
(2004) 02 AP CK 0020

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 1809 of 1998

Union of India (UOI)

APPELLANT

Vs

S. Rekha and Others

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Citation : (2004) 2 ACC 780 : (2005) ACJ 535 : (2004) 3 ALT 49

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This appeal is filed against the order dated 21-4-1998 passed in OAA No. 115 of 1997 by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad.

2. The applicants-respondents herein filed OAA No. 115 of 1997 claiming compensation of Rs. 4 lakhs on account of the death of one S. Raju on 9-11-1997 due to falling down from Rayalaseema Express at Nawandgi platform. It was alleged in the petition that when the train halted at Nawandgi railway station, when the deceased tried to get down, he slipped and fell down due to sudden movement of the train and he was run over by the train and died on the same day i.e. on 9-11-1997. It was further stated that the accident is an "untoward incident" within the meaning of Section 124-A of the Railways Act, 1989, (for short, "the Act") and as such sought for compensation of Rs. 4 lakhs. The claim of the applicants-respondents herein was opposed by the Railways on various grounds.

3. By the impugned award the Tribunal having held that the accident was an "untoward incident" within the meaning of Section 124-A of the Act awarded

compensation as prayed for the applicants-respondents herein. Aggrieved by the same, this appeal by the Railways.

4. Learned Standing Counsel for the appellant-Railways mainly contends that the Tribunal erred in coming to the conclusion that the deceased S. Raju slipped and fell down while getting down from the running train No. 7429 Rayalaseema Express at Basheerabad station. Learned counsel also contends that in the absence of any oral evidence to the effect that the deceased was a bona fide passenger, the Tribunal ought not to have held that he was bona-fide passenger. Learned counsel in support of his contention relied on the Full Bench judgment of this court in Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others, . On the other hand, learned counsel for the claimants" respondents made submissions in support of the impugned order.

5. To award compensation under the provisions of the Act to a victim or deceased for the injury or loss of life, as the case may be, as a result of the accident involving the railway train, in addition to the exceptions (a) to (e) of proviso to Section 124-A of the Act, the essential requirements that are to be satisfied are that the passenger should be a bona-fide passenger, the accident should be an accident within the meaning of "untoward incident" and the accident was not on account of the recklessness or negligence on the part of the victim or deceased. In this case the Tribunal having appreciated the evidence and having regard to the fact that there was an entry made in the inquest report to the effect that a journey ticket was found on the body of the deceased, held that the deceased was a bona fide passenger. The appellant-Railways did not adduce any contra evidence to disbelieve this piece of evidence. It has come in the evidence of AW-2 who was an eye-witness to the incident that on the day of the accident he saw the deceased holding the handle bar of the coach and running alongside the train as the train was moving but after some time he slipped and fell on the track. In the absence of any evidence to the effect that the deceased fell down from the running train while getting down was solely due to his own negligence and recklessness adduced by the appellant-Railways, a presumption is to be drawn in favour of the victim/deceased and it is to be held that the accident is an "untoward incident" as defined under Sub-section (c) of Section 123. There is nothing on record to show that as on the date of the accident the victim was of unsound mind or was in an intoxicated condition. In the decision cited by the learned counsel, the principles enunciated by one of the learned Judges (PSN, J.) of the Full Bench which were characterized as specified principles, conclusions 1, 2 and 4, were approved by the Full Bench. The conclusions 1, 2 and 4 approved by the Full Bench, are thus:

(1) Where a bona fide passenger dies in an untoward incident or sustains injuries, as the case may be, Railways to pay compensation without dispute, unless the death of the deceased, or the injuries sustained by the injured, would fall within the exceptions (a) to (e) of proviso to Section 124-A of the Act.

(2) Accidental falling would include a passenger trying to alight a train, board a

train, or any other like action, and hence they would be covered by untoward incident as specified in Section 123(c) of the Act.

(3).....

(4) Where a penal provision in a Statute or Rules under Tariff would fall or attract any of the exceptions u/s 124-A proviso, may have to be decided in each and every case and general propositions cannot be laid down in this regard in view of the complexity and diversity of the illustrations and the provisions or the Rules.

6. From the above conclusions it is very much clear that except in case the claim is hit by any of the exceptions (a) to (e) of the proviso to Section 124-A of the Act, the Railways shall pay compensation without dispute. The exceptions (a) to (e) of the proviso to Section 124-A of the Act, are thus:

(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.

7. The case on hand, do not fall under any of the exceptions (a) to (e) of the proviso to Section 124-A of the Act. The Tribunal having considered all these aspects of the matter rightly allowed the claim of the claimants, as such, the impugned order warrants no interference.

8. In the result, the appeal fails and it is accordingly dismissed. No costs.