

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.591 of 2016

ORDER:

1 This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'the Act'), is filed by the applicant in O.A.II (U) No.220 of 2011 on the file of the Railway Claims Tribunal, Secunderabad Bench, challenging the order dated 09.06.2016 where under and whereby the application filed by the applicant under Section 16 of the Act was dismissed.

2 For the sake of convenience, parties to this appeal will hereinafter be referred to as they were arrayed in the O.A. before the Tribunal. The facts leading to the filing of the present Civil Miscellaneous Appeal, in brief, are as follows:

3 On 17.04.2011, one A.Anil Kumar @ Anil Kumar Goud (hereinafter referred to as 'the deceased') purchased a train journey ticket bearing No.09275574 in Shadnagar railway station to go to Thimmapur and boarded train No.77672 Mahabubnagar - Kachiguda passenger. While boarding the train, the deceased fell down and sustained injuries. Immediately, the deceased was shifted to Shadnagar government hospital, where he succumbed to the injuries on the same day. The applicant, who is the wife of the deceased, filed the application claiming compensation of Rs.8.00 lakhs from the respondent. The respondent filed counter denying all the averments made in the application inter *alia* contending that the applicant planted the ticket bearing No.09275574 with an ulterior motive to claim compensation. The deceased fell down from the train due to his own negligence, therefore, the incident will not fall within the

ambit of Clause (c) of Section 123 of the Act i.e. 'untoward incident'. Hence the application is liable to be dismissed.

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

- i. Whether the applicants are dependents on the deceased?
- ii. Whether the deceased was a bona fide passenger of the Train in question and died as a result of an untoward incident?
- iii. Whether the applicants are entitled to the compensation as claimed and to what relief?

5 To prove the case of the applicant, the applicant examined herself as A.W.1 and got marked Exs.A.1 to A.8. To disprove the case of the applicant, on behalf of the respondent, R.W.1 was examined and Exs.R.1 and R.2 were marked.

6 Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the deceased is not a *bona fide* passenger and that the deceased himself negligently fell down from the train and consequently dismissed the application. Aggrieved by the order of the Tribunal dated 09.06.2016, the unsuccessful applicant preferred the present appeal.

7 The learned counsel for the applicant submitted that the Tribunal has not properly considered the recitals of Ex.A.1-Xerox copy of the journey ticket, Ex.A.3 – FIR and Ex.A.4 - Inquest report and dismissed the application on erroneous grounds. She further submitted that the oral testimony of R.W.1 coupled with Exs.A.1, A.3 and A.4 clinchingly establishes that the deceased purchased the original of Ex.A.1 at Shadnagar railway station to go to Thimmapur. She further submitted that the findings recorded by the Tribunal are

not based on any evidence much less legally admissible evidence, therefore, it is a fit case to allow the appeal.

8 *Per contra*, the learned standing counsel for the respondents submitted that the findings recorded by the Tribunal are based on evidence, much less, legally admissible evidence, therefore, it is not a fit case to allow the appeal.

9 Now the points that arise for consideration in this Civil Miscellaneous Appeal are **(1)** Whether the deceased is a *bona fide* passenger? **(2)** Whether the death of the deceased was as a result of untoward incident? **(3)** Whether the applicant is entitled to compensation? **(4)** If so, to what amount?

Point No.1:

10 As seen from the testimony of A.W.1, her husband purchased the ticket bearing No.09275574 at Shadnagar railway station to go to Thimmapur. Ex.A.1 is the Xerox copy of the original ticket. In Column Nos.7 and 15 of the inquest report - Ex.A.4 it is clearly mentioned that the ticket bearing No.09275574 was seized from the pant pocket of the deceased. The respondent is also not disputing the genuineness of Ex.A.4 inquest report. In the inquest panchanama it was clearly mentioned that the ticket bearing No.09275574 was issued by the booking clerk at Shadnagar railway station. The oral testimony of A.W.1 coupled with Exs.A.1, A.3 and A.4 clinchingly establishes that the deceased purchased the ticket bearing No.09275574 on 17.4.2011 at Shadnagar railway station to go to Thimmapur. The respondents have not produced any rebuttal evidence to establish that the ticket bearing No.09275574 was not issued by the booking clerk at Shadnagar railway station on

17.4.2011. The respondents have taken a specific plea in the written statement that the applicant planted the ticket. Mere taking of plea that itself is not sufficient to prove the stand of the respondents. The testimony of R.W.1 is no way helpful to the respondents to establish that the ticket is a planted one. If really the ticket bearing No.09275574 was planted one, how the ticket was seized from the pant pocket of the deceased at the time of inquest was not explained by the respondents. This itself clearly indicates that the deceased purchased the ticket bearing No.09275574. The Tribunal made an observation that the applicant planted Ex.A.1 in view of non production of original ticket. The Tribunal lost sight of the fact that the original ticket was seized from the deceased at the time of inquest. The material available on record clinchingly establishes that the deceased is a *bona fide* passenger. The findings recorded by the Tribunal that the deceased was not a *bona fide* passenger is based on assumptions and presumptions. Having regard to the facts and circumstances of the case, this Court is of the considered view that the finding of the Tribunal on this aspect is not sustainable on facts in view of the oral and documentary evidence available on record.

11 In ***Union of India vs. Rina Devi***¹ the Hon'ble apex Court held at para No.29 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.

¹ 2018 SCC Online SC 507

12 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I have no hesitation to hold that the deceased was a *bona fide* passenger. Hence the point No.1 is answered in favour of the applicant and against the respondent.

Point No.2:

13 As seen from the testimony of A.W.1 and R.W.1, the deceased fell down from the train at Shadnagar railway platform and sustained injuries. As seen from the testimony of R.W.1 immediately after the incident, the deceased was shifted to Shadnagar government hospital in 108 ambulance. Their testimony further reveals that the deceased died on 17.4.2011 while undergoing treatment. A perusal of the message of the Station Manager -Ex.A.2, A.3 - FIR, A.4 - inquest report and A.5 - post-mortem examination report, the deceased died due to the injuries by falling from the train. The factum of death of the deceased is not disputed by the respondent.

14 The next question that falls for consideration is 'whether the act of the deceased will fall within the ambit of proviso to Section 124A of the Act so as to absolve the liability of the respondent? If the Act of the deceased falls within the ambit of Clause (c) of Section 123 of the Act, the applicants are entitled to claim compensation.

15 Let me consider the facts of the case on hand in the light of the above provisions of the Act. As seen from the testimony of R.W.1, the deceased fell down from the train No.77672 Mahabubnagar to Kachiguda Passenger at Shadnagar railway station. The testimony of A.W.1 and R.W.1 clearly reveals that the deceased while boarding into the train, fell down and died. The finding of the Tribunal is that

due to his own negligence, the deceased fell down from the train. Mere negligence on the part of the deceased by itself is not a valid ground to exonerate the respondents from their liability. Whether the deceased died due to self inflicted injuries or due to his own criminal act is the point to be decided. Self inflicted injuries or criminal act presupposes an intention on the part of the deceased. In the instant case, absolutely there is no material on record to establish that the deceased voluntarily fell down from the train. In order to resolve the issue, this court is placing reliance in **Rina Devi** case (supra) wherein the Hon'ble apex Court held at para 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. versus 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.

16 As per the principle enunciated in the case cited supra, death or injury in the course of boarding or de-boarding a train will be an 'untoward incident'. Therefore, in the instant case, the death of the deceased will fall within the ambit of 'untoward incident'. The findings recorded by the Tribunal are not sustainable either on facts or in law and hence they are liable to be set aside. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, the death of the deceased will fall within the ambit of an untoward incident as defined under Clause (c) of Section 123 of the Act. Accordingly the

point is answered in favour of the applicant and against the respondent.

Point No.3:

17 The applicant claimed compensation of Rs.8.00 lakhs. In ***Rina Devi*** case (supra) the Hon'ble apex Court held at para No.19 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* {(2001) 3 SCC 714}** and ***Kalandi Charan Sahoo vs. General Manager, South-East Central Railway, Bilaspur* {2018 ACJ 1460}** stands explained accordingly. The 4-Judge Bench judgment in ***Pratap Narain Singh Deo* {(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.

18 As per the principle enunciated in the case cited supra, the claimant is entitled to claim compensation fixed by the railway authorities as on the date of incident with interest from the date of application or under the revised scheme as on the date of award, whichever is beneficial to the applicants.

19 Admittedly, in the instant case the incident occurred on 17.04.2011. If the date of incident is taken into consideration, the applicants are entitled to compensation of Rs.4.00 lakhs with interest at 6% p.a. from the date of application till the date of award. Even if Rs.4.00 lakhs amount was awarded with interest @ 6% p.a. the same will be less than Rs.8.00 lakhs. In view of the principle enunciated in the case cited supra, the applicants are

entitled to claim compensation of Rs.8.00 lakhs. Therefore, the applicant is entitled to Rs.8.00 lakhs towards compensation. Accordingly, this point is answered in favour of the applicants and against the respondents.

20 In the result, the appeal is allowed, setting aside the order dated 09.06.2016 passed in O.A.II (U) No.220 of 2011 on the file of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad granting compensation of Rs.8.00 lakhs to the applicant. The respondents are hereby directed to deposit the compensation amount within three months from today to the credit of the O.A., failing which the claimant is entitled to claim interest at 9% p.a. from today till the date of realisation. No order as to costs. As a sequel, miscellaneous petitions if any pending in this Civil Miscellaneous Appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 4th September, 2018
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