speed and jerks of the train, whereas in the statement given to police, it appears he stated that he made an attempt to get down from the running train and in that process he fell down and suffered the injuries. Viewing from any angle, there is no deliberate or wilful attempt on the part of the applicant to fall down from the train and suffer injuries. There is no contribution on the part of the applicant in suffering the injuries. So also, there was no negligence on his part. In the aforesaid decision, the Hon'ble Apex court held that the concept of self-inflicted injury would require intention to inflict such injuries and not mere negligence of any particular degree. Under these circumstances, it cannot be held that the injuries suffered by the applicant are self-inflicted injuries. The act of the applicant would not fall

under any of the exceptions laid down under Section 124A of the Railway Act, 1989.

10. Further more, in Ex.R1-DRM report, it is stated that there was total negligence on the part of the injured who made deliberate and fatal attempt to jump from running train, and fell down from Raghava Cine complex before reaching Nellore railway station, suffered injuries on his own, and it is a clear case of self-inflicted injury on the part of the applicant-injured person. When there is specific mention in the statutory report under Ex.R1 that there was fall from the train, it cannot be said that the case set up by the applicant is concocted one and invented to claim compensation.

11. As far as journey ticket is concerned, it is the case of the applicant is that he purchased a journey ticket and boarded the subject train, but it was lost in the accidental fall. There is specific evidence of A.Ws.1 and 2 with regard to the applicant purchasing a ticket and boarding the subject train. By examining A.Ws.1 and 2, the initial burden with regard to purchase of journey ticket by the applicant and boarding the subject train stands discharged. The possibility of the ticket being lost in the accidental fall cannot be ruled out. On this aspect, it is

pertinent to refer to the decision of the Apex Court in **Rina Devi (1 supra)** wherein it is further held thus:

“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.*”

In the case on hand, the applicant discharged the burden lying on him by filing an affidavit of the relevant facts. No contra evidence was adduced by railways to disbelieve his evidence. Therefore, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Under these circumstances, the points are held in favour of the applicant and against the railways.

12. As per the medical record placed before this Court, the applicant suffered injuries which led to amputation of his left leg above knee. It falls under the injury mentioned at sl.no.19 of Part III of Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Therefore, the applicant is entitled for a compensation of Rs.4,80,000/-.

Point No.4:

13. In the result, the C.M.A. is allowed. The impugned order dated 03.07.2014 in O.A.A. No.187 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicant is awarded compensation of Rs.4,80,000/- (Rupees four lakhs eighty thousand only) in view of the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways is directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicant is entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. On deposit, the applicant is entitled to withdraw the amount with accrued interest.

There shall be no order as to costs of this appeal.
Pending Miscellaneous Petitions, if any, in the appeal shall
stand closed.

Dr. SHAMEEM AKTHER, J

28.11.2018
DRK



THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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28.11.2018

DRK