

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.823 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 03.06.2016 passed in O.A.(IIU).No.41 of 2011 on the file of the Railway Claims Tribunal, Secunderabad Bench (for short, 'the Tribunal') wherein and whereby the application filed by the applicants under Section 16 of the Railway Claims Tribunal Act was allowed granting compensation of Rs.4.00 lakhs with interest as prayed for.

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

On 21.08.2010 one S.Dalayya (hereinafter referred to as 'the deceased') along with his relative S.Sundara Rao boarded the train Prasanthi Express at Palasa after purchasing ticket bearing No.60861235 from Palasa to Chennai. The deceased boarded the train No.2616 New Delhi to Chennai Grand Trunk (G.T.) Express at Vijayawada to go to Chennai. When the train reached Chinaganjam, due to jerks, the deceased accidentally fell down from Prasanthi Express and died on the intervening night of 21/22-08-2010. The applicants, who are the dependants on the income of the deceased, filed the application under Section 16 of the Railway Claims Tribunal Act, claiming compensation of Rs.8.00 lakhs.

3. The respondent filed written statement denying all the averments made in the application *inter alia* contending that the deceased was not a *bona fide* passenger. The ticket is dated

21.08.2010 and the dead body of the deceased was found on the next day, therefore, the applicants are not entitled to claim compensation. Nobody witnessed the accident, hence, the application is liable to be dismissed.

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

1. Whether the applicants are dependants of the deceased?
2. Whether the deceased was a bonafide passenger of the train in question and died as a result of an untoward incident?
3. Whether the applicants are entitled to the compensation as claimed and to what relief?

5. To substantiate the case, on behalf of the applicants, A.W.1 was examined and Exs.A.1 to A.11 were marked. To dislodge the case of the applicants, on behalf of the respondent, RW.1 was examined and Exs.R.1 and R.2 were marked.

6. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that (1) the deceased died as a result of untoward incident of accidentally fall from the train in question; and (2) the deceased was a *bona fide* passenger; consequently allowed the application.

7. Feeling aggrieved by the order dated 03.06.2016 passed in O.A(IIU).No.41 of 2011, the respondent preferred the present appeal.

8. Sri T.S.Venkata Ramana, learned counsel for the appellant strenuously submitted that the applicants have not examined the

eye-witness to the incident; therefore, it is a fit case to allow the appeal. He further submitted that the deceased negligently fell down from the train; therefore, the applicants are not entitled to claim compensation in view of clause (c) to the proviso to Section 124A of the Railways Act. He further submitted that the findings recorded by the Tribunal are not based on any evidence much less legally admissible evidence.

9. *Per contra*, Miss N.S.Geetha Madhuri, the learned Counsel for the respondents-applicants, 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 interfere with the order of the Tribunal. She further submitted that the deceased was a bona fide passenger, as the ticket was seized from his possession at the time of inquest. She further submitted that the deceased accidentally fell down from the train, therefore, the applicants are entitled to claim compensation.

10. The points that arise for consideration in this appeal are:

1. Whether the deceased died as a result of untoward incident of falling down from the train in question?
2. Whether there are any grounds to allow the appeal?

Point No.1:

11. On 21.08.2010 the deceased purchased a ticket bearing No.60861235 from Palasa to Chennai. At the time of inquest, the railway authorities seized the ticket from the possession of the deceased. As per the recitals of Ex.A3 inquest report also, the railway authorities seized the ticket from the possession of the deceased. The Tribunal basing on the material available on record, arrived at a conclusion that the deceased was a bona fide

passenger. I am fully endorsing with the findings recorded by the Tribunal. Therefore, this Court is of the considered view that the deceased was a bona fide passenger.

12. The next question that falls for consideration is whether the act of the deceased will fall within the ambit of clause (c) to the proviso to Section 124A or Section 123 of the Railways Act.

13. It is not in dispute that on 21.08.2010, the deceased boarded GT Express at Vijayawada to go to Chennai. On the date of incident, the deceased was travelling in the second class general compartment. The deceased fell down from the train at Chinaganjam Railway Station due to jerks. A perusal of the record clearly reveals that there was no stop at Chinaganjam to GT Express. As per the averments made in the application, the deceased fell down from the train due to jerks only. As rightly pointed out by the learned standing counsel, no one witnessed the incident. The Investigating Officer recorded the statement of co-passenger by name Sundara Rao(Ex.A8). As per the recitals of Ex.A8, the deceased was standing near the door of the compartment.

14. Learned counsel for the applicants strenuously submitted that the act of the deceased will not fall within the ambit of criminal Act as contemplated under the provisions of the Railways Act. To substantiate the argument, she has drawn the attention of this Court to the decision in ***Jameela and Others v. Union of India***¹ wherein it was held at paras 5 and 9 as follows:

¹ 2010 ACJ 2453

“Para 5: We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways that the deceased M.Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under section 124-A of the Act.”

“Para 9: The manner in which the accident is sought to be reconstructed by the Railways, the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.”

15. The facts of the case on hand are almost identical to the facts of the case cited supra. As per the principle enunciated in the case cited supra, the act of the deceased will not fall within the definition of criminal act. On the other hand, the act of the deceased will fall within the ambit of untoward incident as contemplated under Section 123 of the Railways Act. The Tribunal considered the material available on record in right perspective and arrived at a conclusion that the act of the deceased will not fall within the purview of Section 124A of the Act. I am fully endorsing

with the findings recorded by the Tribunal. Hence, this point is answered in favour of the applicants and against the respondent.

Point No.2:

16. The findings recorded by the Tribunal are based on evidence much less legally admissible evidence. There are no grounds much less valid grounds to interfere with the well considered findings recorded by the Tribunal. Hence, the appeal is liable to be dismissed.

17. In the result, the C.M.A. is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dt:17.09.2018
Rns

T.SUNIL CHOWDARY, J

