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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2022

PRONOUNCED ON : 05.04.2022

CORAM:

THE HONOURABLE Mr.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.2566 of 2017

1. D.Devi
2. A.Santhosh, (Minor)
3. V.Rajamanickam
4. R.Kanchana
(2nd appellant being minor, rep.by
mother and natural guardian 1st
appellant)

... Appellants

Vs.

The Union of India Owning
Southern Railway, rep by its General Manager,
Chennai - 600 003.

... Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 23 of Railways Claims Tribunal Act, against the judgment dated 28.01.2016 and made in O.A.(II-U) 223/2014 on the file of the Railway Tribunal, Chennai Bench and allow the same.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.M.Vijay Anand

J U D G M E N T

This Civil Miscellaneous Appeal has been filed questioning the order dated 28.01.2016 in O.A.(II-U) 223/2014, on the file of the Railway Claims Tribunal, Chennai Bench.

2.O.A.(II-U) 223/2014 had been filed by the appellants herein under Section 16 of the Railway Claims Tribunal Act, 1987 r/w. Section 123 (c) (2) and 124-A of Railways Act, 1989 seeking a claim of Rs.4,00,000/- which sum has been enhanced to Rs.8,00,000/- in view of the amendment to the statute together with interest at 9% per annum from the date of filing of the claim petition together with costs as compensation for the unfortunate death of Abaraniji, who was the husband the first claimant and the father of the 2nd claimant and the son of the 3rd



and 4th claimants and who, while traveling in an electric train from Tambaram to Madras Beach on 21.10.2013 at 05.55 p.m., due to over crowd accidentally fell down from the running train in the platform at Guindy Railway station and sustained head injuries. He was taken in the same train with the help of the Guard and was detained at Kodambakkam Railway station, where, the staff of 108 ambulance declared him dead.

3.The claimants produced the tickets bearing No.416651602 from Villupuram to Tambaram and ticket No.433578733 from Tambaram to Beach.

4.Claiming compensation in their capacity as legal representatives and dependents, the claim petition was filed.

5.The respondent Union of India owning Southern Railway represented by its General Manager filed counter denying and disputing the facts stated. They claimed that the deceased was not a bonafide passenger and that, he had trespassed into the Railway Track and got injured. He was sent to the Government Hospital for further treatment by the same train, but he was detained at Kodambakkam, since his relatives wanted to take him to a private hospital for treatment, but the staff of the ambulance declared him dead. It was stated that it was a case of trespass and therefore, the respondent sought dismissal of the claim petition.

6.The Tribunal, during the course of trial, marked Ex.A1 to Ex.A3 in terms of Rule 15-B of Railway Claims Tribunal (Procedure) Rules, 1989 and four issues were taken up for consideration, namely,

(i) whether the applicants are the only dependants of the deceased?

(ii)whether the deceased was a bona fide passenger?

(iii)whether there was any untoward incident on 21.10.2013 as defined under Section 123 (c) (2) of the Railways Act, 1989? and

(iv)finally whether the applicants are entitled for compensation?

7.The first appellant examined herself as AW1 and marked the copies of the First Information Report, inquest report, final report and the tickets as Ex.A4 to Ex.A7.



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8. With respect to the first issue, namely, whether the applicants are the only legal heirs/dependants of the deceased, the Tribunal had examined the legal heirship certificate, which has been produced and also a marriage invitation card and had come to the conclusion that the applicants are the dependants of the deceased.

9. With respect to the other issues, which were taken up together viz., whether the deceased was a bonafide passenger, whether there was any untoward incident on 21.10.2013 and whether the applicants are entitled for compensation, the Tribunal first examined the statement of the Station Master, who stated that the deceased had trespassed into the railway track and got injured by the electric train going from Tambaram to Madras Beach and that he was sent to the Government Hospital for further treatment but that he was detrained at Kodambakkam by the Guard, since the relatives of the victim wanted to take him to a private hospital for treatment and that the staff of the 108 Ambulance declared him died.

10. It was also stated in the DRM report which was also considered by the Tribunal that the deceased suddenly trespassed at the edge of platform No.1 at Guindy Railway station and was knocked down by the EMU train approaching the platform and sustained bleeding injuries. He was taken in the same train to the Government Hospital for treatment but was detrained at Kodambakkam Railway station. It was stated that he did not have any valid ticket or pass. The Tribunal also examined Ex.A5/inquest report, Ex.A6/ final report, wherein it has been, however, recorded the deceased had fallen down from the train.

11. On the basis of the rival contentions, the Tribunal answered issue No.3 in the negative holding that the death of Abaranji was not untoward incident. It was then observed that the consideration of issue No.2 whether he was a bonafide passenger or not will not therefore arise. It was also found that there were two season tickets in Ex.A7. One was from Villupuram to Tambaram in the name of R.Abaranji and the other was from Tambaram to Chennai Beach in the name of Prabhu. It had been stated that no document had been produced to show that both the tickets related to the same person. Therefore, the Tribunal dismissed the claim petition by order dated 28.01.2016.

12. Questioning that particular order, the claimants have filed the present appeal.

13. Heard arguments advanced by Mr.S.Parthasarathy, learned counsel for the appellants and Mr.M.Vijay Anand, learned standing counsel for the respondent.



14.The facts are that the deceased/R.Abaranji had suffered injuries at the platform of Guindy Railway Station having been hit by an electric train proceeding from Tambaram to Madras Beach. The issue, which arises for consideration, is whether the incident occurred, since he trespassed into the platform or whether as a passenger, he fell down and suffered the injuries. He later died of the injuries. The further issue which has to be examined is, if he had either fallen down from the train or if he had suffered injuries while on the railway platform, whether the appellants can be granted compensation for his death. Another issue, which has to be examined is whether the name of the deceased is R.Abaranji or R.Prabu and whether both the names refers to the same individual or whether both the names refers to two different individuals.

15.Ex.A7 contains a season ticket from Villupuram to Tambaram in the name of R.Abaranji and a season ticket from Tambaram to Madras Beach in the name of R.Prabu.

16.Even before examining further with respect to the claim of the appellants, it would be instructive to examine the dictum laid down by the Hon'ble Supreme Court reported in Civil Appeal No.4945 of 2018, Union of India Vs. Rina Devi, dated 09.05.2018. In that particular case, the Hon'ble Supreme Court was concerned with a claim for compensation, in a case, where the claimant stated that her husband had purchased a ticket for second class for travel from Karauta to Khusrupur by train No.532 and fell down from the train due to the rush of passengers and died on the spot. The respondent however claimed there was no ticket, since the ticket was not recovered. The claimant further stated that the railway ticket was not recovered, since it could have been lost somewhere. This claim was contested and it was stated that the deceased was not a bona fide passenger but was wandering near the railway track. It was also stated that the cousin of the deceased, who lodged the FIR stated that the deceased was suffering from mental disorder and was wandering in that state of mind.

17.The Tribunal had dismissed the claim petition stating that it was not a case of untoward incident and that, the deceased was not a bonafide passenger.

18.The High Court set aside the order of the Tribunal on the basis of the evidence of a third party, who filed an affidavit that the deceased had purchased a ticket and the boarded the train. It was stated that the onus to prove that the deceased was a ticketless traveler was on the Railways.



19. In the appeal filed, the Hon'ble Supreme Court had 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 :



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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 non-platform 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



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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 self-inflicted 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



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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 Kumar³⁴ 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



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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.

Re: (iii) Burden of Proof When Body Found on Railway Premises Definition of Passenger :

17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a passenger. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in Gurcharan Singh (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows :

"3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to



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possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station.

17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

20.The reasoning of the Hon'ble Supreme Court is 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".

21.With respect to the burden of proof, when a body is found in the railway premises, the Hon'ble Supreme Court had observed as follows:

"We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."



22. It is thus seen that an obligation is placed on the claimants to file an affidavit to discharge the initial burden. In the instant case, such an affidavit had been filed by the claimants herein. The contention was with respect to the season tickets produced in Ex.A7 and whether, the names R. Prabu and R.Apparanji referred to the same person. A marriage invitation card had been produced, in which, it has been clearly stated that the groom was R. Prabu @ R.Abaranji. The first claimant is the wife of the deceased and she would know the name of the deceased. If he had two different names, then she would be the first person to state that. No woman would claim that she is the widow of two different persons, merely to receive compensation. There is no ground to suspect her specific statement. The original marriage invitation card had been produced as a document. The witness had also grazed the witness box. The two season tickets had been produced. Merely because the season tickets are in the names of R.Prabu and R.Abaranji would not disqualify the claimants from getting compensation for the death of R.Abaranji / R.Prabu. The incident happened when, the train hit the deceased at the platform of Guindy Railway Station. Even if it is to be stated that he was wandering around the platform, as per the ratio laid down in Rina Devi (cited supra), the claimants are entitled for compensation amount. I am obliged to uphold the principle of law as laid down in Rina Devi case (cited supra).

23.The learned standing counsel for the respondent, pointed out to a judgment passed by a learned Single Judge of this Court. But unfortunately, the learned Single Judge was not drawn attention to the law as stated by the Hon'ble Supreme Court in Union of India Vs. Rina Devi (referred supra). That dictum laid down by the Hon'ble Supreme Court is the law of the land and has to be followed by this Court.

24.Accordingly, I set aside the Order dated 28.01.2016 in O.A.(II-U) 223/2014 and allow the Civil Miscellaneous Appeal with costs. The claimants are also entitled for compensation with interest and costs.

25.The respondent is directed to deposit within a period of 12 weeks from the date of receipt of a copy of this order the compensation amount of Rs.8,00,000/- (Rupees eight lakhs only) together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit and on such deposit, it should be apportioned by granting a sum of Rs.4,00,000/- (Rupees four lakhs only) to the first claimant/widow and to deposit a sum of Rs.3,00,000/- (Rupees Three lakhs only) in Fixed Deposit in the name of 2nd claimant/



minor. The said deposit shall be in Fixed Deposit, till he attains the age of 18 years, with permission to the first claimant to withdraw the interest for every quarter for personal expenses. A sum of Rs.50,000/- is granted to each of the claimants 3 and 4. The accrued interest on the aforesaid sum should also be paid to the respective parties in the aforesaid manner. On attaining the age of majority, the 2nd claimant can withdraw the amount deposited in Fixed Deposit. The 1st, 3rd and 4th claimants are permitted to withdraw their share of the compensation immediately on deposit by the respondent as directed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

sms

To

1. The Railway Tribunal, Chennai Bench.
2. The General Manager,
The Union of India Owning
Southern Railway,
Chennai - 600 003.
3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Parthasarathy, Advocate SR.No.23117

+1cc to Mr.M.Vijay Anand, Advocate SR.No.23274

C.M.A.No.2566 of 2017

DKM(CO)
GMY(19/04/2022)