
(2015) 09 AP CK 0013
In the Andhra Pradesh High Court
Case No : CMA No. 92 of 2008

Shaik Mahaboob Basha and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Citation : (2015) 6 ALD 510 : (2016) 1 ALT 1

Hon'ble Judges : M. Seetharama Murti, J.

Bench : Single Bench

Advocate : T.L. Krishna Prasad, for the Appellant; Pushpinder Kaur, for the Respondent

Final Decision : Allowed

Judgement

M. Seetharama Murti, J.—This is an appeal by the unsuccessful applicants assailing the judgment dated 5.11.2007 of the III Member of Secunderabad Bench of the Railway Claims Tribunal, Secunderabad passed in OAA No. 253 of 2001. I have heard the submissions of the learned Counsel for the applicants and the learned Standing Counsel for Union of India/Railways. I have perused the material record.

2. The history of the case, in brief, is this:

The applicants are the parents and the sister of Shaik Samdani Basha, the deceased. They had filed the claim petition before the Railway Claims Tribunal claiming a compensation of Rs. 4,00,000/- for the loss sustained by them on account of the untimely death of the said deceased due to his involvement in an untoward incident, viz., accidental fall from a train. The Railways had resisted the said claim by filing a counter before the Tribunal. At trial, A.Ws. 1 and 2 were examined on the side of the applicants and Exhibits A1 to A5 were marked. While adjudicating the lis, there was no concurrence between the two Members of the Bench. One Member (Technical) had held in favour of the applicants holding that they are entitled to compensation as prayed for. However, the Judicial Member

had held that the deceased is not a bona fide passenger and that therefore, the applicants are not entitled to any compensation. Therefore, the matter was referred to a third Member. The third Member concurred with the finding of the Judicial Member and had dismissed the claim application of the applicants. Therefore, the applicants are before this Court.

3. The learned Counsel for the applicants had contended as follows:

The applicants had sufficiently established their pleaded case that the deceased had boarded the Coromandel Express to go to Vijayawada, on that day, having purchased a II Class Ticket, and that when the train had reached KM No. 239/2-4, he had fallen down from the said train at Tettu Railway Station due to a jerk and was dragged on the sleepers and that during the course of the accident, his train ticket was lost. However, the said facts and the evidence adduced were not properly appreciated by the Judicial Member and the III Member of the Tribunal. The finding that the deceased is not a bona fide passenger is not based on accurate consideration of facts and proper appreciation of the evidence. It was erroneously held that the Coromandel Express had no scheduled halt at Tettu Railway Station. It was erroneously presumed that the deceased had tried to alight from the running train and that therefore, the incident is a consequence of a wrongful act, neglect and criminal act on the part of the deceased. The learned Chairman of the Tribunal ought to have held that the deceased was a bona fide passenger and that the fall of the deceased from the train is an accidental fall and ought to have concurred with the finding of the Technical Member instead of concurring with the finding of the Judicial Member. The order, which is impugned, is contrary to the facts pleaded and the evidence brought on record. Therefore, the order impugned is unsustainable and is liable to be set aside. Just compensation may be awarded to the appellants/applicants.

4. On the other hand, the learned Standing Counsel for the Railways had contended as follows:

The deceased is admittedly holding a season pass to travel between Gudur and Nellore. The incident had admittedly occurred at Tettu Railway Station beyond Nellore. Therefore, the pass he was holding did not authorize him to travel beyond Nellore. At the time of the inquest certain articles were recovered from the dead body and the close by place. But, the II Class Railway Ticket which was allegedly purchased by the deceased for undertaking travel upto Vijayawada was not found either on the wearing apparel of the deceased or at the scene of incident. AW 2, who was examined to establish that the deceased had purchased a ticket is not a truthful witness and he is an interested witness. The deceased, who was holding a pass to travel upto Nellore, having tried to jump from the moving train at Tettu Railway Station had contributed to the incident by his own negligence and criminal act; and, the injuries are self-inflicted. The fall of the deceased from the train is not an accidental fall. Therefore, the learned Chairman was right in holding that the deceased was not a bona fide passenger and that his fall is not an accidental fall. The order impugned does not call for any

interference. There is no merit in the appeal and the appeal is devoid of merit and is liable to be dismissed.

5. I have carefully gone through the record. I have bestowed my attention to the facts and I have noted the submissions.

6. The points for consideration are:

(i) Whether the deceased was a bona fide passenger of Train No. 2842 Coromandel Express from Chennai to Vijayawada, on 21.7.2001?

(ii) Whether the deceased died as a result of an untoward incident of accidental fall from the train?

(iii) Whether the applicants are entitled to award of the compensation as prayed for?

(iv) Whether the impugned order is unsustainable under facts and in law as contended by the applicants?

(v) To what relief?

Point No. 1:

7. The facts of the matter and the contentions of both the sides are already stated supra, in detail.

8. To begin with, the case of the applicants, who are the parents and the sister of the deceased, in brief, is as follows: "On 20.7.2001, the deceased alongwith a relative, Shaik Alla Baksh (AW 2), went to Chennai for purchase of lorry spare parts. After purchase of some spare parts, the deceased who had some work at Vijayawada had asked his relative to remain at Chennai to purchase the remaining spare parts. Thereafter, on 21.7.2001, the deceased alongwith the said relative came to Chennai Railway Station at about 8.30 p.m. and had purchased a journey ticket from Chennai to Vijayawada and had boarded the train. After departure of the train, the said relative had left for market at Chennai for the purchase of other spare parts. While traveling in the said train, the deceased, who was standing near the door of the train, had fallen down at Tettu Railway Station due to a sudden jerk. Thus, his fall from the train is an accidental fall. After his fall, his body was dragged to a distance of 30 sleepers. In the facts and circumstances of the case, the claimants are entitled to compensation."

9. The railways filed a written statement resisting the claim and inter alia contending as follows:

The material allegations in the petition of the applicants are false. The deceased had purchased a journey ticket upto Vijayawada for his travel in the said Coromandel Express's false. According to the control message of the Station Superintendent of the Tettu Railway Station forwarded to the Government Railway Police, Ongole on 21.7.2001, a body of a male person aged 30 years was found to have been run over by Coromandel Express (2842). From the place of

the incident and the wearing apparel of the deceased, the Identity Card, the railway season ticket card, cycle key, watch, tiffin box, pen, pocket comb and a courier service receipt were recovered. The inquest revealed that the deceased was not a businessman and was employed with Forest Range Officer, Narasingpet, Gudur. He was performing up and down journey between Nellore and Gudur on a II Class Season Ticket. The Coromandel Express has no schedule stop at Tettu Railway Station, which is beyond Nellore. The deceased being a regular commuter obviously might have boarded the train at Gudur instead of waiting for a passenger train; and, having come to know that the train, which he had boarded does not stop at Nellore might have jumped out of the train at Tettu in a rash and negligent manner and thereby, he might have subjected himself to the accident. Therefore, the fall is not an accidental fall and is only due to his negligence and criminal act. If really, he had possessed a valid ticket for his journey upto Vijayawada, the same would have been found on his dead body or at the scene of incident; but, it was not so. When the other belongings of the deceased were found on the dead body, the theory that the ticket alone was lost cannot be accepted. Since the deceased is not a bona fide passenger and as the fall from the train was due to his own criminal act and as the injuries are self-inflicted, the Railways have no liability to pay any compensation. Hence, the claim application is liable to be dismissed. The claim application was rightly dismissed. The appeal is devoid of merit and is liable to be dismissed.

10. AW 1, the 1st claimant, who had deposed in line with the pleadings in the application, is admittedly not an eye-witness to the accident. He only deposed about his receiving news about his son's death in a railway accident and his identifying the dead body of his son. Then, what remains is the evidence of AW 2, who was said to have accompanied the deceased when the deceased had boarded the train at Chennai for traveling upto Vijayawada after purchasing a II Class Ticket. In his affidavit filed in lieu of examination-in-chief he had supported the version of the applicants that the deceased had purchased a ticket before boarding the train and had further affirmed that after the deceased had boarded the train and the train had left Chennai Railway Station, he had left the Railway Station. In his cross-examination, it was elicited that he also belongs to Nellore and that he is a neighbor of the deceased. He had asserted in the cross-examination that he and the deceased went to Chennai Railway Station and that the deceased had purchased a ticket for his journey from Chennai to Vijayawada and that he had also purchased a platform ticket and the said ticket was purchased by the deceased for his journey on Coromandel Express and that even before the train had left the station, he had left the platform. He had denied the suggestion that due to his acquaintance with the deceased, he is speaking falsehood. Though RW 1, the Mail/Express Guard was; examined, he is not an eye-witness to the accident. In his cross-examination, he had stated that the person, who had fallen at Tettu Railway Station was holding a plastic cover; and, that the contents of the same had fallen helter skelter at the spot and that the items/articles which were seen were listed and that Exhibit R2 is the list of such

articles and that the said person was having a season ticket from Gudur to Nellore and that the Coromandel Express has no schedule halt at Tettu Railway Station and that he had sent Exhibit R3 message to the Government Railway Police for further action in the matter and that Exhibit R2 is the acknowledgment under which the articles found on the dead body and near the dead body were handed over to the Government Railway Police. Thus, the only witness who can be said to be an eye-witness in regard to the fact as to whether the deceased purchased a ticket or not is AW 2. The learned Chairman of the Tribunal branded him as a compulsive liar and did not accept his evidence; and had held that the theory sought to be proved through AW 2 that in his presence, the deceased had purchased a journey ticket for travel upto Vijayawada cannot be accepted for the reasons that a season pass from Gudur to Nellore was found at the scene and that the deceased was a regular commuter and that on the dead body and near the dead body several articles were found, but not any II Class Railway Ticket, which was allegedly purchased. However, before coming to a conclusion that whether the evidence of AW 2 is to be accepted or discarded, it is necessary to refer to the contents of the crime records, namely, Exhibits A1 and A2.

11. Exhibit A1 is the FIR, wherein the Station Superintendent concerned had stated about the noticing of the dead body. Exhibit A2 is the inquest panchanama. A perusal of Exhibit A2, the inquest panchanama would disclose that the deceased had sustained a head injury besides the following injuries: "His left hand was cut off upto shoulder, his left leg bone was broken and badly damaged and his right leg was cut off upto knee and its bones were visible." The said exhibit on further perusal would reveal that the dead body was dragged upto 30 sleepers and hence, there are oil marks on the backside of the body and that on the side line, courier service receipt on which it was written as Shaik Samdani Basha, Forest Range Office, Narasingaraopet, Gudur, Nellore-302108 and also cycle key were found and that the deceased was wearing coffee colour terry cotton pant, sky blue shirt with full hands. It is not in dispute that the dead body was found at Tettu Railway Station at KM No. 239/2-4. The inquest report further reveals that it was opined by the inquestdars that on 21.7.2001 the deceased had boarded the Coromandel Express after purchasing a journey ticket from Chennai to Vijayawada and that he was standing near the door since there was rush in the train and that while so traveling in the train, he had accidentally slipped and fallen down near Tettu Railway Station due to the jerks of the train and had sustained injuries to head and other parts of the body and had died due to heavy loss of blood.

12. The learned III Member Tribunal by the impugned order, while holding that AWs. 1 and 2 were not eye-witnesses to the incident had held that the one and only inference that can be drawn from the material placed on record is that the deceased had tried to get down from the moving train at Tettu Railway Station, where the train in question had no scheduled halt, and that in the process, he had fallen down from the train and had sustained injuries. It was further held that due to rush in the train and also due to jerk, the deceased had accidentally

slipped and fallen down from the train is only an opinion formed and an inference drawn by the panchas at the time of inquest proceedings; and that the same has no basis and it cannot be treated as a substantive piece of evidence. In the well considered view of this Court, the said approach adopted by the learned Member of the Tribunal in drawing an inference from the contents of the inquest report to the above effect is not a correct and the said inferences are not based on sound appreciation of the facts and circumstances of the case. As rightly contended by the learned Counsel, an inference also can be drawn from the facts and circumstances that the deceased who was standing near the door of the compartment of the fast moving train might have accidentally fallen down due to jerks of the train. The learned Counsel for the applicants further forcefully urged that in the absence of any rebuttal evidence, the presumption that generally every passenger holds a journey ticket unless the contrary is proved is applicable to the instant case. It is not in dispute that the dead body of the deceased was dragged to a distance of about 30 sleepers from the place, where the fall had taken place, and that the deceased had sustained severe injuries including traumatic amputation of limbs and had succumbed to the injuries. Therefore, there is a possibility and probability of some of the articles on the body of the deceased not being traced and collected from the scene. What is important to note is that the Railways did not mark the copies of the rough sketch and the observation report of the scene of accident, if any, prepared by the police to show as to where the various articles that were found at the scene were lying at the time of the observation of the scene. So, this Court is inclined to hold that the explanation of the applicants that the journey ticket purchased by the deceased to undertake the journey from Chennai to Vijayawada on that day might have been lost can be accepted.

13. 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 trams 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. Similarly it can also be presumed that every person traveling in a train possesses a valid ticket. In support of the view that such a presumption can be drawn, the learned Counsel for the applicants had placed reliance on a decision of a Division Bench of the High Court of Union of India Vs. Parameswaran Pillai and Another, . The facts of the reported case show that a mother claimed compensation on account of her son's death in an untoward incident namely a railway accident and that at that time she was not accompanying her son and that her testimony was to the effect that he was traveling in connection with his business; and that therefore, the Court took the view that in the common course of human conduct she would never have had any reason to presume or believe that he would travel without a

valid ticket. Going by the facts of the case, it was further presumed that the deceased would have traveled with a ticket and not without a ticket. In the said decision, the High Court of Kerala referred to the decision of the Supreme Court in Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, ; the decision of the Kerala High Court in Joji C. John Vs. Union of India (UOI), and that of this Court in Union of India (UOI), Secunderabad Vs. B. Koddekar and Another, , wherein it was categorically laid down that among other things the fact that the passenger had purchased a ticket and is a bona fide passenger is always to be presumed unless it is shown to be otherwise. As per the ratio in the decisions, such presumptions always swing in favour of the injured; and, if unfortunately the injured dies, such presumptions shall aid those entitled to compensation in that regard. There is no need to multiply decisions on this settled legal position. Having regard to the facts and the legal position obtaining it can safely be presumed and accepted that the deceased held a ticket and that the ticket was lost at the time of the incident. Viewed thus, this Court holds that the deceased is a bona fide passenger and that the defence based on assumptions that he was not holding a ticket cannot be countenanced. The point is accordingly answered.

Point No. 2:

14. 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 Act 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 traveling 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 authorized 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.

Point No. 3:

15. Exhibit A5, the certificate issued by the Mandal Revenue Officer, sufficiently established the relationship of the applicants with the deceased and the same is not being disputed before this Court. When once this Court recorded a finding that the deceased was a bona fide passenger and that his death was on account of an untoward incident, viz., accidental fall from the train, it follows that the Railways are liable to pay the compensation to the applicants. Accordingly, a compensation of Rs. 4,00,000/- is awarded to the applicants with interest at 9% per annum from the date of the application till the date of payment/realization. The point is accordingly answered in favour of the applicants.

Point No. 4:

16. Having regard to the reasons and the findings under Points 1 to 3 supra, this Court holds that the order impugned calls for interference and is liable to be set aside. Accordingly, the order impugned is set aside.

Point No. 5:

17. In the result, the appeal is allowed. As a sequel, the application of the applicants is allowed awarding a compensation of Rs. 4,00,000/- to the applicants with interest at 9% per annum from the date of the application till the date of payment/realization. The Railways/respondent is directed to deposit before the Tribunal the said compensation payable to the applicants with interest within two months time from the date of the receipt of a copy of this judgment. On failure to do so, the appellants (applicants) are at liberty to recover the same by following the procedure established by law.

18. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.