

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.211 of 2016

1.Smt.T.Aruna
2.T.Venkata Ramanaiah
3.Smt.T.Gangamma

...Appellants/Applicants

Vs.

The Union of India owning
Southern Railway,
Rep.by General Manager,
Chennai - 600 003.

...Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claim Tribunal Act, against the order dated 03.11.2015 passed by the Railway Claims Tribunal, Chennai Bench, in OA(II-U)319/2014.

For Appellants : Mr.T.Raja Mohan
For Respondent : M/s.T.P.Savitha

J U D G M E N T

The judgment dated 03.11.2015 passed in OA(II-U)319/2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The details of the untoward incident occurred, which resulted filing of an application under Section 16 of the Railways Act, which stated as under:

"On 22.05.14 after seeing his wife at his aunt's house at Kesaavaram Village, he left for his native place by train. The applicants came to know from the Gudur Railway Police, that the deceased, while traveling in any one of the train, prior to 09.00 hrs of 22.05.14, due to rush and jerk of the train, accidentally fell down from the running train between Naidupeta and Pedapariya Railway Stations, suffered grievous injury on head, near left eye, near left ear and died at the place of occurrence. It was an untoward incident. The second class ticket purchased by the deceased for his travel from Nayudupet to

Gudur was said to have been lost at the time of accident and the same could not be traced by the police authorities."

3. The learned counsel appearing on behalf of the respondent/Railways mainly contended that the Divisional Railway Manager ['DRM' for brevity] Gummidipoondi, made a finding that "the deceased might have accidentally fallen down from unknown running train, while travelling on footboard run over and killed due to his carelessness".

4. Relying on the said findings, the learned counsel for the respondent/Railways reiterated that the accident occurred due to the negligence on the deceased and therefore, the appellants are not entitled for compensation. The observations made by the Railway Claims Tribunal in Paragraph 5.6 also relied upon and the said observations reads as under:

"(i) FIR (Exh.A-1) was lodged by police based on message from SM/NYP on 22.05.14 at 11.00 hours that at Shri Subramanyam, Acting Keyman on Unit No.3 of SE/PW/NYP ID No.13837 reported that he found a male dead body aged about 30 years lying between NYP-PYA down line at KM 112/20-22.

(ii) The applicants claim that the deceased had purchased a II class journey ticket from Nayudupet to Gudur for his travel.

(iii) As per inquest report Exh.A-6, there is no recovery of any journey ticket.

(iv) As per DRM report, the deceased not a bona fide passenger in the absence of any valid ticket or travelling authority.

(v) It is seen from SM Message (Exh.A-2) that the body was found between Nayudupet and Pedapariya Railway Stations at KM 112/20-22.

(vi) Even if it is presumed that the deceased had travelled by a train from Naidupeta, he would have hardly travelled for 4 Kms which would have been a fleeting journey and ticket checking staff of respondent would not have had the opportunity to check whether the deceased was travelling with a valid authority."

5. Regarding the said ground relied on by the appellant/Railways, this Court is of the considered opinion that the F.I.R lodged reveals that the accident occurred and the man died. The applicants claimed that the deceased had purchased a II class journey ticket from Nayudupet to Gudur for his travel. Admittedly, inquest report Exh.A-6 reveals that the train ticket was not retrieved. The DRM Report also reveals that the deceased was not a bona fide passenger in the absence of any valid ticket

or travelling authority. The Railway Tribunal made an observation that even if it is presumed that the deceased had travelled by a train from Naidupeta, he would have hardly travelled for 4 Kms which would have been a fleeting journey and ticket checking staff of respondent would not have had the opportunity to check whether the deceased was travelling with a valid authority.

6. Non examination of the travelling ticket by the Travelling Ticket Examiner is not a ground to decline the benefit of compensation to the claimants, so also non availability of the Travelling Ticket or non retrieval of the travelling ticket are also not a ground to decline the benefit of compensation. Once, the factum regarding the accident was established, and the accident occurred nearby the Railway Track and the F.I.R, inquest report as well as the final report reveals that the death occurred due to fallen down from a running train, then there is no reason to reject the benefit of compensation to the claimants. Certain minor contradictions regarding the facts would not disentitle the claimants from getting the benefit of compensation, which is a welfare legislation. Thus, the benefit of minor contradictions should go in favour of the claimants and not in favour of the Railways. In such circumstances, the burden of proof lies on the Railways to establish that the deceased or injured was not a bona fide passenger of the train in which the accident occurred. Contrarily, the burden cannot be shifted on the claimants and the burden cannot be discharged by the poor claimants in such circumstances as the accident occurred within the Railway premises and therefore, the burden lies on the railways to establish that a deceased or injured was not a bona fide passenger.

7. The Hon'ble Supreme Court of India in the case of Union of India Vs. Rina Devi in Civil Appeal No.4945 of 2015 dated 09.05.2018, held as follows:

"Re: (ii) Application of Principle of Strict Liability - Concept of Self Inflicted Injury

16.1 From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124A provide that 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'. Only exceptions are those provided under proviso to Section 124A. In Prabhakaran Vijaya Kumar (supra) it was held that Section 124A 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 (supra).

16.2 Coming to the proviso to Section 124A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression 'self inflicted injury' in the proviso. In some decisions it has been held that injury or death because of negligence of the victim was at par with self inflicted injury. We may refer to the decisions of High Courts of Kerala in Joseph PT (supra), Bombay in Pushpa (supra) and Delhi in Shayam Narayan (supra) on this point.

16.3. In Joseph PT (supra), the victim received injuries in the course of entering a train which started moving. Question was whether his claim that he had suffered injuries in an 'untoward incident' as defined under Section 123(c) could be upheld or whether he was covered by proviso to Section 124A clause (b). The High Court held that while in the case of suicide or attempt to commit suicide, intentional act is essential. Since the concept of 'self inflicted injury' is distinct from an attempted suicide, such intention is not required and even without such intention if a person acts negligently, injuries suffered in such an accident will amount to 'self inflicted injury'. Relevant observations are :

"Therefore, the two limbs of the Proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term "self-inflicted injury" not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term "self-inflicted injury" used in the statute can be deduced as one which a person suffers on account of one's own action, which is something more than a rash or negligent act. But it shall not be an intentional act of attempted suicide. While there may be cases where there is 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 intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc. act to his detriment. Facts of this case show that the appellant

attempted to board a moving train from the off side unmindful of his age and fully aware of the positional disadvantageous and dangers of boarding a train from a level lower than the footboard of the train. It is common knowledge that the footboard and handrails at the doors of the compartment are designed to suit the convenience of the passengers for boarding from and alighting to the platform. And at the same time, when a person is trying to board the train from the nonplatform side, he will be standing on the heap of rubbles kept beneath the track and that too in a lower level. Further more, he will have to stretch himself to catch the handrails and struggle to climb up through the footboard hanging beneath the bogie. The probability of danger is increased in arithmetic progression when the train is moving. Visualising all these things in mind, it can only be held that the act of the appellant was the height of carelessness, imprudence and foolhardiness. It is indisputable that the purpose of Section 124A of the Act is to provide a speedy remedy to an injured passenger or to the dependants of a deceased passenger involved in an untoward incident. Section 124A of the Act provides for compensation to a passenger or his dependants who suffers injury or death, as the case may be, in an untoward incident even where the untoward incident is not the consequence of any wrongful act, neglect or default on the part of the Railway Administration. To this extent, it can be said to be a no-fault liability. Even though the provisions relating to payment of compensation in the Act can be said to be a piece of beneficial legislation, it cannot be stretched too much to reward a person who acts callously, unwisely or imprudently. There is no provision of law brought to our notice permitting the passengers to entrain from the non-platform side of the railway track. However, the counsel for the respondent did not show any provision of law prohibiting the same. The question whether an act by which a passenger sustains injury while boarding a train through the off side, is a selfinflicted injury or not depends on the facts of each case. Merely because a person suffered injury in the process of getting into the train through the off side, it may not be sufficient to term it as a selfinflicted injury, unless the facts and circumstances show that his act was totally imprudent, irrational, callous and unmindful of the consequences. All the facts and circumstances established in this case would show that the act of

the appellant was with full knowledge of the imminent possibility of endangering his life or limb and therefore, it squarely comes within the term "self-inflicted injury" defined in Section 124A Proviso (b) of the Act."

16.4 In Pushpa (supra) a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of 'self inflicted injury'. The relevant observations are :

"Such an attempt by a hawker has been viewed by the trial Court as something amounting to criminal negligence on his part and also an effort to inflict injuries to himself. The trial Court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed."

16.5 In Shyam Narayan (supra), same view was taken which is as follows :

"6(ii) I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity."

16.6 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 34 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 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."

8. As far as the present appeal is concerned, the final report reveals that the deceased is the native of Chittedu Village, Kota Mandal, SPSR, Nellore District. He went to his aunt house to see his wife as she was staying at Kesavaram village, Kotanbedu Mandal of Chittoor District. After 5 days i.e. on 22.05.2014, he left his aunt house in order to return to his village by an unknown train, while on journey he might have accidentally fallen down an unknown running train in between Naidupeta and Pedapariya Rss down line at KM No.112/20-22, as a result sustained severe blood injuries and died on the spot.

9. The DRM report is only a presumptive finding and which cannot be considered as a conclusive finding as the said observations were not substantiated with any other evidence. The DRM Report further reveals that the deceased might have accidentally fallen down from unknown running train, while travelling on footboard run over and killed due to his carelessness. Thus, impliedly they are admitting that the deceased was travelling in a train. When the deceased was travelling in a train, then a factual inference is to be drawn that the accident occurred due to fallen down from the running train. The claimants are entitled for such an inference and in the absence of any proof to establish that the deceased was not a bona fide passenger.

10. This being the principles to be considered, this Court is of the considered opinion that the findings of the Railway Tribunal is based on certain presumptive findings and therefore, perverse.

11. Thus, the judgment 03.11.2015 passed in OA(II-U)319/2014 is set aside. The appellants are entitled for a compensation of Rs.8,00,000/-(Rupees Eight Lakhs only) as amended with effect from 01.01.2017 and the said compensation is directed to be apportioned as detailed hereunder:

(i) The first appellant/wife is entitled for a sum of Rs.3,00,000/-(Rupees Three Lakhs only).

(ii) The appellants 2 and 3 are the parents of the deceased and they are entitled for 2.5 lakhs each.(Rupees Two Lakh and Fifty Thousand Each).

12. The respondent/Railway is directed to deposit the award amount with accrued interest within a period of twelve (12) weeks from the date of receipt of a copy of this judgment and on such deposit, the appellants are permitted to withdraw the award amount along with the interest at the rate of 6% from the date of award as per the apportionment by filing an appropriate application and the payments are to be made through RTGS.

13. Accordingly, the Civil Miscellaneous Appeal in C.M.A.No.211 of 2016 stands allowed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kak
To

The Railway Claims Tribunal,
Chennai Bench, Chennai.

+1 CC to Mr.T. Rajamohan, Advocate sr 8901.
+1 CC to Mr.T.P. Savitha, Advocate sr 8882.

C.M.A.No.211 of 2016

RP(CO)
SP(18/03/2021)

सत्यमेव जयते

WEB COPY