

(2001) 02 AP CK 0025

In the Andhra Pradesh High Court

Case No : AAO No's. 3103 of 1998 and 1183 of 1999

Union of India

APPELLANT

Vs

Uggina Srinivasa Rao

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Railways Act, 1989 — Section 82

Citation : (2001) 2 ACC 208 : (2003) ACJ 402 : AIR 2001 AP 360 : (2001) 3 ALD 247 : (2001) 3 ALT 429

Hon'ble Judges : V.V.S. Rao, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Mr. T. Rama Krishna Rao, for the Appellant; Mr. N. Pardha Sarathy and Mr. S. Chandrasekhar, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—The two miscellaneous appeals are filed by the Union of India, represented by the General Manager, South Central Railway, Secunderabad challenging the orders respectively passed in OAA No. 14 of 1998 and OAA No.41 of 1998 by the Railway Claims Tribunal, Secunderabad directing payment of compensation to the passengers involved in the railway accident. Since the common question arises in these two appeals with the consent of both the parties they can be disposed of by a common order.

2. The parties in this appeal are referred to as arrayed in the original application. One Uggina Srinivasa Rao (hereinafter referred to as the "injured person"), respondent in CMA No. 3103 of 1998 of Anakapalle filed an application before the Railway Claims Tribunal in OAA No.14 of 1998 stating that on 1-12-1997 while he was travelling in Train No.7016, Secunderabad - Palasa (Visakha Express) from Anakapalle to Visakhapatnam, he fell down accidentally from the coach at Anakapalle station and received injuries. He further stated that he got treated in the hospital. He, therefore claimed compensation from the respondent-Railways. Respondents in CMA No. 1183 of 1999, dependants of one K. Madhava Rao (hereinafter referred to as the "deceased"), who died in the accident that

occurred on 28-11-1997 due to fall while boarding Train No. 123 UP Singareni Passenger at Manchiryal to go to Sirpur Kagaznagar, and OAA No.41 of 1998 claiming compensation from the Railways.

3. The respondent Railways filed the written statement stating, inter alia, that the injury received by the applicant in OAA No.14 of 1998 was a self-inflicted injury since he was trying to board a running train and that therefore the incident does not fall within the ambit of "untoward incident". It was denied that the applicant was a bonafide passenger travelling in the Train No.7016 Visakha Express. In the written statement filed in OAA No.41 of 1998 the respondent-Railways stated that the death of Madhava Rao (for short the "deceased") was caused due to carelessness and negligence on his part in attempting to entrain the moving train at Manchiryal and therefore it is not liable to pay compensation.

4. Basing on the pleadings the Tribunal framed the following issues in both the applications as follows:

1. Whether the applicant in OA No.14 of 1998 is a bonafide passenger?
2. Whether the applicants in OA No.41 of 1998 are dependants of the deceased?
3. Whether the deceased was a bona fide passenger?
4. Whether the accidental fall of the deceased as alleged is not an untoward incident?
5. Whether the alleged accidental fall of the applicant is not an untoward incident?
6. What is the nature and extent of injuries suffered?
7. Whether the accidental fall of the deceased as alleged is not an untoward incident?"
8. To what amount of compensation they are entitled to?

5. Before the Tribunal the applicant in OAA No.41 of 1998 examined himself as PW1 and marked Exs.A1 to A5. Applicant No.1 in OAA No.41 of 1998 was examined in support of her case and marked Exs.A1 to A6.

6. The Tribunal after careful scrutiny of the evidence, both oral and documentary, on the question whether the applicant in OAA No.14 of 1998 was a bonafide passenger, held that the applicant was travelling in the train on the valid monthly season ticket, Ex.A1 and found that he was a bona fide passenger. Further it was held that in view of the provisions of Section 124-A of the Railways Act (for short the "Act") the element of rashness or negligence either on the part of the victim or on the part of the Railways is not relevant to assess whether the incident can be taken within the purview of an "untoward incident" and found that the applicant got injured in an untoward incident coming within the purview of Section 124-A of the Act. According to the finding of the Tribunal and as per the medical certificates, Exs.A2 and A3 produced by the applicant it was observed

that amputation of thigh of the applicant was taken place. Therefore the tribunal, though claimed compensation of Rs.2,80,000/- by the applicant, taking consideration the amended provisions of the Railway Accident and Untoward Incident (Compensation) Rules, 1990 awarded compensation of Rs.3,30,000/- to the applicant in OAA No.14 of 1998.

7. With regard to the claim of the applicants in OAA No.41 of 1998 the Tribunal placing reliance on Ex.A6 found that the applicants are the wife and sons of the deceased and are dependants. It was held that the deceased was holding a valid journey ticket bearing No.28455, Ex.A5, from Manchiryal and Sirpur Kagaznagar and found that the deceased was a bona fide passenger at the time of the incident. The Tribunal while giving a finding that the deceased fell down from the train in which he was travelling, that he received grievous injuries and that as a result of which he died and that therefore Railways is liable to pay compensation. Accordingly the Tribunal awarded compensation of Rs.4 lakhs to the dependants of the deceased payable by the Railways. Challenging the judgment and decree passed by the Railway Claims Tribunal making the Railways liable to pay compensation and directing payment of compensation to the applicants, the present appeals are filed by the Railways.

8. The arguments advanced by the Railways are three fold - (i) that the deceased met with an accident while boarding on a running train and as such this is not an untoward incident to attract the provisions of Section 124-A of the act and his legal heirs are not entitled to any compensation; (ii) that the person who was trying to board a train is not a passenger; and (iii) the Railways-appellant seeking exemptions under the provisions of Section 124-A of the Act.

9. The learned standing Counsel appearing for the Railways, the appellant in both the appeals, submitted that evidently the injured person received the injuries while he was attempting to enter the running train, that the injury received by him is a self-inflicted injury and that therefore the finding of the Tribunal in fixing the liability of the Tribunal is beyond the scope under the provisions of Section 124-A of the Railways Act, 1989 (for short the "Act"). He also submitted that the incident in which the injured received injuries is not at all an "untoward incident" as defined in Section 123(c)(2) of the Act and that the finding that the injured had met with the "untoward incident" within the meaning of Section 123(c)(2) of the Act is erroneous. Lastly he contended that due to carelessness and negligence on the part of the deceased in attempting to enter the moving train and inasmuch as the injury received by the deceased is a self-inflicted injury within the proviso (b) of Section 124-A of the Act, the dependants of the deceased are not entitled to compensation and therefore the findings of the tribunal are liable to be set aside. In support of its case the Railways-appellant placed strong reliance on the following decisions:

(1) Union of India v. Sunil Kumar, 1984 SC 1737; (2) Thozhilalar Transport Company Vs. Valliammal and Others, (3) Prakash Anand Pednekar v. Sitabai R. Gawas, 1996 ACJ 991 ; (4) Ms. Southern Motors v. C. Sivajothiammal, 1982 ACJ

(Supp.) 85; (5) Uvaraja v. Parvathi Animal, 1986 ACJ 506 and (6) Janaki Bai v. Union of India, II (1999) ACC 150 (DB).

10. On the other hand the learned Counsel for the respondents submitted that the injured person purchased a valid ticket for travelling in the train carrying passengers and accidentally fallen from the train while getting into the train, that he is a passenger within the explanation (ii) to Section 124-A of the Act and that therefore he is entitled for compensation. He further submitted that the deceased during the course of working in the railway accidentally fallen down from a passenger train and died in that incident and that such incident is an untoward incident within the ambit of Section 124 of the Act and that therefore the legal heirs of the deceased are entitled for compensation. He also submitted that u/s 82-A of the old Act (now correspondent new Section 124) the railway administration is liable for payment of compensation only when there is an accident to a train resulting to injury or death to a passenger and in the absence of train accident, any accident caused to the passenger while travelling in a train, he or his legal representatives are not entitled for any compensation, as held by the Supreme Court in Union of India v. Sunil Kumar (supra). Whereas after introduction of Sections 123 and 124-A in the new Act in the year 1994, in the absence of train accident, the railway administration is liable for payment of compensation in case of accident to a passenger and therefore the compensation awarded by the Tribunal cannot be interfered with. Lastly the learned Counsel for the respondents submitted that after amendment to the Railway Act in the year 1994 the provisions relating to the payment of compensation to the legal heirs of the deceased in an accident are same in the Motor Vehicles Act, Railway Act as well as the Workmen Compensation Act. Therefore the order of compensation awarded to the respondents in the appeals is not open to attack.

11. The point that arises for consideration in these appeals is whether the accident caused to the injured and the deceased would attract the provisions of Sections 123 and 124-A of the Act and if so, whether the amount of compensation awarded by the Tribunal to the injured and the legal heirs of the deceased is reasonable or excessive.

12. To deal with the questions whether the incident is an "untoward incident" and whether the injured and the deceased are passengers it is necessary to have a reading of Sections 123 and 124-A of the Act. It is relevant to extract the provisions of Section 123(c)(2) which defines the meaning of "untoward incident" as follows:

"Untoward incident" means-

(1) (i) xx xx xx

(ii) xx xx xx

(iii) xx xx xx

(2) the accidental falling of any passenger from a train carrying passengers.

13. With regard to the compensation that has to be paid to the persons involved in the accident on account of untoward incidents, Section 124-A says that:

"124-A. Compensation on account of untoward incidents :--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 killed to maintain an action and recover damages. In respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as maybe 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 purposes of this Section, "passenger" includes-

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

14. A plain reading of Section 123(c)(2) says that the "untoward incident" means the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Act says that when in the course of working a railway an untoward incident occurs and then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, the injured or the legal heirs of the deceased entitle for compensation.

15. In this case on hand whether the injured person, who purchased a valid ticket to travel in the train, and the deceased person, who was working with the railways, are come within the meaning of "passengers". Explanation (i), (ii) to Section 124-A of the Act says the "passenger" as railway servant on duty and a person who has purchased a valid ticket for travelling by a train carrying passengers on any date or a valid platform ticket and becomes a victim of an untoward incident.

16. The injured person has purchased a valid season ticket bearing No.38028

and actually in possession of the same and while attempting to board the train carrying passengers fallen from the train and received injuries and in the case of the deceased person, during course of working in the Railways, while attempting to enter into the train carrying passengers accidentally fallen down from the passenger train and died in the accident. Therefore they come within the meaning of explanation (i) and (ii) to Section 124-A of the Act and they can be held as passenger.

17. The deceased is a bona fide passenger and while travelling on a train accidentally fallen down from the running train and received grievous injuries resulting in his death. Hence this is an "untoward incident" as defined u/s 123(c) (2) of the Act and as such the dependants of the deceased are entitled to compensation in pursuance of Section 124-A of the Act. It has to be held that the accidental fall from any part of the compartment is covered by untoward incident. If there is a fall from the steps leading to the compartment, it is a fall from the train. The steps of the compartment cannot be disassociated from the compartment. They are integral part of the compartment. Therefore the contention that the deceased met with an accident while boarding on a running train is not an untoward incident, cannot be accepted. Also the contention that the person who is trying to board a train is not a passenger, cannot be accepted.

18. Reliance is placed by the Railways on a decision in *Purushothama Devadiga v. Thangamtna*, 1999 ACJ 470, in support of his contention that the injured and the deceased are not passengers. That is a case where admittedly the deceased was standing on road and was waving his hand to the bus driver to stop the bus in order to board the same and the same bus was dashed against him and he died. In that case it was held that the deceased was not a passenger. The facts of that case are different from the facts of the case on hand and therefore the said decision is of no help to the appellant-Railways.

19. In the present case the train did not hit the injured and the deceased died while boarding the train and the injured received injuries.

20. In view of our above discussion we find no merit in the appeals warranting interference with the impugned orders. The appeals fall and are accordingly dismissed. No costs.