

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.487 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 29.05.2015 in O.A.(II U) No.534 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellants-applicants claiming compensation for the death of G.Satyanarayana (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.2717 Ratnachal Express (hereinafter referred to, as 'the subject train') on 19.10.2008 while travelling from Visakhapatnam to Rajahmundry, 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 applicants would contend that the deceased was travelling by the subject train on 19.10.2008 from Visakhapatnam to Rajahmundry; that in the course of journey, he got down at Duvvada railway station to fetch water for his wife and minor grand

daughter, who were his co-passengers on that day; that when he tried to get into the train, the train started moving, and as a result, he fell down and suffered injuries; that the deceased had purchased journey tickets for all of them; that the applicants did not produce tickets before the Tribunal; that there is evidence of A.W.1 that those tickets were handed over to the Ticket Collectors when they were leaving Rajahmundry railway station; that the Tribunal erroneously held that the deceased was not a *bona fide* passenger and died due to his own negligence and that the incident would not amount to an untoward incident of accidental fall, and declined to grant compensation, 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 inspite of caution given by R.W.1-Sr.T.P., Duvvada, the deceased made an attempt to board the speeding superfast express; that due to his own negligence, he had fallen down; that as per the enquiry conducted by the railways, the deceased was not possessing a valid journey ticket; that he was not a *bona fide* passenger of the subject train; that the Tribunal rightly dismissed the claim petition 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 deceased G.Satyanarayana was a *bona fide* passenger of train No.2717 Ratnachal express travelling from Visakhapatnam to Rajahmundry on 19.10.2008 ?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No. No.2717 Ratnachal express on 19.10.2008 ?
- 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 applicants, wife of the deceased was examined as A.W.1 and Ex.A1-attested copy of message; Ex.A2-attested copy of FIR; Ex.A3-attested copy of inquest report; Ex.A4-attested copy of post-mortem examination report; Ex.A5-death intimation; Ex.A6-death certificate; Ex.A7-no objection certificate and Ex.A8-photo copy of ration card, were got marked.

On behalf of railways, R.W.1-Senior Token Porter, R.W.2-Railway Protection Force Head Constable and R.W.3-Station Manager, were examined, and Ex.R1-extract of station diary and Ex.R2-DRM report, were got marked.

8. A.W.1 is wife of the deceased. She clearly stated that her husband got down at Duvvada to fetch water and thereafter she lost contact with her husband; that she continued to travel to her destination i.e. Rajahmundry; that even at Rajahmundry railway station, her husband did not appear, and so, she left the railway station after handing over the journey tickets belonging to herself and her husband to the railway employees at the gate. This aspect was disbelieved by the Tribunal. Generally, Ticket Collectors as well as other railway personnel are posted at entrance and exit gates of a railway station. The personnel posted at the former gate check tickets of passengers who enter the railway station to board train, and the personnel posted at the latter gate check tickets of passengers who come out of the railway station after completion of the journey and in that process, they collect their tickets. Nothing has been elicited in cross-examination of A.W.1 to discredit her testimony with regard to handing over of the journey tickets to the railway personnel at the exit gate of the railway station. The evidence given by A.W.1 cannot be disbelieved. On this aspect, 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:

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

“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, it is not disputed that A.W.1 accompanied the deceased in the journey. She discharged the burden lying on the applicants by filing an affidavit of the relevant facts. No contra evidence was adduced by railways to disbelieve her evidence. Therefore, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train.

9. Further more, there is evidence of R.W.1 who was on duty on 19.20.2008 at Duvvada railway station. It is his evidence that he saw the deceased trying to get into a moving train and shouted not to board the speeding superfast express, but, however, the deceased made an attempt to board into the train and in that process he fell down, suffered injuries and succumbed to the injuries on the same day evening. On this aspect, it is appropriate to

refer the decision of the Hon'ble Supreme Court in **Rina Devi's case** (1 supra), 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 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'.

10. There is specific evidence of R.W.1 that the deceased in this case, while making an attempt to board the subject train, had accidentally fallen down, sustained injuries and succumbed to the same. There is no other evidence from the side of the railways to state that the injury suffered by the deceased is self-inflicted injury and falls under exceptions narrated under Section 124A of the Railways Act, 1989. Principles of strict liability can be applied to the instant case. In view of the aforesaid decision of the Hon'ble Apex court, the injuries suffered by the deceased are not self-inflicted injuries. There was no intention to suffer any injury. The manner in which the deceased made an attempt to board into the train, fell down and sustained injuries would not establish that the deceased made an attempt to suffer self-inflicted injuries or that he wanted to commit suicide. He got down at Duvvada railway station to fetch water for his wife and grand daughter and he saw the train moving and in a hurry, made an attempt to board the subject train, accidentally fell down in between train and track, suffered grievous injuries and succumbed to the same on the same day. He did not intend to suffer the injuries nor there was any criminal negligence on his part to suffer the subject

injuries. It is only an accidental fall and certain amounts an untoward incident of accidental fall from 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 applicants and against the railways.

Point No.4:

11. In the result, the C.M.A. is allowed. The impugned order dated 29.05.2015 in O.A.(II U) No.534 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicants are awarded compensation of Rs.8,00,000/- (Rupees eight lakhs 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 applicants are entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. Out of the compensation amount, applicant no.1-wife of deceased, is entitled to receive Rs.6,00,000/- and the remaining amount shall be shared by the other applicants equally. On

deposit, the applicants are entitled to withdraw the respective shares 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

19.11.2018
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