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CMA.No.28 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2023

PRONOUNCED ON : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.28 of 2018

S.Kuppuswamy

Appellant

Vs

The Union of India, owning Southern Railway

by General Manager, Chennai-3

Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement, dated, 18.07.2017, made in OA (II-U)3/2017, by the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.S.Umapathy

For Respondent : Mr.Vijay Anand, Standing Counsel

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement, dated, 18.07.2017, made in OA (II-U)3/2017, by the Railway Claims Tribunal, Chennai Bench.
2. The Appellant, who is the father of the deceased, namely, K.Harikrishnan, has filed the claim petition before the Tribunal, seeking a compensation of Rs.4,00,000/-, for the death of the deceased, who died in an untoward incident of accidental fall from a train on the night in between 17/18th June, 2016. The claim petition was resisted, on various grounds, by the



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Respondent, by filing a reply. On the side of the Appellant, Ex.A1 to Ex.A6 were marked. Finding that the deceased was not a bona fide passenger, the Tribunal has dismissed the claim application. Hence, this appeal has been filed by the claimant.

3. This Court heard the learned counsel for the Appellant and also perused the entire materials placed on record.
4. According to the Appellant, since the incident falls within the definition of 'untoward incident' under Section 123(c) of the Railways Act, the Tribunal ought to have allowed the claim application and without considering the settled principles laid down by various Courts, the Tribunal had dismissed the application, erroneously shifting the burden of proof on the Appellant regarding the status of 'bona fide passenger'. Though no ticket was recovered from the deceased during the investigation, since admittedly he fell down from the train and died, he was a bona fide passenger and as such, the Applicant is entitled to get compensation. Reliance is placed on the decision reported in **2019 3 SCC 572 (Union of India Vs. Rina Devi)**.
5. According to the Respondent, the deceased was not a bona fide passenger and the incident is not an 'untoward incident' and the alleged incident is an instance of self-inflicted injuries and the deceased died only due to his own negligence and hence, the impugned order, rejecting the claim application, is proper.
6. Section 123(c) of the Railways Act reads as under:-



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(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.

7. Section 124A of the Act provides as follows:-

"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 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



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unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation: For the purpose 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."

8. In order to award compensation for any loss, damage, injury or death, occurred to a victim, in the Railway Premises, the points to be determined are that the victim was a bona fide passenger and sustained injury or death, as the case may be, in an 'untoward incident'. 'Untoward incident' should not fall within the exceptions (a) to (e) of proviso to Section 124A of the Act and the 'accidental fall' would include a passenger, trying to alight a train, board a train or any other like action and he would be covered by 'untoward incident' as specified in Section 123(c) of the Act. Therefore, while boarding the train or alighting the train or standing near the door, due to jerk of the train, if a person accidentally falls from the train and sustains injury or dies, it cannot be held that due to his own negligence or carelessness, he sustained injury or died. The burden lies on the Railways to prove that the person met with an accident or death due to his own negligence, thereby not entitled to compensation from the Railways.

9. In this case, as per the First Information Report, inquest report and the final report, it is seen that the deceased, while travelling in the train, had fallen down at KM 112/25-23 up main line of Muguntharayaouram Railway Station,



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which is located between Katpadi-Chennai and died on the spot due to the injuries sustained, but, it is stated that no journey ticket was recovered, during the investigation. Thus, it is crystal clear that the deceased was a passenger and he fell down from the train accidentally and died, in other words, the deceased died of the accident due to fall from the train. Thus, the factum of 'untoward incident' stands proved, in view of Section 123(c)(2) of the Act, which defines 'untoward incident' as 'accidental falling of any passenger from a train carrying passengers'.

10. In so far as the contention of the Railways that it is a case of 'self-inflicted injury', as defined under Section 124A(b) of the Act, is concerned, it means injuries, which are self inflicted by a person, when he is capable of rational voluntary action and would be inflicted by one's self. When a person accidentally falls from the train because of some jerk or slipped down, while boarding or alighting or standing, it would not amount to 'self-inflicted injury', but it is only an 'untoward incident' as defined under Section 123 (c)(2) of the Act. Falling from a train to death due to one's own negligence does not come within any exception enumerated under Section 124A (a) to (e) of the Act.

11. Mere non-recovery of a ticket is not a ground to deny the compensation. In this case, the claimant, who has no means of knowledge about the ticket purchased by the deceased, cannot be expected to discharge the burden that the deceased held a valid ticket, since at that time, there were probabilities of losing the ticket by the deceased on account of an untoward incident, while



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falling down from the running train or thereafter and there was also every possibility of the miscreants, taking his belongings. In this case, as stated above, since the factum of untoward incident is established to have occurred in the Railway Premises and the investigation report also revealed that the untoward incident occurred due to the train accident, the burden of proof is on the Railways to establish that the deceased was not a bona fide passenger, as has been held in **2019 3 SCC 572 (Union of India Vs. Rina Devi)**, but in this case, the Railways failed to discharge such a burden by valid evidence.

12. At this juncture, it is relevant and pertinent to make a reference to the decision reported in **2008 ACJ 1895 (Union of India v. Prabhakaran Vijaya Kumar and others)**, wherein the principle of strict liability of Railway Administration for no fault liability in case of railway accidents was laid down. In **2019 3 SCC 572 (Union of India Vs. Rina Devi)**, while dealing with the provisions of Section 124A of the Act, the Honourable Supreme Court had laid down the rulings regarding the application of principle of strict liability. Thus, in cases where there was an accidental falling of a passenger from train on a railway track or a contributory negligence of the victim, strict liability would arise for Railway Administration to compensate.

13. In view of the above, this Court is of the considered view that without considering the facts and circumstances of the case, the Tribunal erred in not granting compensation to the Applicant, by dismissing the application, by the impugned order, which warrants interference by this Court.



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14. In fine, this Civil Miscellaneous Appeal is allowed, setting aside the impugned judgement of the Tribunal. The Respondent is directed to pay a compensation of Rs.4,00,000/- (Rupees Four Lakhs only) with interest at 6% p.a. from the date of the application till the date of this order and thereafter, 9% p.a. till the date of payment, to the Appellant. No costs.

06.06.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The General Manager, Southern Railway, Chennai-3
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

Srcm

Pre-Delivery Judgement in
CMA.No.28 of 2018

06.06.2023