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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A. No.3126 of 2018

S. Devaraj

.... Appellant/
Appellant

versus

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

... Respondent

Civil Miscellaneous Appeal filed under Section 23 of Railway Claims Tribunal Act, 1987 to set aside the order dated 28.09.2018 passed by the Railway Claims Tribunal, Chennai Bench in OA(II-U) No. 68 of 2017 granting an award for the statutory compensation of Rs.8,00,000/- with interest at 12 % p.a. from the date of filing of the claim application viz., 21.04.2017 till the date of payment and costs of the proceedings.

For Appellant : Mr. R.Sekaran
For Respondent : Ms. Savitha.T.P

JUDGMENT

The claimant in O.A.No.68 of 2017 on the file of the Railway Claims Tribunal, Chennai is the appellant herein.

2. The facts necessitating filing of the claim petition before the Claims Tribunal arose owing to an incident which occurred on 23.02.2017, on which date, while the appellant, who was traveling in an EMU train from Perungulatur to Chennai Beach Station in the morning at around 8:50 hours, due to heavy rush, speed, jerk and jolt of the train, accidentally fell down from the running train between Palavanthangal and St. Thomas Mount Railway Stations and suffered grievous injuries on his face and both the legs. Totally seven passengers had fallen down. Two died on the spot and five suffered grievous injuries. The petitioner was one among them.



3. The nature of injuries, which he suffered were injuries over left foot femoral head, left forearm fracture, head injury. His left foot was amputated. There was also subcutaneous block and the fractured ulna had been stabilized with seven holes. There was total hip replacement after one month of discharge. He was also advised to wear a prosthetic leg below the knee. These are all very serious and grievous injuries. His retina also had to be operated upon. In view of these injuries, which he suffered, while he was actually travelling in the train, he preferred the claim petition.

4. The Railway Claims Tribunal thereafter proceeded to determine whether he was a bona fide passenger and came to the conclusion that he was not a bona fide passenger because he did not produce the season ticket which he claimed to have purchased in Beach Station.

5. My attention has been brought to a judgment of the Hon'ble Supreme Court in Civil Appeal No. 4945 of 2018 in the case of Union of India vs. Rina Devi wherein compensation was claimed with respect to a similarly placed passenger and the stand taken by the railways was that the deceased therein was not a passenger but was wandering near the railway track. It was also stated that he was suffering from mental disorder. The Hon'ble Supreme Court had examined Section 23(c) of the Railway Act, 1989, wherein it is stated as follows:

'Section 23. Definitions:

2[(c) "untoward incident" means-

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.]'

6. With respect to the application of principle of strict liability and also regarding the burden of proof and



incidentally about the definition of a passenger, it has been stated that the initial burden whether the claimant was a bona fide passenger or not will be on the claimant and that can be discharged by filing an affidavit of the relevant facts and then the burden will shift on the railways to disprove that fact.

7. In the instant case, the fact the accident occurred cannot be denied or disputed. The fact that in the said accident totally seven persons suffered and two of them died and five of them suffered grievous injuries again cannot be denied or disputed.

8. An affidavit had been filed by the appellant affirming that he was travelling in the train when the accident occurred and that he was one among the seven others who met with the accident. The accident occurred owing to the curve which the railway line took and the closeness of the electric pole adjacent to the railway track.

9. It is argued by the learned counsel for the respondent that since the injured were carrying bags on their shoulders, the bags got hit by the electric pole and as a result of which the passenger fell down. I wonder at such an argument. Moreover, this cannot be the reason for all seven passengers carrying a bag is not prohibited while travelling in a train. Therefore, the contention that there was jolting of the train that was responsible for the accident reasonably appears to be correct.

10. Thus, the judgment in Union of India vs. Rina Devi referred supra applies with force to the facts of the present case. The relevant portion of the said judgment is extracted herein below:

'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



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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



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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



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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 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 self-inflicted 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



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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 course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will 34 2017 (13) SCALE 652 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



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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 this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to



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case in its nature is susceptible should always be produced. Section 114(g) of the Indian 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."

17.3 In Kamrunnissa (supra), 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 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 paragraphs 7 & 8 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,



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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."

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. Re: (iv) Rate of Interest'

The aforesaid judgment is the law as on date.

11. The reasoning of the Tribunal that the appellant herein is not entitled for compensation, since, according to them, he was not a bona fide passenger, is rejected by me and that reasoning is set aside. The judgment of the Hon'ble Supreme Court has laid down in very clear terms, that if an affidavit is filed, the initial burden of being a bona fide passenger is discharged by the claimant.

12. In the instant case, the claimant has filed an affidavit. An FIR has also been registered which clearly indicates that he fell down from that particular train along with other passengers. These are facts which cannot be denied or disputed. In view of the above reasoning, the order of the Tribunal has to be set aside and is set aside and the matter is remitted back for fresh disposal, to determine the compensation payable keeping in view the dictum laid down in the judgment of the Hon'ble Supreme Court referred to supra.

13. It is made clear that the opinion and finding of the Railway Claims Tribunal that the appellant is not a bona fide



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passenger has been set aside by this court. The Tribunal will now have to determine the compensation payable for the injuries suffered and to that extent, the claimant is permitted to lead evidence by producing relevant medical reports. On the basis of such medical reports, the Tribunal has to determine the just compensation payable to the claimant, without raising the issue of bona fide passenger once again, in view of the judgment of the Hon'ble Supreme Court referred supra and particularly in view of the fact that the appellant was actually a passenger who fell down along with seven others when the train took a curve and passengers were hit by the electric pole at that particular area since the electric pole was close to the railway track.

14. The Civil Miscellaneous Appeal is, therefore, allowed and the order dated 28.09.2018 in O.A. No. 68 of 2017 is set aside and the matter is remitted back to the Railway Claims Tribunal for fresh consideration on the issue of determination of compensation. No order as to costs. The Railways Claims Tribunal is directed to dispose of O.A.No.68 of 2017 on or before 30.09.2022. I am informed that the records of the Tribunal have not been forwarded to this court. Therefore, O.A.No.68 of 2017 can be taken up for further hearing by the Railway Claims Tribunal without any unnecessary delay.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mrn

To :

1. Railway Claims Tribunal,
Chennai Bench

Copy To

The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to Mr.R.Sekaran, Advocate, S.R.No.14414
+1cc to Ms.Savitha.T.P , Advocate, S.R.No.4400

C.M.A. No.3126 of 2018

NR(CO)
PM/04/04/2022