

(2008) 07 AP CK 0089
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1131 of 2006

Balagoni Siva Prasad

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Railways Act, 1989 — Section 123, 124A, 125

Citation : (2009) ACJ 1332 : (2008) 5 ALT 605

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : T.L. Krishna Prasad, for the Appellant; T.S. Venkataramana, for the Respondent

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order dated 10-11-2006 in O.A.A. No. 45 of 2004 on the file of Railway Claims Tribunal, Secunderabad, wherein the claim of the appellant herein for compensation, was dismissed.

2. Heard both sides. Perused the records.

3. The appellant herein filed claim application before the Tribunal seeking compensation of Rs. 4,00,000/- u/s 124-A and 125 of the Railways Act (for short "the Act") for the injuries sustained by him in an untoward incident of accidental fall. According to him on 20-02-2004 while he was travelling by 170 (Push-Pull Train) between Mahaboobabad and Warangal, he accidentally fell down from running train due to sudden jerks and jolts while train was passing between Tallapusalapalle and Intikanne Railway stations and both his legs were cut in the middle of the thigh and left hand was cut at arm, as the wheels of train passed over them. He was travelling with a valid ticket from Mahaboobabad to Warangal.

4. The respondent-Railways contended that as per the Passenger Guard of Train, it arrived at Tallapusalapalli station at 17.18 hours and after starting the train, he found a male person trying to board the running train. Though the appellant was a bona fide passenger, he has fallen from the train due to his own negligence

while boarding running train and hence, the railways are not liable to pay any compensation.

5. The Tribunal on appreciation of the evidence on record dismissed the claim application on the ground that the claimant fell down from the train due to his own negligence in trying to board the running train after it started from Tallapusalapalle and therefore, it is not an untoward incident. Hence, the appeal.

6. It is not disputed that the appellant was a bona fide passenger, having valid ticket Ex.A-5 from Mahaboobabad to Warangal and was travelling by Train No. 170 on 20-2-2004. The specific case of the appellant in his application is that while the train was running between Tallapusalapalle and Intikanne railway stations, he accidentally fell down from the running train due to jerks and jolts resulting in injuries to the legs and hands. In the evidence, he however, stated that when the train started from Tallapusalapalle RS, he accidentally fell down from the running train, as he was standing at the door. There is a major shift in the stand taken by the appellant from the pleading to the evidence on the aspect as to how the incident occurred. His evidence that he fell down from the train while he was standing at the door and when the train started from Tallapusalapalle RS is totally at variance with his first version that he fell down from a running train due to jerks and jolts. Apart from the apparent contradictions between two versions, the question of his falling from the train does not arise, unless he was standing at the door or on the footboard while the train was on move, which he was not expected to do. If he was inside the train while it was on the run, the question of his falling from the door does not simply arise, unless he stood at the door while the train was in motion. The evidence of R.W.1 - Railway Guard and R.W.2 - Station Master of Tallapusalapalle RS is to the effect that the train halted at Tallapusalapalle and again when it started moving, the appellant tried to board into the compartment and slipped and fell down. Their testimony is corroborated by the entries in Ex.R-1 Rough journal of the Guard to the effect that a male person has fallen down and ran over by the train while he was trying to board the train.

7. Learned Counsel for the appellant would contend that as the appellant was travelling from Mahabubabad to Warangal, the question of his boarding the train at Tallapusalapalle RS does not simply arise. Simply because the appellant was holding a ticket from Mahaboobabad to Warangal, no inference can be drawn that he did not get down on to the platform. Even according to the appellant, the train halted at Tallapusalapalle and he fell down while he was standing at the door. The evidence adduced by the respondent would establish that the appellant fell while trying to board the train when it re-started at Tallapusalapalle. The conduct of the appellant in trying to board the train, which has already started to move, is clearly an act of negligence on his part.

8. Section 124-A of the Act renders the railways liable to pay the compensation for the injuries sustained in an untoward incident. Section 123[c][2] defines an untoward incident as meaning among other things "accidental fall of any

passenger from a train carrying passengers". Proviso to Section 124-A, however, states "no compensation shall be payable if the passenger suffers injury, due to among other things, self-inflicted injury". Thus the combined reading of above two provisions would disclose that though a person is entitled to claim compensation for the injuries sustained in an untoward incident, which included accidental fall from the train, the railways are, however, not liable to pay such compensation when the passenger suffers injury which is self-inflicted.

9. Learned Counsel for the appellant would invite the attention to the decision in Union of India (UOI) Vs. V.M. Ranganadhan, , wherein, it was held that "the railways must plead and prove that the victim had an intention to sustain injury on his own accord, the exception carved out in Section 124-A of the Act cannot be applied". In the above case, it was found that the contention of the appellant-railways could have been appreciated, if only there was any evidence adduced on its behalf, to disclose that the respondent had indulged in any acts on his own accord, resulting in the injuries. In the present case, the respondent-railways have not only pleaded but also have adduced evidence in support of the plea that the appellant tried to board a running train at Tallapusalapalle RS and in that process, he fell and sustained injuries. The decision cited, is therefore, not applicable to the facts of the present case.

10. However, the Apex Court in Appeal (Civil) No. 6898 of 2002 in Union of India v. Prabhakaran Vijayakumar and Ors. 2008 (6) SCJ 209 on 5-5-2008, in similar circumstances held as follows:

We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an "accidental falling of a passenger from a train carrying passengers". Hence, it is an "untoward incident" as defined in Section 123[c] of the Railways Act.

11. In the above case also, the deceased attempted to board the train and fell down from the running train and the Tribunal held that it was not an untoward incident within the meaning of expression of Section 123[c] of the Act. The High Court of Kerala held that the deceased came within the expression "accidental falling of a passenger from a train carrying passengers", which is an untoward incident. The Apex Court held that "in either case whether the deceased was actually inside the train when she fell down or she was only trying to get into the train, it amounted to accidental falling of a passenger from a train carrying passengers and hence, it is an untoward incident, within the meaning of Section 123[c] of the Act". It was further held that "since the provision for compensation in the Railways Act is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one and the interpretation which advances the object of the statute and serves its purpose should be preferred."

It was further held as follows:

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 traveling 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.

In the above case, the Apex Court held that "death of the deceased while trying to board the train did not occur because of any of the reasons mentioned in Clauses (a) to (e) of the proviso to Section 124-A and hence, the case was clearly covered by the main body of Section 124-A of the Act". It was further held that "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."

12. In the above case also, the Apex Court rejected the contention of the Railways that there was no fault on their part and there was contributory negligence on the part of the deceased in trying to board the running train and therefore, the railways are not liable for compensation. In view of the principles laid down by the Apex Court in the above decision, which are squarely applicable to the facts of the present case, it must be held that the impugned order of the Tribunal rejecting the claim on the ground that the appellant had fallen from the train due to his own negligence while boarding and therefore, the railways are not liable to pay compensation, in view of the exception contained in the proviso to Section 124-A of the Act, is not sustainable and the same is accordingly set aside. As held by the Apex Court in the above decision, the expression "accidentally 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 and in view of applicability of doctrine of strict liability in respect of claims arising u/s 124-A of the Act, it is wholly irrelevant as to who was at fault. The respondent-Railways is therefore held liable to pay the compensation to the appellant for the injuries sustained by him. Hence, the matter is remitted to the Tribunal for the purpose of fixing the appropriate amount of compensation payable to the appellant.

13. In the circumstances, the order dated 10-11-2006 passed in O.A.A. No. 45 of 2004 by the Tribunal is set aside and the matter is remitted to the Tribunal for

the purpose of fixing the appropriate amount of compensation payable to the appellant. The Tribunal is directed to dispose of the application within three months from the date of receipt of copy of this judgment.

14. In the result, the appeal is disposed of accordingly.