

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.225 of 2016

R.Sundaram

..Appellant/Applicant

Vs.

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

..Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claim Tribunal Act, against the order dated 28.07.2015 passed by the Railway Claims Tribunal, Chennai Bench, in OA(II-U) 339/2013.

For Appellant : Mr.T.Raja Mohan
For Respondent : Mr.C.V.Ramachandramurthy
Senior Panel counsel

J U D G M E N T

The judgment dated 28.07.2015 passed in OA(II-U) 339/2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The facts regarding the untoward incident occurred are narrated as the deceased had attended temple Festival at her native village of Sembarayanallur on 26.05.2013. On the next day on 27.05.2013, she had informed her daughter in law that she intend to visit her co-sister's daughter Savithri, who resides at Latheri. She used to travel by train by purchasing second class ticket. The nearest Railway Station is Thiruvalam and the applicant came to know from the police authorities that while travelling from Thiruvalam to Latheri and when the train was proceeding between Katpadi and Latheri due to speed and jerk, she accidentally fell down, suffered grievous head injury and died at the place of occurrence. The Railway Police registered a case in Crime No.140/2013 dated 27.05.2013. The inquest report also filed, which reveals that the accident occurred and the deceased sustained grievous injuries and died due to fallen down

from the running train. The final report filed after investigation also reveals that the deceased died due to the train accident. While so, the Railway Claims Tribunal made a finding that the claimant has to satisfy the two main ingredients viz., "the accidental falling of any passenger from a train carrying passengers and he must have purchased a valid ticket for travelling by a train carrying passengers under Section 123© (2) and Explanation to Section 124-A of Railways Act, 1989. In this case, no credible evidence was led in by the applicant regarding purchase of ticket or travel and fall.

3. Thus, the Claim Petition was rejected.

4. The learned counsel appearing on behalf of the respondent/Railways relied that the claimant at the first instance must establish that the deceased was a bona fide passenger. In the absence of any such proof, the application deserves to be rejected and accordingly, the Railway Tribunal rejected the application. Thus, there is no infirmity as such and the appeal is to be dismissed.

5. The learned counsel appearing on behalf of the appellant/claimant objected the said contentions by stating that once the factum regarding the accident was established beyond any pale of doubt, and the inquest report as well as the final report submitted after investigation also states that the deceased died due to the train accident and more specifically, fallen down from the running train, there is no reason whatsoever to deny the compensation merely on the ground that the travel ticket was not retrieved.

6. The Railway Claims Tribunal failed to consider the probabilities of losing the ticket by the deceased on account of an untoward incident, there is a possibility that the ticket would have been lost while falling down from the running train or thereafter, while taking to the hospital in Ambulance or subsequently, while conducting post mortem or otherwise. Various probabilities of missing of the travelling ticket was not considered by the Railway Claims Tribunal. Contrarily, the Railway Tribunal arrived a conclusion that the appellant has not produced the travel ticket and therefore, the deceased was not a bona fide passenger of the train. An inference in this regard cannot be drawn against the claimant. Contrarily, the factual inference in such circumstances held in favour of the claimant as compensation is a welfare legislation. Once, the factum regarding the untoward incident is established in the Railway premises and the investigation also reveals that the untoward incident occurred due to the train accident and thereafter, the burden of proof must be shifted on the Railways to establish that the deceased was not a bona fide passenger.

7. The report submitted by the Divisional Railway Manager [DRM] reveals that the deceased was sitting on doorways of the said train and slept and fallen down from the running train. Due to restless on the full night. Further, she was not having any travelling ticket or valid pass. Thus, the DRM held that the deceased was not a bonafide passenger. This exactly the point adjudicated by 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 and the Hon'ble Supreme Court of India ruled that in such circumstances, the Railway must establish that the deceased was not a bona fide passenger. In other words, the benefit of doubt regarding the non retrieval of the travelling ticket must be extended in favour of the claimant and the burden of proof is to be shifted on the Railways to establish that the deceased was not a bona fide passenger.

8. The Hon'ble Supreme Court of India in the case of Union of India Vs. Rina Devi (cited supra), 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."

9. In view of the facts and circumstances as well as the principles laid down in the case cited supra, this Court is of the opinion that the findings of the Railway Tribunal is not in consonance with the principles settled by the Apex Court of India.

10. Accordingly, the judgment dated 28.07.2015 passed in OA (II-U) 339/2013 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.225 of 2016 stands allowed. The appellant/claimant is entitled for a compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) and 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 appellant/claimant is 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. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Railway Claims Tribunal,
Chennai.

2.The Section officer,
V.R.Section,
High Court, Madras -104.

+lcc to Mr.C.V.Ramachandra murthy, Advocate, sr no.8921

+lcc to Mr.T.Rajamohan, Advocate, sr no.8904

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C.M.A.No.225 of 2016

CP(CO)

RMP(16/03/2021)

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