

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.658 of 2007

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the applicants questioning the order dated 25.04.2007 passed in O.A.A.No.186 of 2002 by the Member (Technical), Railway Claims Tribunal, Secunderabad.

The original application was filed by the parents of the deceased-Nandyala Kalyana Babu. The case of the applicants before the Tribunal was that their son died in an accident that occurred on 27.02.2002. The Railways have denied the case and so the parties went to trial. For the applicants, AW.1 was examined and Exs.A.1 to A.5 were marked. For the respondent, RWs.1 & 2 were examined and Exs.R.1 & R.2 were marked.

The Tribunal dismissed the case essentially on the ground that the applicants did not file a train ticket to prove that the deceased was a bonafide passenger and that there is a discrepancy between the pleadings and the documentary evidence about the death. According to the Tribunal, the inquest report shows that the deceased tried to 'board the moving train'; fell down and died, whereas the pleading was to the effect that the deceased got down at Kodur Railway Station for drinking water and while he was boarding the moving train, he slipped and fell down. Therefore, the

application for compensation was dismissed. Questioning the said finding, the present appeal is filed.

This Court has heard Sri Pottigari Sridhar Reddy, learned counsel for the appellants/applicants and Smt. Bala Jayayasree, learned standing counsel for the respondent/ South Central Railways, Secunderabad.

The learned counsel for the appellants has strongly relied upon the following judgments:

- i) ***Union of India v. Prabhakaram Vijaya Kumar***¹,
- ii) ***Balagoni Siva Prasad v. Union of India***²,
- iii) ***Jameela v. Union of India***³,
- iv) ***Union of India v. V.M. Ranganadhan***⁴.

and argued that it does not make a difference as per the settled law, whether the deceased was actually getting onto the train or if he has fallen down from a moving train. It is his argument that the alleged discrepancy in pleading is not so vital as to throw out the entire case set up by the appellants.

In ***Prabhakaram Vijaya Kumar***'s case (1 supra), while discussing the liability of the Railways, the Hon'ble Supreme Court of India in para-15 reproduced Section 124-A of the Railways Act, 1989 and held that if the death was not due to suicide/self-inflicted injury/his own criminal act/any act

¹ 2008 ACJ 1895 SC

² 2009 ACJ 1332 AP HC

³ 2010 ACJ 2453 SC

⁴ 2007 ACJ 901 AP HC

committed by him in a state of intoxication or insanity/or any other natural cause, the liability of the railways is absolute.

The learned counsel pointed out that if the case comes within the purview of Section 124-A, it is irrelevant as to who is at fault, since the liability of the railways is strict and absolute. The relevant paras 16 and 17 of this judgment are reproduced hereunder:

“16. The accident in which Smt. Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault.”

The learned counsel pointed out that the Hon'ble Supreme Court of India reviewed the law on strict liability and upheld that the concept of 'no fault liability' of the Railways that contributory negligence is not very relevant. To a similar effect is in the second judgment reported in **Balagoni Siva Prasad's** case (2 supra). In that case also, the learned counsel pointed out that the Railways have proved and established through evidence that the appellant tried to board a running train and in the process he fell down and died. He pointed out that even then the decision of the Tribunal was negatived and the matter was remanded to the Tribunal for fixing the compensation.

The third judgment relied upon is **Jameela's** case (3 supra) wherein the Hon'ble Supreme Court again reproduced Section 124-A and held that if the accident is not covered by the proviso, the liability of the Railways is absolute. The findings at paras 8 & 9 of the judgment are reproduced below:

"8. Section 124-A of the Act renders the railways liable to pay the compensation for the injuries sustained in an untoward incident. Section 123[c][2] defines an untoward incident as meaning among other things 'accidental fall of any passenger from a train carrying passengers'. Proviso to Section 124-A, however, states 'no compensation shall be payable if the passenger suffers injury, due to among other things, self-inflicted injury'. Thus the combined reading of above two provisions would disclose that though a person is entitled to claim compensation for the injuries sustained in an untoward incident, which included accidental fall from the train, the railways are, however, not liable to pay such compensation when the passenger suffers injury which is self-inflicted.

9. Learned Counsel for the appellant would invite the attention to the decision in **Union of India, rep. by General Manager, SCR, Secunderabad v. V.M. Ranganadhan** 2007 ACJ 901 (AP), wherein, it was held that 'the railways must plead and prove that the victim had an intention to sustain injury on his own accord, the exception carved out in Section 124-A of the Act cannot be applied'. In the above case, it was found that the contention of the appellant-railways could have been appreciated, if only there was any evidence adduced on its behalf, to disclose that the respondent had indulged in any acts on his own accord, resulting in the injuries. In the present case, the respondent-railways have not only pleaded but also have adduced evidence in support of the plea that the appellant tried to board a running train at Tallapusalapalle RS and in that process, he fell and sustained injuries. The decision cited, is therefore, not applicable to the facts of the present case."

The last judgment relied upon is the case of **V.M. Ranganadhan** (4 supra) wherein it was noticed that when the passenger was trying to board at Ongole Railway Station, he slipped, fell down and sustained injuries. The learned single Judge held that the slipping and falling down comes within

the definition of an 'untoward incident'. Relying on this judgment, the learned counsel argued that in this case also, the accident or untoward incident occurred in the railway station and that compensation was awarded. The alleged discrepancy between the pleading and the inquest report is therefore not really material according to the learned counsel.

On the other hand, the learned counsel for the respondent argued that the deceased was 'negligent' in either of the two versions that are available on record and that the deceased is also not a bona fide passenger as no details of the ticket are given and no ticket was also found. She states that a false case is set up to claim compensation. Therefore, she argued that the Tribunal was right in negating the case.

This Court on an examination of the submissions made and the evidence on record notices that the accident occurred in the railway station. However, the railways were unable to prove that the accident that occurred falls within the 'proviso' of Section 124-A of the Railways Act. There is no evidence to show that this accident comes within clauses (a) to (e) of the proviso to Section 124-A. In the absence of such evidence, this Court in line with the decision of the Hon'ble Supreme Court **Prabhakaram Vijaya Kumar's** case (1 supra) holds that the accident is clearly covered by the main body of Section 124-A of the Railways Act and not the proviso. Hence, the liability of the Railways is strict or as it is called 'no fault liability'. Since the case comes within the purview of Section

124-A, it is really irrelevant as to who is at fault. Para-17 of **Prabhakaram Vijaya Kumar's** case (1 supra) is relevant as is the finding of the learned single Judge in **Balagoni Siva Prasad's** case (2 supra). In that case, even when the Railways proved through their evidence that the appellant tried to board the running train, still the learned single Judge held that the compensation is payable. The other two judgments which are relied upon are also equally applicable to the facts and circumstances of the case.

The other issues that arose for consideration are the lack of a ticket near the deceased or on the body of the deceased. This Court notices that time and again various High Courts including this Court have held that the burden is upon Railways to prove that the deceased was not a bonafide passenger. This Court and other High Courts have consistently held that there is a presumption that every passenger is a bonafide passenger and that it is for the Railways to prove that he is not bonafide passenger. The burden is squarely upon the Railways to prove this. The judgments reported in **Shaik Mahaboob Basha v. Union of India**⁵ and **General Manager, South Central Railway v. E. Ramamohan Rao**⁶ are relevant. The mere fact that ticket was not found on the body or close to the deceased will not lead to a conclusion that the deceased was not a bonafide passenger. The witnesses examined by the Railways and the evidence

⁵ 2016 (1) ALT 1

⁶ 2004 (6) ALD 283

adduced by the Railways do not lead to this conclusion. Thus, it is clear that the Railways did not discharge the burden cast upon them.

For all the above reasons, this Court holds that the finding of the Tribunal in the impugned order is incorrect. This Court holds that the applicants are entitled to succeed. The Civil Miscellaneous Appeal is therefore allowed.

In view of the judgment of the Hon'ble Supreme Court in ***Tahazhathe Purayil Sarabi v. Union of India***⁷, the applicants are also entitled to interest. The order dated 25.04.2007 passed in O.A.A.No.186 of 2002 by the Member (Technical), Railway Claims Tribunal, Secunderabad is thus set aside and it is held that the applicants are entitled to a sum of Rs.4,00,000/- towards compensation with simple interest at 6% per annum from the date of the application till the date of this order and thereafter, at the rate of 9% per annum from the date of this order till the date of actual payment.

In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 27.04.2018
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⁷ 2009 ACJ 2444