



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2022

Pronounced on : 08.04.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

C.M.A No.3296 of 2017

1.S.Chinnappan

2.C.Stella

...Appellants/Applicants

Vs.

The Union of India

Represented by the General Manager

Southern Railways,

Chennai - 600 003.

...Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act, 54 of 1987, to set aside the order dated 29.06.2017 in O.A (II-U) 132/2016 passed by the Railway Claims Tribunal, Chennai Bench.

For Appellant .. Mr.T.Raja Mohan

For Respondent .. Mr.M.Vijay Anand

JUDGMENT

Civil Miscellaneous Appeal has been filed challenging the judgment dated 29.06.2017 in OA (II-U) 132 / 2016 passed by the Railway Claims Tribunal, Chennai Bench.

2.The applicants therein are the appellants herein. They had filed OA (II-U) 132/2016 under Section 16 of the Railway Claims Tribunal Act, 1989 seeking compensation of Rs.4,00,000/- together with interest at 9% per annum, owing to the unfortunate death of their son C.Alexander, who had died on 03.02.2016 and who fell down between Koradachery and Kulikkarai Railway Stations while traveling in second class fare from Tiruvarur to Nidamangalam and was traveling in the general compartment. He fell down due to over crowd, speed, jerk and jolt of the train. He suffered injuries on the head, right leg and on his back. One of the passengers stopped the train by pulling the chain. He was shifted by 108 ambulance to Government Tiruvarur Medical College



and Hospital. However, he died on the same day/03.02.2016.

3.Owing to amendment in the Act, the compensation payable for death of a passenger owing to untoward incident has been enhanced to Rs.8,00,000/-.

WEB COPY

4.Claiming compensation his parents had filed an application before the Tribunal. They had also filed copies of the First Information Report, Accident Register, Message issued by Chief Train Clerk, Inquest Report, Postmortem report, Final Report submitted by the police, the Death Certificate and Legal Representative Certificate which were all marked as Exs.A1 to A6.

5.During the course of trial, the respondent however, denied liability, and claimed that the deceased C.Alexander was not a bonafide passenger. They further claimed that the copy of the Accident Register showed that the accident history was not clear. It was stated that he had been admitted to the hospital by his father. It was not clarified how the father arrived to take the deceased to the hospital. They claimed that they were not liable for any compensation under Section 124-A of the Railways Act, 1989.

6.The report of the DRM along with the enquiry conducted by the Guard of the train had also been marked as exhibits. The respondent stated that they had been informed that the victim traveled on the footboard, chatting on the mobile phone and fell down from the running train. They also stated that the train was not crowded and that the victim was not a bonafide passenger.

7.The Tribunal had taken up as issues whether the claimants were dependents, whether the deceased was a bonafide passenger and whether there was any untoward incident on 03.02.2016 and whether the applicants were entitled for compensation.

8.With respect to issue whether the applicants were dependents of the deceased, the Tribunal had held in the affirmative.

9.With respect to the deceased was a bonafide passenger, the Tribunal observed that it was stated in the DRM report that the deceased was not a bonafide passenger. The ticket dated 03.02.2016 bearing No.186430169 meant for journey from Tiruvarur to Nidamangalam, was issued at 5.15 p.m. Information about the accident was received at 5.40 p.m., stating that one person had fallen from Train No.16187 beyond Thirumathikunnam railway station. The train was detained for five minutes. The Accident Register was written at 7.25 p.m. The Chief Booking Supervisor stated that the ticket was not valid for journey by express train. It was therefore stated that the deceased was not entitled to travel in the said train. It was also stated that



the availability of the ticket created a suspicion of planting the ticket. The Tribunal therefore concluded that the deceased was not a bonafide passenger.

10. In this connection, the Tribunal referred to a judgment of the Delhi High Court reported in (2014 ACJ 1505), Geeta V. Union of India and of the Karnataka High Court reported in (2014 ACJ 2505), Union of India V. Lakshmi & Others, wherein, it was stated that the initial burden was on the claimants to prove that the deceased was a bonafide passenger. Holding that, the deceased was not a bonafide passenger and that the accident was not an untoward incident, the Claim Petition was dismissed.

11. Challenging that particular finding in the judgment, the claimants have filed the present Civil Miscellaneous Appeal.

12. Heard arguments advanced by Mr. T. Raja Mohan, learned counsel appearing for the appellants and Mr. M. Vijay Anand, learned counsel appearing for the respondent.

13. The fact that the deceased / C. Alexander, fell down from a running train between Koradachery and Kulikkarai Railway Stations while traveling in Train No. 16187 is not in dispute and cannot be denied. The fact that he was a passenger of that train cannot be denied or disputed. The fact that he fell down on the track and suffered injuries leading to his death again cannot be denied or disputed. That ticket bearing No. 186430169 issued at Tiruvarur railway station at 5.15 p.m had been produced as a document again cannot be denied.

14. It is the contention of the respondent that the ticket holder of the said ticket was not permitted to travel in an express train. If a ticket holder having purchased ticket for a passenger train is found to be traveling in an express train within the stations for which he is entitled to travel, then he is liable for fine and penalty to pay the difference amount. He still remains a passenger of the train. He cannot be termed as stranger or a trespasser into the train. He had purchased a ticket but should have purchased the ticket of higher value to enable him to travel in an express train. He still a bonafide passenger but without a proper ticket, therefore the reasoning of the Tribunal that the deceased/C. Alexander was not a bonafide passenger has to be rejected.

15. Even otherwise reference can be made to the judgment of the Hon'ble Supreme Court reported in (2019) 3 SCC 572, Union of India v. Rina Devi. In that case, a claim was made by a widow for the death of her husband who was said to have fallen down from Train No. 532 on 20.08.2002, when it was traveling between Karauta to Khusrupur, due to rush of passengers and died on the



spot. The ticket could not be produced. However, an affidavit was filed that the ticket had been purchased. The contention of the respondent there was that the deceased was wandering in the railway track and they also placed reliance on the statement of his cousin that he suffered from mental disorder and was wandering in that state of mind. The Hon'ble Supreme Court even under those circumstances had held as follows:

"Re : (ii) Application of principle of strict liability
- Concept of self-inflicted injury

20. 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 124-A 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 124-A. In *Prabhakaran Vijaya Kumar [Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813]* 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 [Jameela v. Union of India, (2010) 12 SCC 443 : (2010) 4 SCC (Civ) 644]* .

21. Coming to the proviso to Section 124-A 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 on a par with self-inflicted injury. We may refer to the decisions of the High Courts of Kerala in *Joseph P.T. [Joseph P.T. v. Union of India, 2013 SCC OnLine Ker 24151 : AIR 2014 Ker 12]* , Bombay in *Pushpa [Pushpa v. Union of India, 2017 SCC OnLine Bom 8117 : (2017) 3 ACC 799]* and Delhi in *Shyam Narayan [Shyam Narayan v. Union of India, 2017 SCC OnLine Del 8734 : 2018 ACJ 702]* on this point.

22. In *Joseph P.T. [Joseph P.T. v. Union of India, 2013 SCC OnLine Ker 24151 : AIR 2014 Ker 12]* , the victim received injuries in the course of entering a train



WEB COPY

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 124-A 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 : (SCC OnLine Ker para 24)

"24. 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 of his age, circumstances, etc. act to his detriment. Facts of this case show that the appellant attempted to board a moving train from the offside unmindful of his age and fully aware of the positional disadvantage 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 at a lower level. Furthermore, he will have to stretch himself to catch the handrails and struggle to climb up through the footboard



WEB COPY

not entitled to compensation as it was a case of "self-inflicted injury". The relevant observations are : (SCC OnLine Bom para 14)

"14. 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."

24. In Shyam Narayan [Shyam Narayan v. Union of India, 2017 SCC OnLine Del 8734 : 2018 ACJ 702] , same view was taken which is as follows : (SCC OnLine Del para 7)

"7. I cannot agree with the arguments urged on behalf of the appellant 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."

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



WEB COPY

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.

Re : (iii) Burden of proof when body found on railway premises – Definition of passenger

26. 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 [Raj Kumari v. Union of India, 1992 SCC OnLine MP 96 : 1993 ACJ 846] referring to the scheme of the 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 bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. The 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, the Delhi High Court in Gurcharan Singh [Gurcharan Singh v. Union of India, 2014 SCC OnLine Del 101 : 2015 ACJ 171] 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 the 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 : (Gurcharan Singh case [Gurcharan Singh v. Union of India, 2014 SCC OnLine Del 101 : 2015 ACJ 171] , SCC OnLine Del para 4)



WEB COPY

place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of AW 1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal."

28. In Kamrunnissa [Kamrunnissa v. Union of India, (2019) 12 SCC 391 : 2017 SCC OnLine SC 304] , from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of "untoward incident" but a case of run over. It was observed:

"7. The aforestated report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not



WEB COPY

possible for us to accept that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of Paras VII and VIII extracted hereinabove, the report also reveals that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in 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."

16. The law laid down by the Hon'ble Supreme Court is clear. They have very categorically held that even if an affidavit is filed about the purchase of a ticket, the initial burden of proof is discharged and the onus shifts to the railways to prove that the deceased was not a bonafide passenger.

17. In the instant case, a ticket had been produced. It was for the railways to establish that the deceased was not a bonafide passenger. A mere statement that he was traveling in an express train with the ticket of a passenger train cannot dislodge the fact that he was a passenger of the train and that he can be termed as bonafide passenger, if he pays the penalty required. The judgment of Hon'ble Supreme Court is binding.

18. I would therefore allow the Civil Miscellaneous Appeal with costs and set aside the judgment of the Railway Claims Tribunal in OA (II-U) 132/2016 dated 29.06.2017. A direction is given to respondent to deposit the claim amount of Rs.8,00,000/- (Rupees Eight Lakhs only), in view of the amendment to the Act, enhancing the compensation together with interest at 9% per annum from the date of this award till the date of realization, within a period of six weeks from the date of receipt of a copy of this order. On such deposit the appellants are permitted to withdraw the sum in equal proportions.

-s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

smv



To

The Registrar,
Railway Claims Tribunal,
Chennai Bench.

WEB COPY

+1cc to Mr.T.Rajamohan, Advocate, S.R.No.24805

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.24766

C.M.A No.3296 of 2017

SRA (CO)
RN (23/05/2022)