

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.1100 OF 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 28.09.2012, passed in O.A.A.No.272 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, whereunder and whereby, the Tribunal dismissed the claim application filed by the appellants/applicants seeking a compensation of Rs.4,00,000/- consequent on the death of the deceased Smt Jakkam Adilakshmi.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways. Perused the material available on record.

3. Learned counsel for the appellants/applicants would contend that while the deceased Smt Jakkam Adilakshmi was walking by the side of railway platform No.1, suddenly, train No.8509 Visakhapatnam to Nizamabad Super Fast Express passed silently without blowing horn in a high speed and due to that, the saree of the deceased Smt Jakkam Adilakshmi was struck in the train and she was pulled inside and dragged between the railway track and the railway platform, and succumbed to the injuries and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that the manner in which the

deceased Smt Jakkam Adilakshmi died would not fall within the definition of “untoward incident” of accident and therefore, the applicants are not entitled for compensation; that the Tribunal, while dealing with this aspect, had elaborately dealt with the entire evidence and recorded a finding that the manner in which the deceased Smt Jakkam Adilakshmi met with an accident and succumbed to injuries would not fall within the provisions of Section 123(c) of the Railways Act, 1989 (for short, “the Act”) and rightly dismissed the claim; that the deceased Smt Jakkam Adilakshmi had not purchased the ticket to undertake the journey and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on both sides, the points that arise for determination are:

- “1. Whether the deceased Smt Jakkam Adilakshmi was a bona fide passenger of train No.M-180 Visakhapatnam – Kakinada passenger travelling from Visakhapatnam – Annavaram on 07.07.2007? and***
- 2. Whether the manner of death of the deceased Smt Jakkam Adilakshmi in the instant case amounts to an untoward incident?”***

6. **POINT No.1:-** The Tribunal, while dealing with the subject matter, had elaborately dealt with the evidence of A.W.1 and also the details of the ticket on which the deceased Smt Jakkam Adilakshmi, A.W.2 and her children travelled i.e., ticket bearing No.40541056 to travel from Visakhapatnam to Annavaram by train No.M-180 Visakhapatnam – Kakinada Passenger. The ticket was marked as Ex.A-1. Further, the genuineness of Ex.A-2 – attested copy of F.I.R. is not disputed by the Railways. A.W.1, husband of the deceased Smt Jakkam Adilakshmi, had also testified the same

along with A.W.2, co-sister of the deceased Smt Jakkam Adilakshmi. Having elaborately dealt with the entire evidence, the Tribunal had recorded a finding in favour of the applicants that the deceased Smt Jakkam Adilakshmi was a *bona fide* passenger of travel No.M-180 Visakhapatnam – Kakinada passenger travelled from Visakhapatnam – Annavaram on 07.07.2007.

7. **POINT No.2:-** There is specific evidence of A.W.2 that the deceased Smt Jakkam Adilakshmi got down from train No.M-180 at Annavaram Railway Station and while she was walking on platform No.1 to go out of the station, train No.8509 Visakhapatnam – Nizamabad Super Fast Express came silently without blowing horn in a high speed running behind her, as a result of which, the saree of the deceased Smt Jakkam Adilakshmi got struck to the engine of the said train and the deceased Smt Jakkam Adilakshmi was pulled inside and was dragged by the said train to some distance, due to which she sustained grievous injuries and succumbed to the injuries instantaneously. Further, Ex.A-3 – attested copy of the inquest report of the deceased Smt Jakkam Adilakshmi reveals the same. Further, R.W.2 – D.Srinivasa Rao had also deposed that he was informed that when the deceased Smt Jakkam Adilakshmi was walking by the side of the platform, she was dragged by train No.8509 and succumbed to injuries and died.

8. It is appropriate to refer Section 124-A of the Act which reads as under:-

“Section 124-A:- Compensation on account of untoward incident — When in the course of working in a railway an

untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this Section by the railway administration if the passenger dies or suffers injury due to —

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.”*

As per section 124-A of the Act, persons who suffer self inflicted injuries or suffer injuries due to their criminal act are not liable for compensation. There is also evidence on record that lot of construction material was placed on the railway platform and there was no electricity at that time of the accident. That also contributed to the accident and the death of the deceased Smt Jakkam Adilakshmi. This is substantiated by examining A.W.2.

9. “Untoward incident” is defined under Section 123(c) of the Act, which reads thus:-

“Untoward incident” means-

- (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or*
- (ii) the making of a violent attack or the commission of robbery or dacoity; or*

- (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or***
- (2) the accidental falling of any passenger from a train carrying passengers.”***

10. Under Chapter XIII of the Act, persons injured or the dependants of the deceased are entitled to claim compensation for the injuries that occurred in the railway accident. “Railway Accident” is defined under Section 123(a) of the Act. Section 124-A of the Act deals with the payment of compensation on account of the untoward incidents. It also specifically excludes the persons who are not entitled for compensation in the railway accidents. The death of the deceased Smt Jakkam Adilakshmi occasioned due to the high speed running of train No.8509 Visakhapatnam – Nizamabad Super Fast Express without blowing horn and due to the negligence of the Railways in placing lot of construction material on the platform and also due to the darkness at that point of time. As per the evidence on record, it is proved that the deceased Smt Jakkam Adilakshmi was dragged by train No.8509 Visakhapatnam – Nizamabad Super Fast Express running in high speed when she was walking on platform, and made her fall in between the train and platform and thereafter, by the side of track, and that the deceased Smt Jakkam Adilakshmi was cut into pieces. It certainly amounts to an untoward incident caused by the said train. It will not come under any of the exceptions laid down under Section 124-A of the Act. It can also be held that when the train had dragged the deceased Smt Jakkam Adilakshmi

and made her fall by the side of the track, it amounts to an untoward incident of fall from a train. Since the death of the deceased Smt Jakkam Adilakshmi had occasioned in an untoward incident, the applicants, being the dependants on the deceased, cannot be denied compensation under the Act. So, the applicants are entitled for a compensation of Rs.8,00,000/- (Rupees eight lakhs only). The respondent/Railways is directed to pay the compensation within a period of three (3) months from the date of receipt of a copy of this order failing which the applicants are entitled for interest at the rate of 6% per annum from the date of this order till the date of realisation.

11. Accordingly, the appeal is allowed setting aside the order, dated 28.09.2012, passed in O.A.A.No.272 of 2007 by the Tribunal. On deposit of the compensation, the 1st appellant/1st applicant, who is the husband of the deceased Smt Jakkam Adilakshmi, is entitled to 50% of the compensation amount and the other appellants/applicants 2 and 3 are entitled to share the remaining 50% of the compensation amount equally. There shall be no order as to costs.

12. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 28.09.2018
AMD

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