
(2010) 08 AP CK 0091
In the Andhra Pradesh High Court
Case No : C.M.A. No. 2983 of 2002

Union of India (UOI)

APPELLANT

Vs

V. Santhabai and Others

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2011) 5 ALD 579 : (2011) 2 ALT 512

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The respondents filed O.A.A. No. 255 of 1999 before the Secunderabad Bench of Railway Claims Tribunal claiming compensation, on account of the death of V. Chander Naik, husband of the 1st respondent and father of respondents 2 to 5. It was pleaded that Chandu Naik boarded Train No. 6591, Parbhani-Bangalore Hampi Link Express, with a view to travel up to Marked Road Station in a general compartment. According to them, the deceased fell down in the station on account of a sudden jerk and died of multiple injuries. He was said to be aged 35 years and the matter was reported by the Railway officials themselves to the police and a case was registered.

2. The appellant filed written statement opposing the claim. It was stated that the deceased was not a bona fide passenger and that he fell down from the train on account of his own negligence and carelessness. The Tribunal awarded a sum of Rs. 4,00,000/- as compensation to the respondents through its order dated 12.07.2002. The same is challenged in this appeal filed u/s 23 of the Railway Claims Tribunal Act.

3. Learned Counsel for the appellant submits that no ticket was recovered from

the deceased and the finding recoded by the Tribunal that the deceased was a bona fide passenger is not supported by evidence. He further submits that though the Tribunal expressed the view that there was negligence on the part of the deceased to get down from the train even while it is in motion, it ignored that aspect and proceeded to award the compensation. He contends that the view taken by the Tribunal is opposed to the judgment of this Court in Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others,

4. Learned Counsel for the respondents on the other hand submits that the deceased died in a horrible condition, having been run over by the train in the precincts of the station itself and it is difficult to expect ticket with him. He contends that the very fact that the deceased traveled full length of his journey discloses that he was a bona fide passenger. He further submits that the appellant did not plead any acts of negligence or lack of prudence on the part of the deceased much less proved the same.

5. The accident and the resultant death of the deceased occurred in the precincts of the Malkhed Road Railway Station. It is the railway staff that took him in an injured condition and made an attempt to shift him to the hospital. The deceased died even before any treatment could be given to him. Two facts become necessary in view of the submissions made by the learned Counsel for the parties viz., whether the deceased was a bona fide passenger and whether there was any negligence on the part of the deceased.

6. It is no doubt true that no ticket was recovered from the dead body of the deceased. The recovery of a ticket from the body of the deceased, who died in an untoward incident, would certainly prove beyond any doubt that he was a bona fide passenger. However, mere absence thereof does not by itself lead to a conclusion to the contrary. The fall from a moving train would result in a horrifying situation. When parts of the body are separated, it would be difficult for a ticket to be intact with the body. At the same time, the enquiry as to the bona fide nature of a passenger cannot be reduced to an empty formality. In case, the ticket is not recovered from the body, the attendant circumstances can certainly be verified. If the passenger has travelled fairly long distance, an inference can certainly be drawn that had he not been a bona fide passenger, he would have been booked by the checking staff. Further, it is not uncommon that if the passenger does not have the time enough to purchase a ticket before the train leaves, he may choose to straight away board the train in contemplation of purchasing ticket from the TTE, if necessary by paying fine also. Therefore, much would depend upon the facts and circumstances in a given case.

7. In the case on hand, it emerged that the untoward incident occurred at the destination of the deceased. He traveled all the way from Tandur to Malkhed road. Therefore, the finding recorded by the Tribunal in this regard does not warrant interference.

8. Coming to the second question, the appellant resisted the claim by pleading

that the deceased was guilty of negligence or at least contributory negligence. In Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others, a Full Bench of this Court held that if it is found that an individual is guilty of negligence or has not taken the required amount of care and caution, the Railways cannot be held liable to pay the compensation for the injuries or death that occurred in an untoward incident. However the application of the principle laid down by the Full Bench needs the existence of adequate plea by the Railway administration and proof thereof. In Union of India v. Peravali Jagannadham 2004 (2) AWR 540, this Court held that the necessary facts that constitute negligence or lack of proper care must not only be pleaded but also be proved by the Railway administration. No such effort was made by the appellant.

9. In the recent past, the Hon''ble Supreme Court in Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, dealt with in detail the scope of the liability arising out of accidental fall of any passenger from a train carrying passengers with reference to the relevant provisions of the Railways Act. The concept of "strict liability" that originated from the judgment of House of Lords in Rylands v. Fletcher in 1868 has been explained in the context of the liability arising under the untoward incidents occurring in passenger trains. The Hon''ble Supreme Court observed that since the provisions are in the nature of social security measures, even where two views are possible, one that is beneficial to the victims must be adopted. Viewed from any angle, this Court does not find any basis to interfere with the order under appeal.

10. The respondents filed cross objections claiming interest. The Act, as such, does not provide for award of interest. However, in the recent past, the Supreme Court in Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, held that the interest is payable at 6% from the date of filing of application. Hence, the appellant is liable to pay the interest at the rate of 6% from the date of application till the date of deposit of the amount. The learned Counsel for the appellant submits that review petitions are pending before the Hon''ble Supreme Court and the appellant may be granted time for paying the interest component.

11. Accordingly, the appeal is dismissed and cross objections are allowed. However, the appellant is granted three months' time from today to pay the interest component of the compensation. There shall be no order as to costs.