

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.11.2019
Pronounced On	20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2916 of 2011

Gukhana @ Guna Appellant/ Applicant
vs

The Union of India Owning
Southern Railway
Rep.by its General Manager,
Chennai. Respondent/ Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 23(1) of Railway Claims Tribunal Act, 1987, to set aside the order passed by the Hon'ble Railway Claims Tribunal, Chennai Bench in O.A.No.12 of 2010, dated 13.07.2010 and allow the said petition.

For appellant : Mr.S.Parthasarathy
For respondent : Mr.M.Vijay Anand

J U D G M E N T

The appellant is aggrieved by the impugned order dated 13.07.2010 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.12 of 2010.

2.By the impugned order, the Railway Claims Tribunal has dismissed O.A.No.12 of 2010 filed by the appellant.

3.The appellant had boarded train No.2624 (Trivandrum Express) on 23.09.2008 from Trichur at about 20.00 hours under a wrong impression that the said train would stop at Jolarpet Railway Station on the following morning when it reaches the aforesaid station. The appellant held a valid train ticket for the aforesaid journey.

4.When the train was passing through Jolarpet Station at a slow speed, the appellant attempted to disembark from the moving train. The appellant thus fell and sustained grievous injuries on his right leg and right hip with multiple injuries all over his body. The right leg of the appellant was thereafter partially amputated due to the injury.

5. Under these circumstances, the appellant filed a claim petition on 18.11.2009 before the Railway Claims Tribunal for compensation of Rs.4,00,000/- from the Railways. The Respondent Railways contested the claim petition stating that the appellant had wrongly boarded the train and since it was not scheduled to stop at Jolarpet Station, the attempt of the appellant to disembark from a moving train was a "self-inflicted injury" and therefore did not amount to "untoward train accident" to fasten the liability on the Respondent Railways.

6. The Respondent Railways prayed for dismissal of the claim petition. Before the Railway Claims Tribunal, the Respondent Railways had failed to file the original mandatory investigation report along with the counter. It was however later filed. In the mandatory DRM/MAS report dated 22.03.2010 filed on 09.04.2010, the Respondent Railways classified the incident as "fallen down and injured." In the said report, it is also admitted that the deceased was a bonafide passenger holding a valid train ticket.

7. Question before the Tribunal was whether the Respondent Railway was liable to compensate to the appellant under Section 123(c)(2) of Railways Act, 1989 and whether the appellant was entitled to interest and other relief, if any. The Railway Claims Tribunal dismissed the application with the following observations:-

5.4 The applicant was examined as AW-1 and he has come out with different versions in his proof affidavit and in the cross-examination. While in the affidavit he has deposed that on 24.09.2008 when the said train came near Jolarpettai Railway Station, he had suddenly fallen down from the running train, fell into the track and run over by the said train resulting in injuries, but however, in the cross-examination he has deposed that on the fateful day, train No.2624 did stop at Jolarpet and in the process of alighting from the train, he has fallen and met with the incident. This sudden U-turn taken by the applicant/injured proves one fact that he is not coming with clean hands before the Tribunal. Further, an inference that the applicant/injured is trying to suppress the truth which is visible from the chain of circumstances put together (discussed later in para 5.6) seems inescapable.

5.5 To substantiate the plea taken in defence, the respondent had filed the report of the Divisional Railway Manager/Chennai Division as per Exh.R-1. In the findings column it is

mentioned that when the train in question started running without stoppage at JTJ, he jumped out from the running train and sustained injuries. This document was admitted by the applicant, without any murmur, when it was exhibited implying thereby that the train in question was indeed a non-stop train at Jolarpettai and this fact was corroborated by the document filed on behalf of the applicant himself as per Exh.A-1 (GD extract) which also mentions the fact that it was a non-stopping train at JTJ.

5.6 Viewed against the above backdrop, it is made very clear that the train in question was a non-stopping train at Jolarpettai; the averment in the cross examination of A.W.1 that the train did stop on the fateful day was not established by the applicant through witness by summoning the station records and the ticket was also upto jolarpettai. Considering facts and the circumstances of the case, it is our considered view the act of the applicant in trying to get down from the running train amounts to his own criminal act which further amounts to causing self-inflicted injury which attract provisos(b) and (c) of Section 124-A of the Railway Act, 1989, under which the respondent is excluded from the liability to pay compensation.

5.7 From the foregoing, we answer issue No.1 in the negative that the injuries sustained by the applicant Gukhana @ Guna, s/o Subramani on 24.09.2008 at about 4.30 hrs while he was travelling by train No.2624 Trivandrum Express near Jolarpettai Railway Station was not the result of any untoward accident as defined under Section 123(2) of the Railways Act, 1989, as the same is covered by exception clauses (b) and (c) of Section 124-A of Railways Act, 1989.

6. Issue No.(2) In view of our findings recorded on issue No.1 in the negative, the application filed by the applicant claiming compensation for the injuries sustained by him is liable to be dismissed and hence we proceed to pass the following:-

O R D E R

The application preferred by the applicant under Section 16 of the Railway Claims Tribunal Act, 1987 is hereby dismissed. In the circumstances of the case, parties to bear

their own cost.

8. Heard the learned counsel for the appellant and the respondent Railways.

9. The facts are not in dispute. The learned counsel for the appellant made elaborate submission and prayed for allowing the present appeal. The learned counsel for the appellant relied on the decisions rendered in the following two cases:-

i. A.Thanikachalam and others v. The Union Of India, 2016 (6) CTC 820 ;

ii. General Manager, Union of India, South Central Railway, Secunderabad vs. V.Lakshmana Rao and Others, (2010) 5 MLJ 676.

10. In General Manager, Union of India, South Central Railway, Secunderabad vs. V.Lakshmana Rao and Others, (2010) 5 MLJ 676, it was observed as under:-

" 10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an "accidental falling of a passenger from a train carrying passengers". Hence, it is an "untoward incident" as defined in Section 123© of the Railways Act.

11. Defending the order of the Railway Claims Tribunal, the learned counsel for the respondent Railways submits that the order is well reasoned and requires no interference in this appeal and therefore prayed for dismissal of the appeal. The learned counsel for the respondent relied on the decision of the Kerala High Court in Joseph P.T.@ Thomas Jacob vs. Union of India, rep.by the General Manager, Southern Railway, Chennai -3, MFA.No.21 of 2012 dated 12.06.2013.

12. The only reason that is discernible from paragraphs 5.4 of the impugned order is that in the affidavit filed by the 1st appellant for compensation, the appellant had deposed that on 24.9.2008 when the said train came near Jolarpet Railway Station, he suddenly fell from moving train on the track and was injured but however, at the time of cross-examination, he has deposed that on the fateful day, Train

No.2624 did not stop at Jolarpet Railway Station and in the process of lighting from the train, he had fallen and met with an incident.

13.This according to the Railway Claims Tribunal was an inconsistent plea and therefore an inference was drawn that the appellant was trying to suppress the truth which was visible from chain of circumstances put together as discussed in paragraph Nos. 5 and 6.

14.The question that arises for consideration in the present appeal is whether the appellant had resorted to "self-inflicted injury" so as to exonerate the Respondent Railway from its liability under Section 123 (c) (2) of the Railways Act, 1989. Section 124-A of the Railways Act, 1989 deals with the provision for awarding of compensation on account of untoward incident. It reads as under:-

124A. Compensation on account of untoward incident.-

When in the course of working 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. Explanation.-For the purposes of this section, "passenger" includes

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

15. Proviso to Section 124-A of the Railways Act, 1989 provides for exceptions and circumstances under which the Railways can extricate themselves from paying compensation to the passenger in case of "self-inflicted injury".

16. The Expression "untoward incident" is defined in Section 123 (c) as follows:-

- 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.]

17. The expression "untoward incident" also means "the accidental falling of any passenger from a train carrying passengers". The expression "self-inflicted injury" is not defined under the Railways Act, 1989 or in the Railway Claims Tribunal Act, 1987 or any of the allied enactments.

18. Only exceptions to Section 124 and 124-A are provided under proviso to Section 124-A. In Union of India Vs. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527, it was held that Section 124-A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela Vs. Union of India, (2010) 12 SCC 443.

19. It is the case of the respondent Railway that since the appellant attempted to disembark from a train which was in motion, the appellant had "inflicted injury" on himself and therefore was not entitled to compensation as there was no "untoward incident".

20. In the Kerala High Court decision relied by the respondent Railways in M.F.A. No. 21 of 2012 on 12.9.2013

Joseph P.T alias Thomas Jacob Vs. Union of India, it was observed that in the case of self-inflicted injury, there may be an intention to harm oneself, but certainly there will not be an intention to take out one's own life. Stated differently, in an attempt to commit suicide, the intention will be to kill oneself, but he fails to bring about the desired result.

21.It was further held that certainly it is an offence punishable under section 309 of the Indian Penal Code. Hence both reflexology is have to be understood to have a different meaning. The court further observed that while there may be cases where there is an intention to inflict oneself with injury amounting to self inflicted injury which falls short of an attempt to commit suicide, there can also be cases where irrespective of the intention, a person may act with total recklessness, in that, he may throw all norms of caution to the win regardless of his age, circumstances etc. and act to his detriment. In the aforesaid case, the appellant had attempted to board a moving train unmindful of his age and being fully aware of the positional disadvantages and dangers of boarding a train from a level lower than the footboard of the train.

22.The court there observed that probability of danger is increased in arithmetic progression when the train is moving. Visualising all these things in mind, it was held that the act of the appellant therein was the height of carelessness, imprudence and foolhardiness. Even though the provisions relating to payment of compensation under the Act was a beneficial piece of legislation, it was observed that it cannot be stretched too much to reward a person acts callously, and wisely and imprudently.

23.The report of the inspector vide letter dated 20.03.2010 filed by the respondent before the Railway Claims Tribunal in the present case indicates that the appellant was a bonafide passenger and had travelled from Trichur to Jolarpettai by boarding Train No.2624 (Trivandrum-Madras Express) on 23.9.2008 and when the said train was passing through Jolarpettai junction at a slow speed, he attempted to disembark from the moving train and suffered multiple injuries. It appears that he had the choice of travelling by Train No.2696 express but had mistakenly bordered Train No.2624 Trivandrum Express to reach Jolarpet.

24.It is not clear that how the appellant was allowed to travel in the aforesaid train if the appellant's journey was to terminate at Jolarpet railway station and if the said train was not scheduled to stop at Jolarpet station. Had the railway authorities checked the tickets and advised the appellant to terminate the journey at the inception of the journey and the appellant was instructed to take an alternate train, perhaps the appellant may have not travelled by the said Train No.2624

Trivandrum Express.

25. Even though the appellant had attempted to disembark from a moving train, the Respondent Railways cannot disown their liability and responsibility inasmuch as they did not check the ticket when the appellant boarded the aforesaid train on the previous night to travel to Jolarpettai Junction. Further, Sections 124 and 124-A of the Railways Act, 1989 is based on the principle of strict liability. As per the aforesaid provision, compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the Railway Administration in the case of an accident or in the case of an "untoward incident".

26. In Union of India Vs. Rina Devi, (2019) 3 SCC 572, the Hon'ble Supreme Court held as under:-

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 the judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar [United India Insurance Co. Ltd. v. Sunil Kumar, (2019) 12 SCC 398 : 2017 SCC OnLine SC 1443 : (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 163-A 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 124-A merely on the plea of negligence of the victim as a contributing factor.

27. The Hon'able Supreme Court in the above case in Union of India Vs. Rina Devi, (2019) 3 SCC 572 considered the above decision of the Kerala High Court and the views expressed in several other decisions cited therein and have been disagreed.

28. Thus, if the ratio of the decision of the Honourable Supreme Court in the above case is applied to the four corners of the facts of the present case, it is evident that the appellant cannot be said to have resorted to "self-inflicted injury". Therefore, the accident resulting in the injury was

on account of "untoward incident" as defined in Section 123 (c) of the Railways Act, 1989.

29. In the light of the above discussion and in the light of the decision of the Hon'able Supreme Court in Union of India Vs. Rina Devi, (2019) 3 SCC 572, I am of the view that the order passed by the Railway claims Tribunal is liable to be set aside and is hereby set aside and the case is remitted back to the Railway Claims Tribunal, Chennai Bench, to award appropriate compensation to the petitioner for the injury suffered, in accordance with law, within a period of six months from the date of a copy of this order.

30. The Present Civil Miscellaneous Appeal is thus allowed by way of remand. No cost.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Railway Claims Tribunal,
Chennai Bench.

2. The Section Officer,
V.R. Section. High Court,
Madras.

3. The General Manager,
Union of India Owning
Southern Railway
Chennai.

+1cc to Mr. Vijay Anand, Advocate SR.No. 405943

+1cc to Mr. S. Parthasarathy, Advocate SR.No. 106310

C.M.A.No.2916 of 2011

A.SK(25/02/2020)