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**(2009) 10 AP CK 0061**  
**In the Andhra Pradesh High Court**  
**Case No : C.M.A. No. 1069 of 2009**

Parisa Anjali and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 07-10-2009

**Acts Referred:**

Railways Act, 1989 — Section 124, 124A, 2(29)

**Citation :** (2011) ACJ 693 : AIR 2010 AP 67 : (2010) 1 ALD 225 : (2010) 1 ALT 709 : (2010) 3 RCR(Civil) 472

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** K.S.N. Murthy, for the Appellant; B.H.R. Chowdary, for the Respondent

**Final Decision :** Allowed

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## Judgement

L. Narasimha Reddy, J.—One P. Narasimha Rao, husband of the 1st appellant and father of appellants 2 to 4, boarded a Train, bearing No. 6039 - Ganga Kaveri Express, at Vijayawada, on the intervening night of 4th and 5th January, 1997, to go to Warangal. He accidentally fell from the train at Mahaboobabad and died, while undergoing treatment. The appellants filed O.A.A. No. 47 of 1997 before the Secunderabad Bench of the Railway Claims Tribunal (for short "the Tribunal"). It was pleaded that the deceased was a bona fide passenger and died in an untoward incident. The respondent opposed the claim, by filing written statement. The appellants were put to strict proof of the facts pleaded by them, including the fact that they are the legal heirs of the deceased. The Tribunal dismissed the claim petition, through its order, dated 04-12-2007. Hence this appeal.

2. Learned Counsel for the appellants submits that there was no dispute, as regards the fact that the deceased was travelling in Ganga Kaveri Express, and that he has fallen and died, while the train was in motion. He contends that the evidence of A.W.-2 and the Pointsman of Mahaboobabad cabin, clearly

established that the death was due to accidental fall. He submits that the only ground on which the Tribunal rejected the claim was that, the ticket held by the deceased was not valid for that particular train. Learned Counsel contends that the view taken by the Tribunal is untenable in law.

3. Sri B.H.R. Chowdary, learned Counsel for the respondent, on the other hand, submits that the deceased has fallen from the train, on account of his gross negligence, and the Railways cannot be held liable to pay the compensation. He further submits that the deceased was not a bona fide passenger, inasmuch as the ticket held by him, was not valid for that train.

4. The Tribunal framed three issues for its consideration, on the basis of the pleadings of the parties. They are,

(i) "Whether the Applicant is dependent of the deceased?

(ii) Whether the deceased was a bona fide passenger?

(iii) Whether the accidental fall as alleged is not an untoward incident?

5. Issues 1 and 3 were answered in favour of the appellants. The finding on issue No. 3 reads as under:

The above facts leave no doubt that the deceased fell down from the train as the train was on the run and as a result of the injury died in hospital.

6. The only ground on which the Tribunal rejected the claim was that the ticket held by the deceased was not valid for the concerned train.

7. Therefore, it needs to be seen, as to whether the deceased was a passenger of the train at all.

8. Sections 124 and 124-A of the Railways Act, 1989 (for short" the Act") provide for payment of compensation to passengers, in the event of their sustaining injuries, or their legal heirs, if they die, in an accident, or untoward incident. Under both the provisions, the liability arises, whether or not, there has been any wrongful act, or negligence, or default, on the part of the railway administration. The two ingredients that are necessary to attract the liability are, that the accident, or untoward incident, must have occurred to a passenger train, and that the victim was a passenger in the train. The Word "passenger" is defined under Sub-section (29) of Section 2 of the Act, as to mean, "a person travelling with a valid pass or ticket".

9. In the instant case, the deceased was travelling in Ganga Kaveri Express. The fact, that he has fallen from it and sustained injuries, was spoken to, by none other than the pointsman, who was on duty, at the relevant point of time at Mahaboobabad . A.W.2, by name, B. Subba Rao, deposed that, himself and the deceased were travelling from Vijayawada to Warangal, to collect money from some persons. It is stated that he purchased two tickets from Vijayawada to Warangal, and both of them were travelling in Ganga Kaveri express. They

appear to have boarded in a general compartment of that train. The witness said that, he noticed the absence of the deceased, only when the train reached Warangal. The Tribunal believed his evidence, and found that he was travelling along with the deceased.

10. On behalf of the respondent, the Booking Clerk at Vijayawada Station was examined as R.W.1. He stated that on 04-01-1997, 170 tickets, from Vijayawada to Warangal, were sold during his shift. According to this witness, there is distance restriction for Tamil Nadu and Ganga Kaveri Express trains, which bar a passenger from travelling for a distance of less than 600 KMs, and the distance between Vijayawada and Warangal is far less than that. However, there is nothing on record to show that either the ticket issued to the deceased contained any information to the effect that the holder thereof cannot travel in the Ganga Kaveri Express between Vijayawada and Warangal. Further, the record does not disclose that any effort was made by the Railway Administration to prevent, or discourage, the passengers going to Warangal, from boarding that train at Vijayawada. In the absence of such measures, the deceased, who purchased a ticket and boarded the train, it cannot be said that the deceased was not a passenger.

11. Even if there is any possibility for treating the ticket held by the deceased, as not valid one, he does not cease to be a passenger, in the context of the extension of benefits, under Sections 124 and 124-A of the Act. What becomes material, in this regard, is the intention of the person, who was travelling in the train. It is only when the person boards the train with a clear intention to travel in it, without purchasing a ticket, that he can be treated as not a passenger. Take for instance a situation, where a person finds that the train in which he has to travel, is about to start, by the time he reached the station, and he does not have the time to purchase the ticket. Though he does not hold the ticket, he may still board the train with an intention to pay the fare to the TTE. Such a person can still be treated as bona fide passenger, both, when he boarded the train without ticket and after he pays the fare to the TTE.

12. This discussion is undertaken, only to drive home the point that, much would depend upon the attendant circumstances and the intention of the concerned individual, as regards the manner in which he intends to travel in the train. Mere technical defect vis-a-vis a ticket, which was otherwise validly purchased, does not by itself disentitle the passenger, or his legal heirs, from being extended the benefit under Sections 124 and 124-A of the Act. Therefore, the view taken by the Tribunal cannot be sustained in law.

13. It has already been mentioned that the deceased was very much travelling in the train on the basis of ticket and that the fact that he has fallen from the train, was evidenced by a railway official himself i.e., pointsman.

14. Therefore, the C.M.A. is allowed and the order under revision is set aside. Consequently, O.A.A. No. 47 of 1997 is allowed, awarding a sum of Rs.

4,00,000/- (four lakhs) , as compensation, to the appellants. In view of the fact that there was delay in presentation of the appeal, it is directed that the amount shall not carry interest from the date of presentation of the O.A., till the expiry of one month from the date of this order. Thereafter it shall carry interest at the rate of 7.5%, per annum, till the date of deposit. Out of the sum of Rs. 4 lakhs, the 1st appellant shall be entitled to Rs. 1,90,000/- and appellants 2 to 4, for Rs. 70,000/-, each.

15. There shall be no order as to costs.