
(2004) 09 AP CK 0003
In the Andhra Pradesh High Court
Case No : CMA No. 2286 of 1999

N. Buchilingam and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123, 124(A), 2

Citation : (2006) ACJ 2388 : (2004) 6 ALD 302

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D. Ramalinga Swamy, for the Appellant; B.H.R. Chowdary, for the Respondent

Judgement

L. Narasimha Reddy, J.—Claimants in O.A.A. No. 51 of 1998 before the Railway Claims Tribunal, Secunderabad Bench (for short "the Tribunal") filed this appeal u/s 23 of Railway Claims Tribunal Act.

2. The appellants submitted their claim before the Tribunal alleging that late, N. Balaraj, son of appellant Nos. 1 and 2 and the elder brother of appellant No. 3, left Kollapur, his native place for Hyderabad on 11.1.1998 with a view to travel to Bombay on 12.1.1998. He is said to have purchased a journey ticket to travel from Secunderabad to Bombay by 1020-Konark Express. It is stated that they came to know that he died by falling from the train at Vikarabad, only after the dead body was recovered on 14.1.1998. They claimed compensation on account of the death of the deceased.

3. The respondent filed a written statement denying its liability to pay the compensation. According to it, there was no untoward incident at Vikarabad Railway Station on 12.1.1998 and that the claim is made with a mala fide intention for unlawful gain. It is further stated that their keyman, by name Lakshmaiah found a dead body near the "A" Cabin of Vikarabad Railway Station at 7:30 a.m. on 14.1.1998, and there is nothing to indicate that the death of the

person took place on account of any accident or accidental fall. As to the allegation that the deceased purchased a ticket bearing No. 00608844, the respondent pleaded that though the said ticket as well as a overleaf of Excess Fare Ticket (E.F.T) issued on 12.1.1998 were recovered from the dead body, the deceased cannot be said to be a bona fide passenger, since the deceased was found dead two days later. It has put the appellants to strict proof of the allegations" made by the latter. The Tribunal rejected the claim through its order dated 18.6.1999. Hence, this appeal.

4. Sri D. Ramalinga Swamy, learned Counsel for the appellants, submits that the deceased was a bona fide passenger in the train bearing No. 1020-Konark Express as is evident from the journey ticket, the E.F.T. and the reservation chart, and that the death occurred on account of an accidental fall. He submits that the recovery of the dead body on 14.1.1998 is obviously on account of failure of the railway staff to notice the same and that factor by itself does not belie the very occurrence. He further contends that R.Ws.1 and 2, who were examined on behalf of the respondent, have spoken contrary to the record and their evidence cannot be relied upon.

5. Sri B.H.R. Chowdary, learned Standing Counsel for the respondent, submits that though the travel ticket may have been purchased at Secunderabad, the record discloses that the E.F.T. was collected at or after Tandur Station, and since the dead body was recovered much before that station, the deceased cannot be treated as a bona fide passenger on the basis of such ticket. He contends that the dead body was found at a place nearer to the "A" Cabin of Vikarabad Station, the medical report discloses that the death might have occurred about 24 hours before conducting the post-mortem examination on 14.1.1998. And in that view of the matter, it is difficult to imagine that the deceased died while travelling in the train on 12.1.1998. By referring to various documents, learned Counsel submits that the respondent cannot be held liable to pay the compensation.

6. On the basis of the pleadings, the gist of which is referred to above, the Tribunal framed three issues as under:

1. Whether the Applicants are dependents of the deceased?
2. Whether the deceased was a bona fide passenger?
3. Whether the accidental fall as alleged is not an untoward incident?

As regards the first issue, the respondent did not dispute the relationship of the appellants with the deceased. Hence, the Tribunal answered the same in favour of the appellants. On Issues 2 and 3, the Tribunal found that the deceased was not a bona fide passenger and that his death was not on account of accidental fall. These findings were recorded mainly on account of the gap between the time, when the train had crossed Vikarabad Station on 12.1.1998, and the time at which the dead body was noticed. Reliance was also placed on the depositions of R.Ws.1 and 2.

7. The question as to whether the victim of an accident, covered by the Railway's Act, is a bona fide passenger or not, is to be decided mainly on the purchase of ticket for travelling in the concerned train, by the victim. There may be other circumstances also, to decide this aspect. Where the person is alive but has only sustained injuries, he would be in a better position to explain the facts touching this aspect. Where, however, the victim of the accident is no more, the finding has to be recorded on the basis of circumstantial evidence. Recovery of the ticket from the dead body is treated as one of the important pieces of evidence in holding that the deceased was a bona fide passenger.

8. In the present case, a peculiar situation existed. A travel ticket issued on 12.1.1998 at Secunderabad Station and an E.F.T issued during the course of journey on the same day were recovered from the dead body. The body, however, was recovered one and a half days subsequent to the time of journey. The delay in noticing the dead body, gave scope to the respondent to plead that the deceased was not a bona fide passenger.

9. On behalf of the appellants, P.Ws.1 and 2 were examined and certain documents were marked. P.W.1 is the first appellant. Since, he has neither witnessed the accident nor was the person, who has last seen the deceased, his evidence is of no use. P.W.2 accompanied the deceased to the Railway Station on 12.1.1998. Even his evidence is not of much use. The Tribunal was guided mostly by the evidence of R.Ws.1 and 2. R.W.1 is the T.T.E of compartment No. S4 of that train on that day and R.W.2 is the keyman employed at the place, where the dead body was noticed.

10. The evidence of R.W.1 discloses that a passenger holding a ticket bearing No. 00608844 from Secunderabad to Chatrapati Shivaji Terminal, Mumbai (C.S.T.M.) came to him at Tandur Station seeking allotment of a berth and since berth No. 19 in Secunderabad quota was found vacant, he allotted the same to him. He stated that the berth was allotted after Tandur Station and the possibility of the E.F.T being found with the person at Vikarabad Station does not arise. The reservation chart of the concerned compartment as well as the E.F.T. received by him were made part of the record. The evidence of R.W.2 is to the effect that he found the dead body on early hours of 14.1.1998. In his cross-examination, it was elicited that he was off the duty on 13.1.1998.

11. A perusal of the reservation chart discloses that Berth Nos. 1 to 24 in compartment No. S4 were earmarked for Secunderabad Station. The chart does not disclose that there is any quota for Tandur in that compartment. There would have been necessity for R.W.1, to have waited till the train crosses Tandur Station, for allotment of unoccupied berths, if only he was handling the berths meant for Tandur Station. The record discloses that he allotted Berth No. 19, which is part of Secunderabad quota, to the deceased. The vacancy position of berths earmarked for Secunderabad would be evident even before the train leaves Secunderabad. Either way the T.T.E. does not have to wait till the train crosses Tandur for allotment of the unoccupied berths of Secunderabad quota.

The reservation chart shows that Berth No. 19 was allotted to the passenger holding ticket bearing No. 00608844 and that he was issued E.F.T bearing No. 229074. These two were the tickets recovered from the body of the deceased. Hence, the version put forward by R.W.1 that he allotted the berth only after the train crossed Tandur is not acceptable.

12. So far as R.W.2 is concerned, he vouched for noticing and recovering the body of the deceased at 7:30 hours on 14.1.1998. On the basis of his statement as well as the observation in the post-mortem report that the deceased might have died 24 hours prior to the post-mortem examination, the respondent contended that the deceased cannot be said to have died during the course of journey, undertaken on the strength of the tickets referred to above. The question as to at what point of time, the deceased may have died cannot depend on the time, at which the dead body was noticed. It may be true that the dead body was found at a place fairly nearer to the cabin. However, it was not stated that it is such a place, where people were passing frequently. R.W.2, the keyman, deposed that he is in-charge of K.M. Nos. 109 to 111 and that he noticed the dead body at K.M.No. 111/7-8. He stated that it is his duty to patrol the line everyday. An inference was drawn to the effect that had the dead body been there on 12th or atleast on 13th January, 1998, it could certainly have been noticed by R.W.2. This proceeds on the assumption that R.W.2 carried his patrolling duty on 13.1.1998. However, it was elicited through him that on every Tuesday, he is off the duty and that 13.1.1998 was Tuesday. The respondent did not plead that a substitute was posted in place of R.W.2, muchless, such a person was examined. Under these circumstances, it cannot be said that the deceased was not a bona fide passenger. On the other hand, the recovery of the tickets, the validity of which is not even doubted, clearly establishes that he was a bona fide passenger. Mere delay in recovery of a dead body, that too, at a place hundreds of kilo meters away from the place of residence of the deceased, cannot be a factor to doubt the bona fides.

13. The other issue touches the question is as to whether the death of the deceased occurred on account of accidental fall. The fact that the dead body was noticed and recovered by the Railway Staff near railway track prima facie discloses that the death of the deceased occurred on account of an accident. The nature of incidents that may result in injuries or death of bona fide passengers, involving a train is elaborately dealt with in Section 123 of the Railways Act. The term "accidental fall" referred to in Clause (c) thereof, does not require that the accident shall be of a particular nature. Once an individual receives injuries or succumbs to them, the liability of the railways arises. It is saved only under certain circumstances referred u/s 124-A of the Act. As long as the circumstances stated therein are not pleaded or proved, the liability against the respondent to pay compensation subsists. Being the provisions intended for the welfare of the victims of accident or their dependants, Sections 123 and 124-A need to be given a liberal construction. There are no factors to indicate that there was any attempt on the part of the appellants to present a fictitious claim. The

fact that the dead body was found at a place hundreds of kilometers away from their residence, the deceased was seen of by P.W.2 at the Railway Station and that tickets were recovered from his body, clearly disclose that the death occurred only on account of accidental fall from the train. Therefore, the appellants are entitled to be paid the compensation as provided for under the relevant provisions. The compensation provided for such instances under the relevant provisions as they stand now is Rs. 4,00,000/-.

14. Hence, the order under appeal is set aside and the civil miscellaneous appeal as well as the O.A.A. are allowed directing that the appellants are entitled to be paid the compensation. At the relevant point of time, the third appellant was said to be dependent upon the deceased. The only persons to challenge this assertion were Appellants 1 and 2. They have not chosen to do so. Hence, the compensation is apportioned among the appellants as under:

Appellant No. 1 : Rs. 1,75,000/-

Appellant No. 2 : Rs. 1,75,000/-

Appellant No. 3 : Rs. 50,000/-

15. The amount shall not carry any interest if it is paid within two months from today. If it remains unpaid thereafter, it shall carry interest at the rate of 9%.