

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.205 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 02.02.2016 passed in O.A.A.No.04 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal')

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in O.A.A. before the Tribunal.

3. On 10.09.2007, the first applicant purchased the ticket bearing No.18827 at Bonakallu Railway Station to go to Warangal in the passenger train bearing No.172. The deceased fell down while boarding the train and sustained grievous injuries. Immediately after the incident, the railway police shifted the deceased to Khammam Government Hospital, for treatment. The right hand of the first applicant was amputated below the knee. The left hand three fingers of the first applicant were also amputated. Hence, the first applicant filed the application under Section 16 of the Railway Claims Tribunal Act claiming compensation of Rs.4,00,000/-. During pendency of the matter before the Railway Claims Tribunal, after recording of evidence of first applicant as A.W.1, he died and his legal representatives were brought on record as applicants No.2 to 4. The second applicant is wife, applicant Nos.3 and 4 are the children of applicant No.1.

4. The respondent filed written statement denying all the averments made in the application *inter alia* contending that the goods train hit applicant No.1 while he was crossing the railway

track in between platform Nos.1 and 2 of Bonakallu Railway Station on 10.09.2007 at about 2.00 p.m. The enquiry conducted by the authorities clearly reveals that applicant No.1 sustained injuries due to his own negligence. The first applicant is not a *bona fide* passenger and he is a trespasser, therefore, the application is liable to be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues.

1. Whether the original applicant (since deceased) sustained injuries as a result of the train No.172 Push Pull on 10.09.2007?
2. Whether the original applicant (since deceased) sustained injuries as a result of the train accident?
3. Whether LRs of original applicant (since deceased) is entitled to claim compensation as prayed for?
4. To what relief?

6. To substantiate the case, the first applicant examined himself as AW.1 and got marked Exs.A.1 to A.10. A.W.2 is the doctor, who treated A.W.1. To dislodge the case of the applicants, on behalf of the respondent, RWs.1 and 2 were examined and Ex.R.1 was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the goods train hit applicant No.1 when he was crossing the track and consequently, dismissed the application.

8. Feeling aggrieved by the order dated 02.02.2016 passed in O.A.A.No.04 of 2008, the unsuccessful applicants preferred the present appeal.

9. Sri T.L.Krishna Prasad, learned counsel for the applicants strenuously submitted that the Tribunal ought not to have placed reliance on the oral testimony of R.Ws.1 and 2, who are not the eyewitnesses to the incident. He further submitted that the Tribunal failed to consider that there is no mention either in Ex.A1 first information report or in Ex.R1 Divisional Railway Manager report that applicant No.1 was a trespasser. He 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.

10. *Per contra*, Sri T.S.Venkataramana, learned Standing Counsel for the Railways, submitted that the testimony of R.Ws.1 and 2 clearly reveals that they came to know through passengers about the incident. He further submitted that non-mentioning of the word 'trespasser' in Exs.A1 and R1 – reports itself is not a valid ground to arrive at a conclusion that the first applicant sustained injuries as a result of an untoward incident of falling from the train in question. He further submitted that the findings recorded by the Tribunal are based on evidence; therefore, it is not a fit case to interfere with the order of the Tribunal.

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

1. Whether applicant No.1 sustained injuries as a result of an untoward incident by falling from the Push Pull passenger train bearing No.172?
2. Whether applicant No.1 is a *bona fide* passenger?
3. Whether applicants No.2 to 4 are entitled to compensation, if so, to what amount?

Point No.1:

12. R.W.1 is the Inspector, R.W.2 is the Deputy Station Superintendent of Bonakallu Railway Station. AW.1 is applicant No.1. A.W.1 and R.Ws.1 and 2 are the competent persons to speak about the manner of the incident. One way, A.W.1 and R.Ws.1 and 2 are the interested witnesses, therefore, their testimony has to be scrutinized meticulously so as to eliminate the exaggerations.

13. As seen from the testimony of A.W.1, while boarding the train bearing No.172, he fell down and sustained injuries. The testimony of R.Ws.1 and 2 reveals that A.W.1 was shifted from Bonakallu Railway Station to Khammam General Hospital for treatment. A perusal of testimony of R.Ws.1 and 2 reveals that they are not eye witnesses to the incident. Their testimony further reveals that they came to know about the incident through passengers. As per the testimony of R.Ws.1 and 2, when A.W.1 was crossing platform Nos.1 and 2 at Bonakallu Railway Station, the goods train hit him due to which he sustained injuries. Even assuming, but not conceding that the version put forth by the respondent is true and correct, certainly the same might have been reflected in the Registers maintained by the Railway Station Authorities. As seen from the testimony of R.Ws.1 and 2, the records were not available in Bonakallu Railway Station. The possibility of deposing in such a manner by R.Ws.1 and 2 in order to exonerate from the liability cannot be ruled out completely.

14. Apart from R.Ws.1 and 2 and A.W.1, the driver of the goods train is the competent person to speak about the incident. For the

reasons best known, the respondent did not choose to examine the driver of the goods train. If really the incident had occurred as stated by the respondent, what prevented them to mention the goods train number in the written statement. Non-mentioning of the goods train number in the written statement itself creates a doubt with regard to the version put forth by the respondent. This Court is unable to understand on what basis the Tribunal has arrived at a conclusion that the goods train hit applicant No.1 due to which he sustained injuries. Any finding recorded by the Court or Tribunal, without the evidence or basing on the evidence, which is not legally admissible, can be termed as perverse. The appellate Court can set aside the perverse findings. The version put forth by the applicants is more probable and believable. The Tribunal lost sight of all these aspects and arrived at a conclusion as if the goods train hit applicant No.1. Viewed from any angle, the finding recorded by the Tribunal is not sustainable. The fact remains that applicant No.1 fell down while boarding the train and sustained injuries. In order to resolve the issue, this Court is placing reliance on **Union of India v Rina Devi**¹, wherein the Hon'ble apex Court, after analysing the case-law on the subject, held at paragraph 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. v. 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**

¹ 2018 SCC Online SC 507

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.

(emphasis supplied)

15. The principle enunciated in the case cited supra is squarely applies to the facts of the case on hand. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that applicant No.1 sustained injuries as a result of untoward incident by fall from a train bearing No.172 Push Pull passenger. Accordingly, point No.1 is answered in favour of the applicants and against the respondent.

Point No.2:

16. The Tribunal has not given any finding on this aspect. The first applicant has taken a specific plea in the application that on 10.09.2007 he purchased the ticket bearing No.18827 at Bonakallu Railway Station to go to Warangal. The ticket was marked as Ex.A3. In the cross-examination of A.W.1, nothing is elicited to shake his testimony so far as purchase of ticket by him is concerned. The testimony of R.Ws.1 and 2 is no way helpful to the respondent to establish that applicant No.1 was a bona fide passenger. The oral testimony of A.W.1 coupled with Ex.A3 clearly reveals that applicant No.1 was a bona fide passenger.

17. In the cross-examination, R.Ws.1 and 2 in unequivocal terms deposed that the word 'trespasser' is not mentioned in Ex.A1 FIR and Ex.R1 Divisional Manager's report. Non-mentioning of such word 'trespasser' in Exs.A1 and R1 cast a cloud on the version put forth by the respondent. The material placed before

the Court falls short to establish that applicant No.1 is a 'trespasser'. As seen from the testimony of A.W.1, his right hand was amputated above elbow. The testimony of A.W.1 further reveals that his left hand three fingers, i.e. middle finger, ring finger and little finger, were amputated. As seen from the testimony of A.W.2, the first applicant took treatment in Khammam hospital. As per the testimony of A.W.2, the first applicant's right hand was amputated above elbow and his left hand three fingers were amputated. A perusal of Ex.A10 case sheet also reveals that the first applicant was admitted in Government Hospital, Khammam on 10.09.2007. The testimony of A.W.1 is supported by oral testimony of A.W.2 and the recitals of Ex.A10 case sheet.

18. Having regard to the facts and circumstances of the case, this Court is of a considered view that the right hand of the first applicant (deceased) was amputated above the elbow and he lost three fingers of his left hand.

19. As per clauses 2 and 9 in part 3 of the notification dated 22.12.2016 issued by Ministry of Railways (Railway Board), New Delhi, applicant No.1 is entitled for compensation of Rs.6,40,000/- for amputation of right hand and Rs.1,60,000/- for loss of fingers.

The compensation awarded under various heads is as follows:

1. Amputation of right hand	Rs.6,40,000/-
2. Amputation of left hand fingers	Rs.1,60,000/-

Total	Rs. 8,00,000/-

20. Applicant No.2 is the wife, applicants No.3 and 4 are the children of the deceased. Taking into consideration the age and

future needs of the applicants, this Court is inclined to apportion the compensation in the following manner:

Applicant No.2	: Rs.6,00,000/-
Applicant No.3	: Rs.1,00,000/-
Applicant No.4	: Rs.1,00,000/-

Accordingly, this point is answered.

Point No.3:

21. The findings recorded by the Tribunal are not based on evidence much less legally admissible evidence, therefore, it is a fit case to allow the appeal.

22. In the result, the civil miscellaneous appeal is allowed, setting aside the order dated 02.02.2016 passed in O.A.A.No.04 of 2008. Consequently, O.A.A.No.04 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is allowed, granting compensation of Rs.8,00,000/-. The respondent is directed to deposit the compensation amount within a period of three months from today, failing which the applicants 2 to 4 are entitled to interest at the rate of 9% per annum from the date of the award till the date of deposit. Out of the compensation, applicant No.2 is entitled to Rs.6,00,000/-, applicant Nos.3 and 4 are entitled to Rs.1,00,000/- each. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date:19.09.2018

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