

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.170 of 2016

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 29.05.2015 in O.A. (II U) No.86 of 2009 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 P.Venkateswarlu (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.440 Passenger (hereinafter referred to, as 'the subject train') at Chirala railway station on 07.01.2009 while travelling from Guntur to Tirupati, 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 had accidentally fallen down from the subject train on 07.01.2009 at Chirala railway station, sustained grievous injuries and succumbed to the same; that A.W.1, father of the deceased, had seen the deceased purchasing journey ticket to undertake the

journey and boarding the subject train; that the journey ticket was lost in the accidental fall and there is evidence of A.W.1 to that effect; that the Tribunal failed to consider the same and erroneously dismissed the claim application, and ultimately prayed to set aside the impugned order and award compensation as prayed for.

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 was not a *bona fide* passenger of the subject train; that no journey ticket was found from the belongings /apparels of the deceased; that nobody had seen the deceased boarding the subject train; that the Tribunal rightly appreciated the entire 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 P.Venkateswarlu was a *bona fide* passenger of train No.440 passenger travelling from Guntur to Tirupathi on 07.01.2009?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No. No.440 passenger on 07.01.2009 ?
- 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 the claim of the applicants, applicant no.1, father of the deceased, was examined as A.W.1 and Ex.A1-attested copy of FIR; Ex.A2-attested copy of inquest report; Ex.A3-attested copy of post-mortem examination report; Ex.A4-death certificate; Ex.A5-attested copy of final report; Ex.A6-photo copy of voter ID card; Ex.A7-photo copy of ration card and Ex.A8-family member certificate, were got marked. On behalf of railways, R.W.1-Passenger Guard and R.W.2- Toilet contractor were examined and Ex.R1-attested copy of rough journal and Ex.R2-DRM report were got marked.

8. To substantiate the claim of the applicants, father of the applicant deposed as A.W.1. His evidence reveals that on 06.01.2009, he accompanied his son, the deceased, to Guntur railway station and his son purchased a ticket and departed by the subject train to Tirupathi to visit his house of his relatives and also temple. In cross-examination, he stated that he did not accompany his son. The Tribunal interpreted it as if A.W.1 did not accompany his son to railway station. The Tribunal found that there is some contradiction in the evidence of A.W.1 and discarded his evidence and concluded that the deceased was not a *bona fide* passenger of the subject train and his death was not as a result of an untoward incident of

accidental fall from the subject train. A perusal of evidence of A.W.1 shows that the mention in cross-examination that A.W.1 did not accompany the deceased means that A.W.1 did not accompany his son by the subject train to travel from Guntur to Tirupathi. There is no ambiguity with regard to the deceased purchasing the journey ticket and boarding the subject train on 06.01.2009. No doubt, in Ex.R2, there is specific mention that the deceased was not possessing any journey ticket. In the inquest report Ex.A2 and the material collected by police concerned also, there is no mention of finding journey ticket. Merely because ticket was not found, it cannot be said that the deceased was not a *bona fide* passenger of the subject train. When father of the deceased as A.W.1 categorically stated that his son purchased the journey ticket and boarded the subject train and when the deceased was dragged to some distance, there was every possibility of losing the journey ticket in the incident. In view of the categorical evidence of A.W.1, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train.

9. To rebut the evidence adduced on behalf of the applicants, the railways examined R.W.1-Passenger Guard of the subject train. He deposed that there was no untoward incident at that point of time. Through R.W.1,

Ex.R1-copy of rough journal was marked wherein also there is no mention of occurrence of an untoward incident. It is relevant to state that since the accidental fall occurred in wee hours of 07.01.2009, it missed sight of the Guard of the train. Therefore, R.W.1, who was on guard duty at that time, could not know the accident and has not incorporated the same in Ex.R1-journey chart. Merely because R.W.1 did not see occurrence of the accident or not noticed the subject accident, it cannot be said that there was no accidental fall.

10. The recitals of Ex.R2 DRM report reveal that altogether statements of 5 witnesses were recorded in the statutory enquiry conducted into the subject incident. It would reveal that on 07.01.2009 the subject train arrived at Chirala railway station at 03.54 hours and left at 04.12 hours. After starting of the train, the deceased tried to board the train, slipped and fell down and died on the spot. There is also evidence of R.W.2-Toilet contractor, who stated that he had seen dead body of the deceased at 6.00 AM on 07.01.2009 in between plat form nos.1 and 2 of Chirala railway station, and he informed the noticing the dead body of the deceased to SS/CL. There is also mention in the statement given by R.W.2 during the statutory enquiry under Ex.R2 wherein he clearly stated that he noticed the deceased coming running and trying to board

the subject train and as a result of that he slipped and fell down, and that body of the deceased dragged up to infront of toilets. He further stated that through relatives, he came to know that the deceased was deaf and dumb. The conclusions recorded in Ex.R2 are that the deceased tried to board running train, slipped down, suffered injuries and succumbed to the same.

11. On this aspect, it is appropriate to refer the decision of the Hon'ble Supreme Court in **Union of India vs. Rina Devi**¹, 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."

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

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'.

12. In the case on hand, as per Ex.R2-inquest report, on 07.01.2009, the subject train arrived at Chirala railway station at 03.54 hours and left at 04.12 hours, and after starting of the train, the deceased tried to board the train, slipped and fell down and died on the spot. It is also clear from statement given by R.W.2 during the enquiry under Ex.R2 that he noticed the deceased coming running and trying to board the subject train and as a result of that he slipped and fell down, and that body of the deceased dragged up to in front of toilets. There is no other evidence from the side of the railways to state that the injury suffered by the deceased is self-inflicted injury and falls under exceptions narrated under Section 124A of the Railways Act, 1989. Principles of strict liability can be

applied to the instant case. In view of the aforesaid decision of the Hon'ble Apex court, the injuries suffered by the deceased are not self-inflicted injuries. There was no intention to suffer any injury. 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 applicants and against the railways.

Point No.4:

13. In the result, the C.M.A. is allowed. The impugned order dated 29.05.2015 in O.A. (II U) No.86 of 2009 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. On deposit, the

applicants are entitled to withdraw the amount with accrued interest equally.

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

22.11.2018
DRK



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DRK