

(2022) 06 TEL CK 0049

In the Telangana High Court

Case No : Civil Miscellaneous Appeal No. 737 Of 2018

Bhaskar Rao Changle

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 17-06-2022

Acts Referred:

Railways Act, 1989 — Section 124A

Citation : (2022) 06 TEL CK 0049

Hon'ble Judges : G. Anupama Chakravarthy, J

Bench : Single Bench

Advocate : S Chandrasekhar, A Praveen Kumar Yadav

Final Decision : Allowed

Judgement

1. This appeal is filed challenging the order dated 03.05.2018, passed by the Railway Claims Tribunal, Secunderabad Bench in O.A.II (U).No.54 of 2009, dismissing the said application.

2. The applicants before the Tribunal are the appellants in this appeal. They filed the aforesaid O.A. claiming compensation of Rs.4 Lakhs for the death of their son Sanjog Changle, who died in an untoward incident while travelling in Train No.792 –Holiday Special Express from Chandrapur to Sirpurkagaznagar on 11.10.2008. It is alleged that the deceased fell down from the running train at Asifabad Road Railway Station on 11.10.2008, sustained severe injuries and died while shifting to Mancheria for treatment. It is also the contention of the applicants before the Tribunal that the journey ticket of the deceased was lost during the incident.

3. A detailed counter was filed by the Railways before the Claims Tribunal contending that the applicants have failed to prove that the deceased was a bonafide passenger and that the report of the Divisional Railway Manager (DRM) disclose that the deceased did not fall from the train accidentally, but rather fell down while de-training from the running train at the Asifabad Road Station.

Therefore, the applicants are not entitled for any compensation.

4. Basing on the pleadings before the Tribunal, the following issues were framed:

1. Whether the application is maintainable ?

2. Whether the Applicants are dependents of the deceased ?

3. Whether the deceased was a bona fide passenger of train No.792 Express while traveling from Chandrapur to Sirpur Kagaznagar on 11.10.2008 ? Whether the deceased died as a result of an untoward incident of accidental fall from the said train ?

4. Whether the Applicants are entitled to the compensation as claimed by them in the application ?

5. To what relief ?”

5. On behalf of the applicants, applicant No.1 i.e. the father of the deceased was examined as AW-1 and exhibits A-1 to A-7 documents are marked. Exs.A-1 to A-3 are the attested copies of FIR, Inquest report and postmortem report of the deceased respectively, Ex.A-4 is the legal heir certificate, Exs.A-5 to A-7 are the copies of Ration Card of AW-1, Election Voters list and School leaving certificate of the deceased respectively. On behalf of Railways, RWs.1 and 2 are examined and Exs.R-1 and R-2 are marked. RW-1 is Mr.Rajanogili, Pointsman and RW-2 is Mr.Manoj Kumar Kanav, S.I., RPF. Ex.R-1 is the copy of message sent by the Deputy Station Superintendent, Bellampally and Ex.R-2 is the Divisional Railway Manager's report.

6. On perusal of Ex.A-1/FIR, it is evident that the Police have received information that the deceased had fallen from the running train and it was an accidental fall. The inquest report also discloses that the deceased accidentally fell from the train and RW-2/RPF S.I. Sri Manoj Kumar is also one of the panch witnesses to the inquest report. The information at that particular point was that the deceased had accidentally fallen from the train. But contrary to it, the DRM's report disclose that the deceased is not a bonafide passenger of the train and one person observed while the deceased was trying to get down from the running train and inspite of several warnings not to get down, the deceased tried to get down from the train and sustained severe injuries. It is pertinent to mention that there is no iota of recital in the DRM's report, as to who was that person, who had observed while the deceased was trying to get down from the running train and as to how the DRM came to the conclusion that the deceased was not a bonafide passenger of the said train. The Railway Claims Tribunal, by completely relying on the evidence of RW.1/the Pointsman and RW.2/Sri Manoj Kumar (RPF S.I.) and also on Ex.R-2/DRM's report, dismissed the claim of the applicants.

7. On perusal of the record, it is evident that on 11.10.2008, a message was sent by the Deputy Station Superintendent of South Central Railway, Bellampalli

stating that "a male person aged 45 years, had fallen from train No.792 express which was passing through via DN loop line at Asifabad" and the passenger was seriously injured and was taken to hospital for treatment in 108 ambulance. Even the first information sent by the Superintendent of Asifabad Station reveal that a person had fallen from the train, but not while getting down from the running train. The DRM's report is dated 16.05.2009, whereas, the incident took place on 11.10.2008, thus, the statements recorded by the DRM are at a very belated stage. The Form-I, dated 13.05.2009 i.e. the report about the untoward incident issued by the Assistant Station Manager, Asifabad Road Station, also disclose that the deceased had fallen down while the train was passing through loop line and it was noticed by RW-1 but the train did not stop. Form-II, dated 14.05.2009 was signed by RW-2/S.I., RPF. These two documents are also given after the span of 6 months from the date of incident. In the cross-examination, RW-2 has specifically stated that there is no document pertaining to the accident, where, it is recorded about the Pointsman seeing the deceased getting down and it is also admitted by RW-2 that the inquiry was conducted after six months of the incident. RW-2 further stated that the Deputy Station Superintendent has agreed and given him the statement that the Pointsman had witnessed the incident, but the said fact was not mentioned in Ex.R-2/DRM's report and also that the Deputy Station Superintendent had given wrong message. It is also admitted in the cross-examination of RW-2 that it was not mentioned in the inquest report that the deceased was trying to get down from the train and that the Pointsman had tried to stop him and it was only mentioned that it was an accidental fall from the train. He further admitted that he was a panch witness to the panchanama i.e. Ex.A-2 and signed as a panch witness and that the Pointsman i.e. RW-1 was also a witness to the inquest report/Ex.A-2. RW-2 admitted that Ex.A-2 clearly discloses about the accidental fall of a person from the train. The evidence of RW-1, who is the Pointsman, also discloses that after two months of the incident, his statement was recorded by the RPF and the train was in motion while he was giving the signal.

8. Though RW.1 is said to be an eyewitness to the incident, there is no mention in Ex.A-2/inquest report about the de-training of deceased and that he was not a bonafide passenger.

9. The learned counsel for the appellants has relied on the judgment of the Hon'ble Supreme Court in Union of India v. Rina Devi [Civil Appeal No.4945 of 2018, dt.09.05.2018], wherein, in para 17.4, it is held as under :

"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.”

10. The learned counsel for appellants has also relied on the judgment of this Court in Shaik Mahboob Basha & others v. Union of India 2016 ACJ 1882, wherein, it is held at para 8.6 as under :

“As rightly contended, it is undisputed that a person will not be permitted even onto the platform without a platform ticket and that a person will not be permitted to travel in a train without a valid ticket with him and that a duty is enjoined upon the officers of the Railways to regulate the entry of passengers to the platform or into the railway station and into the compartments of trains and that the Railways have sufficient mechanism and manpower to regulate the same. Therefore, it can be presumed that every person entering onto the platform holds a valid platform ticket until the contrary is proved.”

11. In para 9 of the aforesaid judgment, it is further held as under :

“9. POINT No.2 :

Dealing with the aspect as to whether the deceased had died in an untoward incident, viz., and accidental fall from the running train, it is necessary to first refer to the relevant provision of law.

Section 124-A of the Railways Act, 1989 reads as under:

“124-A. Compensation on account of untoward incident:- 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 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, 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 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.”

From a reading of the above provision, it is obvious that the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. If any bona fide passenger having a ticket, as defined under clause (29) of Section 2 of the Act dies in an untoward accident, it is incumbent upon the Railways to pay the compensation to the victims without putting up any dispute, provided the death of the deceased does not fall within any of the five exceptions (a) to (e), as indicated above. Since a season pass, which authorised him to travel between Gudur and Nellore railway stations and that the accident had occurred at Tettu railway station beyond the Nellore Railway station at which railway station, there is no schedule stop for the train and simply because the deceased was standing near the door of the compartment at the time when he had fallen down from the running train, it is being sought to be stated that his said act is a negligent and criminal act and that the injuries sustained by him are self-inflicted injuries. This Court, on point no.1, had already held that the deceased is holding a valid ticket and that therefore, he is a bona fide passenger. Hence, the assumption that he might have jumped from the running train cannot be countenanced. Simply because the deceased was standing near the door of the compartment at the time when he had fallen down from the running train, it is being sought to be stated that that his said act is a negligent and criminal act. Be it noted that a criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. As rightly contended by the learned counsel for the applicants, when once the Railways issues tickets to passengers to board trains, it is for the Railways to take steps and appropriate measures to provide accommodation in the compartments of trains to all the passengers holding valid tickets and take security measures to close the doors before the trains move from the platforms and open on arrival of the train on the platforms. The Railways having issued tickets to passengers to board trains, which are overcrowded, cannot put the lives of the citizens to risk and shirk its responsibility with regard to safety and security of the passengers and then contend that it is not liable to pay compensation. Therefore, in the facts and circumstances of the case, it cannot be said that the death of the deceased is on account of self-inflicted injury or his own criminal act. As a result, it must be held that the falling down from the train was, thus, clearly accidental. Point No.2 is, accordingly, answered in favour of the appellants/ applicants.”

12. The learned counsel has further relied on the judgment of Hon'ble Supreme

Court in Jameela & others v. Union of India (2010) 12 SCC 443, wherein, it is held that falling from train to death due to one's own negligence does not come within any exception enumerated in Section 124-A of the Railways Act, 1989 so as to deny compensation.

13. All the aforesaid judgments relied upon by the learned counsel for appellants squarely apply to the facts of the present case. Therefore, the appellants herein are entitled for compensation for the death of their son Sanjog Changle, who died in an untoward incident while travelling in Train No.792 – Holiday Special Express from Chandrapur to Sirpurkagaznagar on 11.10.2008.

14. As per the Schedule given by the Ministry of Railways vide Notification dated 22nd December, 2016, the Railways are liable to pay compensation of Rs.8,00,000/- for the death of its passengers. Therefore, the appellants are entitled to compensation of Rs.8,00,000/-.

15. Accordingly, the appeal is allowed and the order dated 03.05.2018, passed by the Railway Claims Tribunal, Secunderabad Bench in O.A.II (U) No.54 of 2009, is hereby set aside. The 1st respondent-Railways shall pay compensation of Rs.8,00,000/- to the appellants within a period of three months from the date of receipt of a copy of this judgment. Out of the compensation amount, appellant Nos.1 and 2 being parents of the deceased, are entitled for Rs.4,00,000/- each. On deposit, the appellants are permitted to withdraw their shares of compensation.

16. Pending miscellaneous applications, if any, shall stand closed.