

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.509 OF 2009

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the Order, dated 24.01.2006, in O.A.A.No.189 of 2002, on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, the Tribunal).

2. The appellants in the C.M.A. are the applicants, and the respondent in the C.M.A. is the respondent, before the Tribunal. For better appreciation of facts, the parties hereinafter are referred to, as they are arrayed before the Tribunal.

3. The brief facts are that on 05.07.2002, D.Yedkondalu Reddy (hereinafter referred to as 'the deceased') went to Stuvartpuram Railway Station and purchased a journey ticket bearing No.49755 to go to Chirala and boarded passenger train No.163. Due to heavy rush in the compartment, he was standing near the door way, and when the train started suddenly with a jerk, he accidentally slipped and fell down from the train at Stuvartpuram Railway Station and the train ran over him and he died on the spot. The applicants filed the above OAA seeking compensation.

4. Railways filed written statement denying the averments made in the application and prayed to dismiss the same.

5. The Tribunal, on consideration of both oral and documentary evidence available on record, came to the conclusion that though the deceased was a *bona fide* passenger, his fall is a self inflicted injury and accordingly, dismissed the OAA.

6. Learned counsel for the appellants/applicants submits that the deceased was a *bona fide* passenger travelling in the train with a valid ticket; that he died in an untoward incident; that the finding of the Tribunal is erroneous and prays to set aside the impugned order. In support of his arguments, he relied on a decision of the Apex Court in **Union of India V. Rina Devi**¹.

7. On the other hand, learned Standing Counsel for the respondent/Railway submits that as per the contents of the claim petition, the deceased was standing near the door way and hence, it can be said that the deceased has indulged in a prohibited act, thereby subjected himself to the risk of self inflicted injuries. Basing on the same, the Tribunal rightly dismissed the OAA and hence, there are no grounds to interfere with the impugned order.

8. It is not in dispute that the deceased boarded the train after purchasing the ticket. Admittedly, A.W.2 is an eyewitness. He deposed that '*he boarded the train from the platform side and the deceased remained behind him to board the compartment and that both he and the deceased boarded the train from the platform side*'. The Railway did not lead any evidence to rebut the same.

¹ 2018 SCC Online SC 507

9. In **Rina Devi's** case (supra), the 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 the 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 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.’

10. The above decision squarely applies to this case. The Apex Court, in the above decision, held that death or injury in the course of boarding or de-boarding the train would be only an ‘untoward incident’ of accidental fall. Victims falling from the train while boarding or de-boarding are entitled to lay a claim against the Railways and such acts would not fall under the exceptions laid in Section 124-A of the Railways Act.

11. The material placed before the Court clinchingly establishes that the deceased accidentally fell down from the train and died. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the deceased died as a result of an untoward incident of accidental fall from the train. The finding of the Tribunal in this regard is set aside.

12. With regard to granting of interest, the learned counsel for the claimants, by referring to **Rina Devi's** case (supra), submitted that granting of interest @ 7.5% per annum from the date of petition till the date of realization or Rs.8,00,000/-, whichever is higher, is just and reasonable.

13. In the facts of the present case, this Court deems it appropriate to award interest @ 7.5% per annum from the date of filing claim petition before the Tribunal, as is being awarded in other cases.

14. Coming to the quantum of compensation, as per the law laid down in **Rina Devi's** case (supra), the applicants are entitled to either the compensation amount fixed by the Railway Authorities as on the date of the incident together with interest from the date of filing the claim petition; **OR** the amount of Rs.8,00,000/- as per the revised scheme, whichever is beneficial to the applicants. Therefore, in accordance with the law laid down in **Rina Devi**, the respondent-Railways shall pay the compensation to the claimants, by adopting the computation of Rs.4,00,000/- plus interest at 7.5% per annum from the date of claim petition till the date of this judgment OR Rs.8,00,000/- whichever is beneficial, within three months from the date of this judgment. In default of payment within three months, the respondent-Railways shall pay interest at 9% per annum from the date of this judgment till the date of actual payment of compensation. It is stated that during the pendency of this appeal, applicant No.1 (wife of the deceased) died, and

therefore, the compensation amount shall be shared among claimant Nos.2 to 4 equally.

15. Accordingly, the Civil Miscellaneous Appeal is allowed, by setting aside the order dated 24.01.2006 in O.A.A.No.189 of 2002 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. No costs. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 28.11.2019
TJMR

