

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.537 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'Act'), is filed by the Respondent - Railways challenging the order, dated 30.07.2015, passed in O.A.II (U) No.557 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short 'Tribunal'), whereby, the claim petition filed by the respondents - applicants for a compensation of Rs.4,00,000/- for the death of deceased - G. Subba Raju in an alleged untoward incident of accidental fall from a running train, was allowed.

2. Heard Mrs. Ch. Lakshmi Kumari, learned standing counsel for the appellant - Railways, and Sri Inampudi Nageswara Rao, learned counsel for the respondents - applicants.

3. Perused the evidence on record, both oral and documentary.

4. The appellant herein is the respondent - Railways in O.A. II (U) No.557 of 2008 before the Tribunal and the respondents are applicants, who are wife and daughters of deceased - Subba Raju.

5. For the sake of convenience, the parties herein are referred to as they were arrayed in the foresaid O.A. II (U) before the Tribunal.

6. The learned standing counsel for the Railways would contend that death of the deceased falls under the exceptions laid under Section 124-A of the Railways Act. The injuries suffered by the deceased are self-inflicted injuries. The Tribunal did not consider the same. The deceased made an attempt to de-board a running train. The finding of the Tribunal are not inconsonance with the evidence on record, and ultimately prayed to allow the appeal by setting aside the order which is impugned in the present appeal.

7. On the other hand, the learned counsel for the applicants would contend that the deceased was a *bona fide* passenger of train No.157 on 19.05.2008. When the subject train reached Bapatla Railway Station, the deceased alighted from the train to have drinking water, and when he was attempting to re-board the train, he lost his balance, accidentally slipped and fell down from the train and suffered grievous and crush injuries on both his legs and he died while being carried to the Government Hospital, Bapatla for treatment by 108 Ambulance. There is no infirmity in the impugned order, and ultimately prayed to dismiss the appeal.

8. In view of the above submissions made by both sides, the material question that had fallen for consideration is:

Whether the attempt made by the deceased - Subba Raju to re-board Train No.157 Passenger at Bapatla Railway Station on 19.05.2008 while travelling from Ongole to Nidubrolu, amounts to an untoward incident of accidental fall?

POINT:-

9. There is no iota of evidence from the Railway Officers to substantiate that the injuries suffered by the deceased - Subba Raju viz., two crush injuries to both legs were self-inflicted injuries. There is evidence of AW.1 and AW.2, which reveals that on 19.05.2008 when the deceased made an attempt to board Train No.157 Passenger at Bapatla Railway Station, he accidentally fell in between the track and the train, suffered crush injuries to his both legs, while being shifted to Government Hospital, Bapatla by 108 Ambulance, succumbed to the injuries. There is also journey ticket bearing No.38300038 to travel by the deceased to Nidubrolu from Ongole Railway Station. As per the evidence, the deceased got down at Bapatla Railway Station to fetch drinking water and while re-boarding the train, he had accidentally fallen from the train as indicated in the above.

10. As regards the untoward incident of accidental fall, it is appropriate to refer the decision of the Hon'ble Supreme Court in **Union of India vs. Rina Devi¹**, wherein it is held as follows:

"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

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

connection refer to judgment of this Court in ***United India Insurance Co. Ltd. versus Sunil Kumar*** [2017 (13) SC ALF 652] laying down that plea of negligent 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."

i) In the above decision, the Hon'ble Apex Court held that death or injury occurred in the course of boarding or de-boarding of a train will be an accidental fall entitling the dependants or the victim, as the case may be, to the compensation under proviso to Section 124A of the Railways Act, 1989. The Hon'ble Apex Court also held that self-inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree, and that 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'.

11. As seen from the evidence on record, there was no intention on the part of the deceased to suffer any injury. Further, it is established that the deceased had accidentally fallen in between the train and track and suffered crush injuries and succumbed to those injuries. The finding recorded by the Tribunal that the deceased was *bona fide* passenger and died in an untoward incident of accidental fall from the subject train is supported by oral and documentary

evidence. There is nothing to take a different view. The Tribunal justified in allowing the claim application granting compensation of Rs.4,00,000/- with interest. Accordingly, this point is answered against the appellant - respondent and in favour of the respondents – applicants.

12. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the order, dated 30.07.2015, passed in O.A.II (U) No.557 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the present appeal, stand closed.

December 20, 2018
Mgr

Dr. SHAMEEM AKTHER, J