

(2013) 04 KAR CK 0137

In the Karnataka High Court

Case No : M.F.A. No. 8501 of 2009 (RCT) A/W Miscellaneous CVL. 22452 of 2009

The Union of India

APPELLANT

Vs

Smt. Lakshmi and Others

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Railways Act, 1989 — Section 123, 123c(2), 124

Citation : (2014) 2 ACC 11 : (2013) 3 AKR 280 : (2013) 6 KarLJ 285

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : N.S. Sanjay Gowda, for the Appellant; P. Prasanna Kumar, for Sri C.H. Jadhav, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Satyanarayana, J.—The respondent, Union of India represented by General Manager, South Western Railway, Hubli, in OA. No. 105/2007 on the file of Railway Claims Tribunal, Bangalore, has come up in this appeal impugning the judgment dated 29.6.2009 passed therein. Brief facts leading to this appeal are as under:

Respondents 1 to 5 herein are legal heirs of deceased R. Selvaraj, who is said to have died in an untoward incident on the platform of Oorgaum Railway Station while he was in the process of getting in to Marikuppam-Bangalore Passenger bearing train No. 513. The facts which are not in dispute are that on 01.08.2006 R. Selvaraj while in the process of getting in to train bearing No. 513 which was proceeding from Marikuppam to Bangalore at Oorgaum Station fell down from the moving train, injured himself and succumbed to the same on the next day i.e., on 2.8.2006. Subsequently, claim petition was filed by his legal heirs contending that his death is due to untoward incident, which has taken place in the process of his journey from Oorgaum Station to Bangalore in the aforesaid train. It was also contended by them that he was passenger in the said train with valid ticket bearing No. 71789. In the said proceedings, respondent, Railways

took a specific plea that deceased R. Selvaraj was not traveling in the said train with valid ticket issued for journey in the said train for that day and there was also a mistake on his part in trying to board the moving train, in the process he fell down and succumbed to injuries suffered therein.

2. In the proceedings before Railway Claims Tribunal, on appreciation of pleadings three issues were framed therein, which are as under:

1. Whether the applicants are the sole dependents of the deceased R. Selvaraj?
2. Whether the deceased R. Selvaraj was a bonafide passenger by train No. 513 from Oorgaum to Krishnarajapuram?
3. Whether the applicants prove that deceased R. Selvaraj died on account of injuries sustained by him in an untoward incident as stated in Section 123(c)(2) of Railway Act, 1989 or as stated in para 8 of reply statement by the respondent?

And answered all the three issues in the affirmative and held that applicants are entitled to receive compensation in a sum of Rs. 4,00,000/- payable with interest at 9% pa., from the date of order till actual payment.

3. Being aggrieved by the same, respondent, Railways have come up in this appeal impugning said judgment on the ground that finding of Tribunal particularly on issue Nos. 2 and 3 is contrary to the material evidence available on record. So far as issue No. 2 is concerned it is contended that ticket which was found on the person of deceased R. Selvaraj bearing No. 71789 was issued for journey dated 28.7.2006 in respect of very same train and it is not for journey on 1.8.2006. Therefore, at the relevant time of accident deceased was not having valid ticket and he was not a bonafide passenger is one of the grounds. So far as issue No. 3 is concerned, it is contended that as per the DRMs report the accident took place when deceased R. Selvaraj attempted to board the moving train, which has resulted in his falling down and succumbing to injuries suffered therein. Therefore, these two aspects are not properly looked in to and appreciated by Tribunal, which has resulted in miscarriage of justice.

4. Heard the learned counsel for appellant and as well as contesting respondents, who are applicants before Tribunal. Perused the judgment impugned with reference to pleadings, oral and documentary evidence available on record. On going through the same it is seen that reasoning given by Tribunal so far as issue No. 2 appears to be ridiculous. Wherein, it is held that since deceased was not accompanied by any of his family members whatever that is stated by applicants is a guess work on the basis of information given to them by police or other persons, which should be accepted. The finding that even in DRM's report filed by respondent Railways, nowhere it is stated that in the course of investigation none of the witnesses mentioned that deceased had not traveled from Oorgaum Station to Bangalore Station, also appears to be a baseless presumption. The entire finding on issue No. 2 is on the premise that as if a person once enters the train, his presence there should be presumed as bonafide passenger with valid

ticket, even if ticket is not found on his body for the reason that nobody substantiated that he did not purchase the ticket before he got in to the train. This line of reasoning is catastrophic. If the same is accepted and applied in any case, then it would be bad precedent to open floodgate of false and frivolous claims.

5. The relevant provisions of Railways Act is very clear, in that, if a person suffers injury or death in an untoward incident as contemplated u/s 123(c)(2) of the Railways Act, 1987, he/his family members are entitled to seek compensation provided, he is a bonafide passenger with valid ticket. That means, either on his body or in his possession such ticket should be found at the time of accident, which is valid for journey in that particular train for that particular day. If that is not found, then the reasonable presumption is that he was traveling without valid ticket. Assuming for a moment, he has traveled with other passengers and if a valid ticket is produced from the possession of another person traveling along with him also would suffice to show that he was a bonafide passenger with valid ticket.

6. Admittedly, in the instant case, deceased R. Selvaraj was traveling alone, there were no friends, relatives or family members accompanying him. It is not in dispute that his fall from train is when train was moving and he was in the process of getting in to the same. Therefore, assuming for a moment, he had purchased a valid ticket, it would be on his person either in the pocket of his apparels or in the bag or in other things which is carried along with him on his person. The report which is submitted by DRM and Railway Police clearly indicates that no such ticket was found on his body except the ticket bearing No. 71789, which is admittedly issued for travel in the same train for 28.7.2006, which does not amount to valid ticket for traveling on 1.8.2006 when accident took place. In that view of matter, this Court is of the opinion that finding of Tribunal on issue No. 2 is erroneous in trying to tone-down the very purpose of Act and the meaning of the word "bonafide passenger" traveling with valid ticket. In that view of matter, said finding cannot be accepted.

7. Now coming to the finding on issue No. 3 regarding untoward incident, as stated in Section 123(c)(2) of Railways Act is concerned, the word untoward incident as per the dictionary meaning is an act which is accidental by its nature, it is not definite and it is not expected in normal circumstances. Now, with this definition if accident which has resulted in the death of R. Selvaraj is analysed, admittedly, he tried to board the train which was already moving and had gained momentum. In normal circumstances, any person would not risk his life in trying to get in to moving train, which is leaving platform and has gained momentum. If anybody attempt to board moving train, it is nothing short of a suicidal act. Suicidal act cannot be construed as untoward incident under any circumstance. In a given situation when all parameters are normal i.e., train is stationed or is about to start, at that time if a person trying to get in to train and for some reason beyond his control he either falls down or an accident would take place

resulting in bodily injury or death to him, should be construed as untoward incident and not a dare devil attempt to jump in to moving train, which would result in his falling down and coming under the wheels of train ultimately resulting in his bodily injury or death. The later part by any stretch of imagination cannot be termed as untoward incident.

8. At this juncture, it is necessary to revert to the judgment referred to by counsel for respondents which is in Appeal (Civil) 6898/2002 in the matter of Union of India-vs-Prabhakaran Vijaya Kumar & Ors., disposed of by the Apex Court on 5.5.2008, wherein their lordships have under similar circumstances while trying to explain the word untoward incident have said that falling off from the train in the process of getting in to the same would amount to untoward incident. On going through the entire judgment nowhere there is reference to falling down from a moving train. Therefore, the ratio laid down in the aforesaid judgment will have no bearing to the facts and circumstances of the case on hand. In that view of matter, this Court find that there is no justifiable reason to rely upon said judgment to construe that fall from moving train is an untoward incident. Infact, at best it could be called as a dare devil attempt or suicidal attempt on his part in getting in to such train. The said act by any stretch of imagination could not be brought under the definition of untoward incident as contemplated u/s 123(c)(2) of the Railways Act.

9. Learned Counsel for the claimants contended that provisions of Sections 123 and 124 of Railway Act is intended to benefit socially, economically, poor, lower and middle class people who cannot afford any other luxurious mode of transport. These provisions are enacted to protect them from suffering because of accident resulting in injury or death and thereby causing economic instability to the family. This Court is infact in total agreement with the same. However it does not mean that the application of said provisions could be stretched beyond its original intent and try to include all irresponsible, suicidal acts of passengers to bring within the purview of Sections 123 and 124 of the Railways Act and trying to award compensation to them would only mean an attempt in toning down the purpose and intent of the Act. In that view of matter, this Court find no justifiable reason to sustain the judgment impugned in this appeal. In that view of matter, appeal filed by Railways is allowed. The judgment and order dated 29.6.2009 passed in OA. No. 105/2007 is set aside.

Misc. Cvl. No. 22452/2009 filed seeking stay becomes infructuous in view of the main appeal being disposed of.