

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.286 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 12.02.2016 passed in O.A.II(U)No.133 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench, at Secunderabad (for short, 'the Tribunal').

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

On 14.06.2006 the applicant purchased ticket at Kazipet Railway Station to go to Secunderabad and boarded the train No.1020 Bhubaneswar – Mumbai Konark Express at Kazipet. When the train reached Secunderabad Railway Station, the applicant accidentally fell down from the train and sustained injuries to his left leg. Immediately after the incident, the applicant was shifted to Gandhi Hospital, Secunderabad in 108 ambulance. The applicant took treatment in Gandhi Hospital and his left leg was amputated. Hence, the applicant filed the application under Section 16 of the Railway Claims Tribunal Act claiming compensation of Rs.2,40,000/-.

3. The respondent filed written statement denying all the averments made in the application *inter alia* contending that the applicant jumped from the moving train at Secunderabad Railway Station and sustained injuries. The applicant has not purchased the ticket, therefore, he is not a *bona fide* passenger. The act of the applicant fall within the ambit of Proviso to Section 124A of the Railways Act, therefore, the application is liable to be dismissed.

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

1. Whether the applicant was a bona fide passenger of train in question?
2. Whether the applicant sustained injuries as a result of an untoward incident?
3. Whether the applicant is entitled to claim compensation as prayed for?
4. To what relief?

5. To substantiate the case, applicant examined himself as AW.1 and got marked Exs.A1 to A3. AW.2 is the doctor, who treated A.W.1. To dislodge the case of the applicant, on behalf of the respondent, CW.1 was examined and Ex.C.1 was marked.

6. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the applicant was not a *bona fide* passenger and he himself negligently jumped from moving train, therefore, he is not entitled to claim compensation and dismissed the petition.

7. Feeling aggrieved by the order dated 12.02.2016 passed in O.A.II(U)No.133 of 2007, the applicant preferred the present appeal.

8. Sri T.L.Krishna Prasad, learned counsel for the applicant strenuously submitted that the finding of the Tribunal that the applicant sustained injuries while crossing the railway track from platform No.1 to 2 in Secunderabad Railway Station is contrary to the oral and documentary evidence available on record. He further submitted that the Tribunal discarded the oral testimony of C.W.1 and Ex.C1 on erroneous and untenable grounds. 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.

9. *Per contra*, Sri T.S.Venkataramana, the learned Standing Counsel for the Railways, submitted that the applicant negligently jumped from the train, therefore, the applicant is not entitled to claim compensation in view of Proviso to Section 124A of the Railways Act. He further submitted that the findings recorded by the Tribunal are based on oral and documentary evidence; therefore, it is not a fit case to interfere with the order of the Tribunal.

10. Basing on the rival contentions, the points that arise for consideration in this appeal are:

1. Whether the applicant sustained injuries as a result of untoward incident by accidentally fall from the train in question?
2. Whether the applicant is a *bona fide* passenger?
3. Whether the applicant is entitled to compensation, if so, to what amount?
4. Whether there are any grounds to allow the appeal?

Point Nos.1 and 2:

11. Point Nos.1 and 2 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.

12. As seen from the testimony of applicant (A.W.1), on 14.06.2006 he accidentally fell down from Konark Express at Secunderabad Railway Station and sustained injuries. As per the testimony of C.W.1, the applicant fell down from Konark express at Secunderabad Railway Station and sustained injuries. His

testimony further reveals that he shifted the applicant to Gandhi Hospital in 108 ambulance. This Court carefully perused the cross-examination of A.W.1 and C.W.1. No suggestion was put to A.W.1 that he sustained injuries while crossing the railway track from platform Nos. 1 to 2 at Secunderabad Railway Station. There is no pleading in the written statement that the applicant sustained injuries while crossing railway track. The Tribunal has given a finding that the applicant sustained injuries while crossing the railway track at Secunderabad Railway Station. The finding recorded by the Tribunal is quite contrary to the oral evidence of A.W.1 and C.W.1. As observed earlier, C.W.1 recorded the statement of the applicant immediately after the incident. As per the recitals of Ex.C1 also, the applicant sustained injuries while getting down from the train at Secunderabad Railway Station. The finding recorded by the Tribunal that the applicant sustained injuries while crossing the railway track is not sustainable. The material available on record clinchingly establishes that the applicant fell down from train and sustained injuries.

13. The next question that falls for consideration is whether the act of the applicant will fall within the ambit of Proviso to Section 124A of the Railways Act so as to absolve the liability of respondent. The fact remains that the applicant sustained injuries while deboarding the train at Secunderabad Railway Station. In order to resolve the issue in question, this Court is placing reliance on the decision in **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:

¹ 2018 SCC Online SC 507

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)

14. Taking into consideration the facts of the case on hand and also the principle enunciated in the case cited supra, this Court is of the considered view that the applicant sustained injuries as a result of untoward incident by accidentally fall from the train. Having regard to the facts and circumstances of the case, the finding recorded by the Tribunal is hereby set aside.

15. The Tribunal, basing on the material available on record, arrived at a conclusion that the applicant is not a *bona fide* passenger. As seen from the testimony of A.W.1, he purchased the ticket at Kazipet Railway Station. His testimony further reveals that he fell down from the train and lost the ticket. As seen from the testimony of C.W.1, the applicant purchased the ticket at Kazipet Railway Station. A perusal of the record clearly reveals that immediately after the incident, C.W.1 recorded the statement of A.W.1. In the cross-examination of C.W.1, nothing is elicited to shake his testimony so far as recording of statement of applicant by him. As per the recitals of Ex.C1 also, the applicant purchased the ticket at Kazipet Railway Station. To resolve the issue, this

Court is placing reliance on Para-29 of **Rina Devi**, which reads as follows:

29. 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.

(emphasis supplied)

16. 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 finding of the Tribunal that the applicant was not a *bona fide* passenger is not sustainable either on facts or in law. The applicant is a *bona fide* passenger. Accordingly, point Nos.1 and 2 are answered in favour of the appellant and against the respondent.

Point No.3:

17. As per the testimony of A.W.1, he took treatment in Gandhi Hospital for four months and his left leg was amputated. As seen from the testimony of A.W.2, the applicant took treatment in Gandhi Hospital, Secunderabad and his left leg was amputated below the knee. Ex.A3 is the case sheet. As per the recitals of Ex.A3, the applicant's left leg was amputated below the knee. The applicant claimed compensation of Rs.2,40,000/-. In 2016, the railway authorities issued a notification enhancing the compensation amount. As per clause 20 of the notification dated

22.12.2016 issued by Ministry of Railways (Railway Board), New Delhi, the applicant is entitled for compensation of Rs.4,00,000/-.

18. In order to resolve the issue, this Court is placing reliance on paragraph No.19 of **Rina Devi**, 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.

19. As per the principle enunciated in the case cited supra, the applicant is entitled for compensation of Rs.2,40,000/- with interest at 6% per annum from the date of the application till the date of realisation, or under the revised scheme as on the date of the award, whichever is beneficial to the applicant.

20. Taking into consideration the facts and circumstances of the case and also the principle enunciated in the case cited supra, the applicant is entitled for compensation of Rs.4,00,000/-. Accordingly, point No.3 is answered in favour of the applicant and against the respondent.

Point No.4:

21. In the light of the foregoing discussion, the findings recorded by the Tribunal are not sustainable either on facts or in law. Therefore, I am of the considered view that it is a fit case to allow the appeal.

22. In the result, the civil miscellaneous appeal is allowed, setting aside the order dated 12.02.2016 passed in O.A.II(U)No.133 of 2007. Consequently, O.A.II(U)No.133 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is allowed, granting compensation of Rs.4,00,000/-. The respondent is directed to deposit the compensation amount within a period of three months from today, failing which the applicant is entitled to interest at the rate of 9% per annum from the date of the award till the date of deposit. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 14.09.2018
Rns

T.SUNIL CHOWDARY, J

