



C.M.A.No.3426 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 08.03.2022

PRONOUNCED ON : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

C.M.A.No.3426 of 2017

1.G.Arjunan

2.Mrs.A.Valli

... Appellants

Vs.

The Union of India

Represented by the General Manager,

Southern Railway, Chennai

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 23 of the Railway Claims Tribunal Act 54 of 1987, the order dated 25.10.2017 passed by the Claims Tribunal, Chennai Bench in O.A.(II-U) 52/2017 be set aside granting an award for the statutory compensation of Rs.8,00,000/- (vide Gazette Notification with effect from 01.01.2017) together with interest at 12% p.a from the date of filing of the claim application viz., 03.04.2017 till the date of payment and the costs of the proceedings.

For Appellants : Mr.T.Raja Mohan

For Respondent : Mr.M.Vijay Anand



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JUDGMENT

The applicants in O.A.(II-U) 52 of 2017 before the Railway Claims Tribunal, Chennai, are the appellants herein. They are the parents of A.Pandian, who, while travelling up to Guindy on 18.07.2016 in the EMU electric train running from Tambaram to Chennai Beach and accidentally fell down from the running train and suffered grievous injuries and died at the spot, when the train was running between Pallavaram and Trisoolam Railway Stations.

2. They preferred the aforementioned petition, seeking compensation of a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) with interest from the date of the application till date of payment at 9% per annum and also for costs.

3. The said application had been filed under Section 13(1) (ii) and Section 16 of The Railway Claims Tribunal Act, 1987 read with Section 123 (c) (2), 124-A and 125 of The Railways Act, 1989.

4. That application came up for consideration before the Tribunal



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and by Order dated 25.10.2017, the application was dismissed.

Questioning that particular Order, the present Civil Miscellaneous Appeal has been filed.

5. It is the claim of the appellants that their son A.Pandian, was traveling up to Guindy on 18.07.2016 in the local EMU Electric Train, which runs from Tambaram to Beach. At around 03.07 p.m, when the train was running between Pallavaram and Trisoolam stations, there was a sudden jolt in the train and he fell down on the railway track and suffered grievous injuries and died at the spot. Seeking compensation, they had preferred the claim petition.

6. The respondent/Union of India, owing Southern Railway, represented by its General Manager, Chennai, had filed a reply, contending that the deceased had travelled near the door leaning out side the coach and was hit by the signal post and fell down, and they therefore contended, it was a self-inflicted injury. It was also contended that he was not a *bonafide* passenger as the ticket was not recovered from him. It was therefore stated that the accident cannot be termed as an “Untoward Incident” within the meaning of Section 123 (c) (2) of



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Railways Act, 1989, and that therefore, the respondent was not liable to pay compensation under Section 124-A of the Railways Act, 1989.

7. The Tribunal took up for consideration as the first issue, whether the applicants/defendants were entitled for compensation, and answered it in the affirmative since they were the parents.

8. The Tribunal then took up the next issue, namely, whether the deceased was a *bonafide* passenger and in this connection, examined the deposition of AW1/mother of the deceased, wherein, she had stated that she had filed an affidavit and also stated that A.Pandian was working in a Petrol Bunk at Alandur, Chennai and had purchased a ticket and that she had produced the ticket before the Tribunal. It was further seen that the records did not however contain the ticket. It was also observed that in the report of “Untoward incident” filed by the guard of the train, it had been mentioned that one young male was hit by the signal post and fell down. It was also observed that the Inquest report also showed that the deceased was hit by the signal post and fell down between Pallavaram and Trisoolam Railway Stations. The final report concluded that the deceased was hit by the signal post and fell down from the train.



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9. The Tribunal then examined an earlier order of the Tribunal in O.A (II-U) 20/2015 dated 16.09.2015, wherein, the Tribunal had held that there is sufficient distance between the track and the electric post and only when someone makes an adventurous act and leans his body outside the compartment can he be hit by the electric pole.

10. The Tribunal also relied on the judgment of the Ranchi Bench of the Tribunal, wherein, it was observed that it was due to the negligence of the deceased that he fell by being hit by the post. It was therefore held that the deceased was leaning or hanging outside the compartment and was hit by the signal post. It was therefore stated that it was not an “Untoward incident”.

11. The Tribunal also held that since, there was no ticket, the deceased was not a *bonafide* passenger.

12. The Tribunal in view of those conclusions, further held that, since the deceased was not a *bonafide* passenger and since the incident was not an “Untoward incident”, that the death was due to self-inflicted



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injury, and therefore, dismissed the claim petition. This necessitated the filing of the present Civil Miscellaneous Appeal.

13. Heard arguments advanced by Mr.T.Raja Mohan, learned counsel for the appellant and Mr.Vijay Anand, learned Standing Counsel for the respondent.

14. The contention of the learned counsel for the appellant is that, the fact that the deceased was traveling in the train, cannot be denied or disputed. The fact that the deceased fell down, while traveling by the train again cannot be denied or disputed. It is therefore contended that the Tribunal had overreached itself by examining, whether the deceased was leaning outside and then was hit by the electric pole and therefore, learned counsel stated that this Court should interfere with the findings of the Tribunal that he was not a *bonafide* passenger and that the incident was not an “Untoward incident” and therefore, urged that compensation should be granted.

15. Mr.Vijay Anand, learned Standing Counsel for the respondent on the other hand, supported the order of the Tribunal and stated that the



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ticket had not been produced and therefore, the deceased was not a *bonafide* passenger and further pointed out that the deceased fell down from the train, which implied that he was careless and that it was a self-inflicted injury and therefore, the learned Standing Counsel justified the Order, rejecting the claim.

16. I have carefully considered the arguments and perused the material records.

17. The parents of A.Pandian, who was traveling by EMU electric train running between Tambaram and Chennai Beach and was traveling between Tambaram and Guindy on 18.07.2016, and who had fallen down from the train at around 03.07 p.m., when it was proceeding between Pallavaram and Trisoolam Railway Stations, had filed the Claim Petition before the Railway Claims Tribunal, seeking compensation for the unfortunate death of their son. That petition was dismissed even without examining the quantum of compensation payable. It was dismissed on the ground that since the ticket was not recovered, Pandian was not a *bonafide* passenger and since he fell down after being hit by the electric pole, it can be presumed that he must have



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leant outside the train and that the accident must have occurred owing to his own negligence and therefore, it was not an “Untoward incident” and therefore, compensation is not payable.

18. A perusal of the original records reveals that on the side of the claimant, the mother of the deceased had tendered evidence and during her cross-examination, she had stated that she had produced the ticket of A.Pandian before the Court and that she had very specifically denied the suggestion that the incident happened due to the negligence and carelessness on the part of A.Pandian. Among the documents filed, she had also produced the First Information Report in Crime No.114/2016 registered by the Tambaram Railway Police Station, the Inquest report, the Postmortem certificate, the Final Report, the death certificate and the Legal heirship certificate, which were all marked as Exs.A1 to Ex.A6 respectively.

19. In Part III of the claim petition, the claimants had very specifically stated that the second class ticket purchased by A.Pandian for his travel from Tambaram to Guindy was said to have been lost at the time of the accident. The fact that he was traveling in the electric



train, which was running between Tambaram and Chennai Beach Railway Stations is neither disputed nor denied. The fact that he fell down from the train between Pallavaram and Trisoolam Stations is also neither disputed nor denied.

20. It is however claimed by the respondent that he was not a *bonafide* passenger. The report of the Divisional Railway Manager (DRM) was also to the effect that though A.Pandian was a passenger of the train, he cannot be termed as a *bonafide* passenger. The DRM thus held that the deceased was not a *bonafide* passenger.

21. In the case of ***Union of India Vs. Prabhakaran Vijaya Kumar and Others***, reported in ***(2008) 4 MLJ 323(SC)***, the Hon'ble Supreme Court of India had examined the provisions of Sections 2 (29), 123 (C), 124-(A) relating to Doctrine of 'Strict Liability' or 'No fault Liability'. In that particular judgment, it was held as follows:

“14. In our opinion, if we adopt a restrictive meaning to the expression “accidental falling of a passenger from a train carrying passengers” in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation



in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression “accidental falling of a passenger from a train carrying passengers” includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

15. Section 2(29) of the Railways Act defines “passenger” to mean a person travelling with a valid pass or ticket. Section 123(c) of the Railways Act defines “untoward incident” to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act with which we are concerned states:

“124-A. Compensation on account of untoward incidents. —When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has



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been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the Railway Administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the Railway Administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation.—For the purposes of this section, ‘passenger’ includes—

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”*



(emphasis supplied)

16. The accident in which Smt Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault.”

22. The issue of a passenger falling down from the train and the respondent claiming that he was not a *bonafide* passenger since the ticket was not available, came up for consideration before the Hon'ble Supreme Court in the case of ***Union of India Vs. Rina Devi in Civil Appeal Nos.4945 of 2015 dated 09.05.2018***. The Hon'ble Supreme Court held that the Railways must establish that the deceased was not a *bonafide* passenger and the benefit of doubt regarding non retrieval of the travelling ticket must be extended in favour of the claimant and the burden of proof has to be shifted on the Railways to establish that the deceased was not a *bonafide* passenger.



*“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



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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



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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



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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 :



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“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



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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.”

23. In view of the dictum of law laid down by the Hon'ble Supreme Court, I have no hesitation in holding that the Railway Claims Tribunal had misdirected itself in holding that A.Pandian, who was travelling in the train was not a *bonafide* passenger particularly in view of the fact that it had been asserted by the claimants that he was having a ticket, which was lost during the accident. That is a real possibility. I would therefore interfere with the order of the Tribunal and set aside the same.

24. Accordingly, the Order of the Tribunal dated 25.10.2017 in O.A.(II-U) 52 of 2017 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.3426 of 2017 is allowed with costs.



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25. The appellants/claimants are 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 appellants/claimants are permitted to withdraw the award amount along with the interest at the rate of 6% from the date of award in equal proportion by filing an appropriate application. The payments are to be made through RTGS.

05.04.2022

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Index: Yes
Speaking order

To

- 1.The Railway Claims Tribunal,
Chennai Bench.
2. The General Manager,
Southern Railway, Chennai.



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