

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.920 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 21.09.2015 in O.A. II (U) No.267 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellants-applicants claiming compensation for the death of one Kolla Raja @ Kolla Venakta Raja (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train no.473 passenger (hereinafter referred to, as 'the subject train') on 22.1.2007 at Epurupalem railway station while travelling from Ongole to Bapatla, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicants would contend that the deceased was a *bona fide* passenger of the subject train and died in an untoward incident of accidental fall from the said train; that there is ample evidence on record to substantiate the same; that the

Tribunal erroneously held that the deceased was negligent in boarding a running train and hence the applicants are not entitled for compensation as per Section 124A of the Railway Act, 1989 and dismissed the application, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the deceased by trying to board a running train acted negligently, fell down and suffered injuries; that the injuries are self-inflicted injuries and in such an event, there is a bar under Section 124A of the Railway Act, 1989 to grant compensation. It is also contended that the deceased was a tea vendor and not a *bona fide* passenger of the subject train; that the Tribunal elaborately dealt with the evidence on record and rightly dismissed the claim application and there is no infirmity, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the deceased was a *bona fide* passenger of the subject train travelling from Ongole to Bapatla on 22.1.2007 ?
- 2) Whether the deceased died in an untoward incident of accidental fall from the subject train on 22.1.2007 ?

- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 4:

7. To substantiate their claim, applicant no.2 deposed as A.W.1 and examined A.W.2-Gade Subbarathnam, and Ex.A1-family member certificate and Ex.A2-death certificate were got marked.

On behalf of railways, R.W.1 was examined and Ex.R1-extract of general diary; Ex.R2-copy of message and Ex.R3-Divisional Railway Manager's report were got marked.

8. It is the case of the applicants that the deceased, being a *bona fide* passenger, died in an untoward incident of accidental fall from the subject train on 22.1.2007 at Epurupalem railway station while travelling from Ongole to Bapatla. The Tribunal, while dealing with the subject matter of the case, concluded as under : (para 12)

"In view of the principles laid down in the above decisions in the facts and circumstances of the present case, the conduct of the deceased in trying to board a moving train amounts to an act of criminal negligence on his part and the injuries resulting therefrom are to be construed as self-inflicted. By virtue of proviso contained in Section 124-A of the Railways Act, respondent railways are exonerated from their liability to

pay any compensation when the death occurs due to self-inflicted injuries. Since the death of the deceased is not shown to be due to accidental fall from the train, the respondent railways are not liable to pay any compensation. Even otherwise since the deceased is not shown to be a bonafide passenger, no compensation is payable under Section 124-A of the Railways Act."

9. As regards the journey ticket, there is specific evidence of A.W.2, a co-passenger, that she accompanied the deceased and travelled with the deceased. She also deposed about the valid journey ticket possessed by the deceased. It is her evidence that the deceased, in order to go to Bapatla from Ongole, purchased a ticket for the said journey and boarded the subject train; that she accompanied him by the subject train, got down at Karawadi and discontinued her journey at that place. Therefore, the evidence of A.W.2 is categorical that the deceased was travelling in the subject train with a journey ticket. There is nothing to disbelieve her evidence. As per the evidence on record, the journey ticket of the deceased was lost in the accidental fall. When there is accidental fall, there is every possibility of the journey ticket being lost. On this aspect, it is pertinent to refer to a decision of

the Hon'ble Apex Court in **Union of India vs. Rina Devi**¹, wherein it is held thus:

“We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. *However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.*”

The Apex Court held that mere absence of ticket with the injured or deceased does not lead to conclusion that he was not bona fide passenger, and that the claimant can discharge his burden by filing an affidavit of relevant facts. In the case on hand, the applicants discharged the burden lying on them by filing an affidavit of applicant no.2 of the relevant facts. There is also evidence of A.W.2, a co-passenger, in support of the case of applicants. No contra evidence was adduced by railways to disbelieve her evidence. Therefore, it can safely be concluded that the deceased was a bona fide passenger of the subject train.

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

10. As per Ex.R3-DRM report, the deceased made an attempt to board the running train and in that process he fell down in between the train and the track, suffered injuries and died. On this aspect, it is appropriate to refer to the decision of the Hon'ble Apex Court in **Rina Devi's case**, 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 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."

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. In the case on hand, no doubt, there are no witnesses to the alleged accidental fall. However, it can safely be culled out from the record that there was no negligence on the part of the deceased in falling down from the train. Even if it is assumed that while boarding the moving train, the deceased fell down, suffered the injuries and succumbed to the same, it cannot be held that the injuries suffered by the deceased are self-inflicted. In the aforesaid decision, the Hon'ble Apex court held that the concept of self-inflicted injury would require intention to inflict such injuries and not mere negligence of any particular degree. There is no deliberate or wilful attempt on the part of the deceased to fall down from the train and suffer injuries. There is no contribution on the part of the deceased in suffering the injuries. So also, there was no negligence on his part. Under these circumstances, it cannot be held that the injuries suffered by the deceased are self-inflicted injuries. The act of the deceased would not fall under any of the exceptions laid down under Section 124A of the Railway Act, 1989.

12. From the aforesaid discussion, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train and died of the injuries sustained by him in an untoward incident of accidental fall from the subject train. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Under these circumstances, the points are held in favour of the applicant and against the railways.

Point No.4:

13. In the result, the C.M.A. is allowed. The impugned order dated 21.09.2015 in O.A. II (U) No.267 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicants are awarded compensation of Rs.8,00,000/- (Rupees eight lakhs only) in view of the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways is directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicants are entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. Since

applicant no.1 died, the applicant no.2 is entitled to withdraw the amount with accrued interest.

There shall be no order as to costs of this appeal.
Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

28.11.2018
DRK



THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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DRK