

(2011) 08 KAR CK 0136
In the Karnataka High Court
Case No : MFA No. 2887 of 2009

Smt. Rasul Bi and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Railways Act, 1890 — Section 123 (c), 123 (c) (ii), 124

Citation : (2011) 08 KAR CK 0136

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Manjunatha Pattanashetty, for the Appellant; N.S. Sanjay Gowda, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda

1. A claim petition was filed before the Railway Claims Tribunal, Bangalore Bench (for short "the Tribunal"), by the wife and children of one Mr.Vali, who died on 06.02.2005, in a train accident at Birur Railway Station. The Tribunal dismissed the petition, being aggrieved by which, the applicants have filed this appeal.

2. In the claim petition it was stated that, Mr.Vali S/o. Mohammed Vali was travelling on 06.02.2005 in train No.582 Hubli - Bangalore Passenger, as a bonafide paid passenger from Yelavagi to Tumkur with ticket Nos.03783, 03784 & 03785, the train driver trembled the train, an accident occurred, Mr.Vali fell down and died.

3. The respondent in the statement of objections, while denying the statements made in the claim petition, stated that, as per the statements of deceased's daughter and a police constable, the deceased got down from the train at Birur Railway Station to purchase the food from the canteen and after the purchase, he was coming back to get into the train, by that time, the train moved and immediately the deceased threw the food packet and tried to catch the moving

train, slipped, fell down, sustained injuries and died in a hospital. It was stated that, due to own negligence to catch the moving train, the deceased invited the risk of accident and hence, the Railway Administration is not liable to pay the compensation since the incident cannot be called as an accident from the train and the injuries sustained by the deceased was due to his carelessness and negligent act and that, the same is a self-inflicted injury.

4. The following issues were framed:-

1. Is it proved by the petitioner that the deceased M.Vali was a bonafide passenger by train No.582 travelling on 06.02.2005 between Yevavigi and Tumkur?

2. Is it proved by the petitioner that the deceased fell down from the train due to negligent driving and the incident is covered u/s 123(c)(ii) of the Indian Railways Act, 1989?

3. Is it proved by the respondent that the incident occurred due to negligence and carelessness of the deceased as pleaded in Para 6 of Reply statement?

4. Are there any other dependents other than the petitioner?

5. What order? What relief?

5. Wife of the deceased deposed as AW-1 and a daughter of the deceased deposed as AW-2. Exs.A-1 to A-6 were marked. For the respondents, no evidence was let in. The Tribunal considering the evidence of AW-2 and Ex.P-3, held that, the deceased was a (sic)nafide passenger in Train No.582 on 06.02.2005 between Yelavagi and Tumkur. However, it held that, the deceased having not boarded the train, had fallen even before and that, it is not a case of fall from the train and as such, the case falls outside the purview of Section 124 of the Railways Act and is not an untoward incident. By noticing the injuries, it held that, the fall from a train must exhibit more severe injuries in the post mortem report and as a result, it held that, Mr.Vali died due to his reckless attempt in catching a fast moving train, which is a criminal act, disentitling the dependents from claiming any compensation from the Railway Administration. However, it held that, the applicants are the dependents of the deceased.

6. Mr.Manjunatha Pattanashetty, learned counsel appearing for the appellants, contended that, the Tribunal has not correctly appreciated the record of the case and its findings on issue Nos.2 & 3 are erroneous, perverse and illegal, Learned counsel submitted that, AW-2 being an eyewitness, has deposed with regard to occurrence of untoward incident and there being no rebuttal evidence placed on record by the Railway Administration, the dismissal of claim application is illegal.

7. Sri N.S.Sanjay Gowda, learned counsel appearing for the respondent, on the other hand contended that, the record of the case has been correctly appreciated by the Tribunal and the findings recorded on issue Nos.2 & 3 are based on material evidence on record, in view of which, the Tribunal is justified in

dismissing the claim application. Learned counsel submitted that, it is a case of self-inflicted injury by the deceased and not an untoward incident and that, the case falls outside the purview of Section 124 of the Railways Act.

8. In view of the rival contentions and the record of the case, which I have perused, the point for consideration is:

Whether the Tribunal has correctly appreciated the evidence and is justified in dismissing the claim application?

9. PW-1 is the wife of deceased Mr.Vali. During the course of her examination, Exs.A-1 to A-6 were marked. She is not an eyewitness. However, she has stated that, her daughters travelled with her husband and the incident took place at Birur.

10. AW-2, who is the daughter of the deceased, has stated that, herself, her father and younger sister travelled on 06.02.2005 in train No.582 Hubli - Bangalore Passenger and when the train came to Birur Railway Station, an untoward incident occurred and her father sustained grievous injuries, did not recover and died. She has stated that, after the post mortem was conducted, they received the body of the deceased. In the cross-examination, she has stated that, three tickets on which they travelled were submitted to the police authorities, which having been obtained, were filed in the Tribunal and that, her father purchased the tickets and that, they were travelling from Yelavagi to Tumkur. She has stated that, her father got down at B(sic)ur for getting food and when he was boarding, the train moved at a faster. AW-2 is an eyewitness to the incident and she has given statement to the police.

11. Ex.A-1 is the FIR. Ex.A-2 is the P.M Report of the deceased Ex.A-3 is the charge sheet. The Railway Administration got conducted statutory enquiry and a report dated 18.04.2006 was submitted, from which it can be seen that, the incident in question has occurred on 06.02.2005 at Birur Railway Station when the passenger got down from the train to purchase breakfast from the Vegetarian Refreshment Room and when the passenger tried to board the train in movement, he could not board the train, fell down, sustained injuries and expired at Government Hospital, Birur. It was opined that, death was caused due to negligent travel of the passenger. Indisputedly, the Railway Administration has not lead any evidence. Mr.Vali while attempting to board the train, slipped, fell down and died.

12. In the case of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, , it has been held 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 and in either case, it amounts to an "accidental falling of a passenger from a train carrying passengers" and would be an "untoward incident" as defined in Section 123(c) of the Railways Act.

13. In the said case, one Smt.Abja, a passenger, tell on the railway track and

was run over by a train and a claim petition was filed, wherein, the Railway Administration took the stand that the deceased attempted to board the train, fell down from the running train and that, the same is not an untoward incident within the meaning of expression in Section 123(c) of the Railways Act, as it was not an accidental fall of a passenger from a train carrying passengers. The claim petition was dismissed by the Tribunal and the order was challenged by the claimants in the appeal and it was held by the Appellate Court that, the incident falls within the expression "accidental falling of a passenger from a train carrying passengers" which is an "untoward incident" as defined in Section 123(c) of the Railways Act. In the appeal filed by the Railway Administration, it was held by the Apex Court that, the incident is clearly covered by the main body of Section 124-A of the Act and not its proviso.

14. The ratio of law of said decision squarely applies to the case on hand. The Tribunal has not correctly appreciated the evidence placed on record and on account of misdirection adopted in the matter, the application has been dismissed. Since the incident falls within the meaning of "untoward incident", the impugned judgment being erroneous is liable to be set-aside.

In the result, the appeal is allowed and the impugned judgment is set-aside.

O.A 9/2006 on the file of Railway Claims Tribunal, Bangalore Bench, is allowed.

The appellants are entitled to compensation of `4,00,000/- with interest at 6% from the date the application was filed before the Tribunal till date and at 9% henceforth i.e., till the date of payment/deposit, by the respondent.

However, the parties are directed to bear their respective costs.

Draw award accordingly.