



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A. NO.3651/2016 (RCT)

BETWEEN:

1 . MRS. ROJAMANI
W/O Y. VENKATESH
AGED ABOUT 44 YEARS
R/O NO.4352, 6TH CROSS,
POSTAL LAYOUT
RAJA KEMPEGOWDA EXTENSION
CHANNAPATNA
RAMANAGARAM DISTRICT.

SINCE DECEASED BY HER LRS

1(a) MR.VENKATESH Y.,
S/O YALAKKIAH (LATE)
AGED ABOUT 63 YEARS

1(b) MR.VENKATESH MURTHY V.,
S/O VENKATESH Y
AGED ABOUT 34 YEARS

1(c) MISS. LAKSHMI V.,
D/O VENKATESH Y
AGED ABOUT 32 YEARS

1(d) MR. VIJAY V.,
S/O VENKATESH Y
AGED ABOUT 27 YEARS

ALL ARE RESIDENTS OF NO.4352,
6TH CROSS, POSTAL LAYOUT
RAJA KEMPEGOWDA EXTENSION
CHANNAPATNA-562160
RAMANAGARAM DISTRICT.

(AMENDED VIDE COURT ORDER DATED 25.03.2024)

... APPELLANTS

(BY SRI TANVEER PASHA A.S., ADVOCATE)

AND:

1 . THE UNION BANK OF INDIA
REPT BY ITS GENERAL MANAGER
SOUTH WESTERN RAILWAY
HUBLI-580020

... RESPONDENT

(BY SRI HARSHA P. BANAD, ADVOCATE)

THIS M.F.A. IS FILED UNDER SECTION 23 OF THE RAILWAY CLAIMS TRIBUNAL ACT, AGAINST THE JUDGMENT DATED 28.4.2016 PASSED IN OA II U 062/2014 ON THE FILE OF THE RAILWAY CLAIM TRIBUNAL, BENGALURU BENCH, DISMISSING THE APPLICATION FILED U/SEC 16 OF RCT ACT, 1987.

THIS M.F.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.04.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

J U D G M E N T

Heard the learned counsel for the appellants and learned counsel for the respondent.

2. This miscellaneous first appeal is filed praying this Court to set aside the impugned judgment passed in OA II U 062/2014 dated 28.04.2016 by the Railway Claims Tribunal ('the Tribunal' for short) and grant such other relief as deems fit in the circumstances of the case.

3. The factual matrix of the case of the appellant before the Tribunal while filing an application under Section 16 of the RCT Act, 1987 read with Sections 124-A and 125 of Indian Railways Act, 1989 seeking compensation of Rs.8,00,000/- from the respondent-Railway for the death of the deceased Jayamma, wife of late Venkataiah, who died in an alleged untoward incident that occurred on 22.02.2014 is that on the date of the incident, the deceased Jayamma along with her sister Rathamma went to Channapatna Railway Station and purchased a journey ticket to go to Ashokpuram/Mysore. While waiting for Tirupathi passenger train at Channapatna Railway Station, Tuticorin

Express train arrived. Both the deceased and her sister boarded Tuticorin Express and after learning that the said train will not go to their destination station i.e., Ashokpuram, they alighted from the said train. While alighting from the train, the deceased lost balance, accidentally fell down from the train, sustained fatal injuries and died at the spot. The applicant contend that it is an untoward incident and filed a claim petition.

4. The respondent-Railway filed written statement disputing the claim and denying their liability to pay compensation contending that the deceased and her sister boarded a wrong train i.e., Tuticorin Express at Channapatna Railway Station and when the train started moving, they realized that train does not go to their destination station, they alighted from the train when it was moving slowly at Channapatna Station, fell down on the platform and the deceased suffered multiple injuries and died at the spot. It is further contended that the death of the deceased was not due to any accidental fall amounting to an untoward incident within the meaning of Section 123(C) of the Railway Act, but it was due to deliberate

act of alighting from the train which amounts to self-inflicted injuries and by virtue of proviso contained in Section 124 of Railways Act, the respondent is exonerated from the liability to pay compensation.

5. Having considered the pleadings of the parties, the Tribunal framed the following issues:

1. Whether there was any untoward incident as is defined under the provisions of Section 123(C) of Railways Act, 1989?
2. Whether the deceased was a bonafide passenger?
3. Whether the applicants are dependents of the deceased?
4. Whether the applicants are entitled for any relief and interest as prayed for in the application?

6. In support of their claim, the sole applicant was examined as A.W.1, besides Smt. Rathnamma, wife of Narayana and sister of the deceased as A.W.2 and got marked the documents as Exs.A1 to A13. On behalf of the respondent, nobody was examined, but the Divisional Railway Manager

Investigation Report was filed which was marked as Ex.R1 by consent.

7. The Tribunal answered issue No.2 in the 'affirmative', in coming to the conclusion that the deceased was a bonafide passenger. But, while answering issue No.1, comes to the conclusion that when once the deceased realized that she boarded a wrong train and that the train had already started moving from the platform, the options left for the deceased was either to continue the journey and get down at the next station where the train halts or to pull the alarm chain and bring the train to stop to enable her to alight. The deceased has not exercised any of the two options for her safety and on the other hand, she took a huge risk and alighted from a running train. It is quite possible that on suddenly realizing that she boarded a wrong train, the deceased acted on an impulse thought of getting out of the train with a view to board the correct train unmindful of the serious consequences of such act. The fall of the deceased was therefore not on account of any jerk or jolt or due to any pressure or thrust from any passengers, but was due

to her own voluntary and deliberate act of jumping out of a running train. Such a fall which is result of a deliberate and voluntary act on the part of the deceased does not amount to an accidental fall within the meaning of Section 123(C) of the Railways Act and answered the said issue No.1 as 'negative' and exonerated the Railway from its liability and in view of the said finding, the issue of dependency is not examined in detail. The Tribunal, while answering issue No.4 comes to the conclusion that the claim is 'devoid of merit' and dismissed the claim petition. Being aggrieved by the said judgment, the present miscellaneous first appeal is filed before this Court.

8. The main contention of the learned counsel for the appellants is that the very approach of the Tribunal is erroneous and the Tribunal failed to appreciate that the deceased was an aged woman and not a regular commuter in train and when she learnt that she has boarded a wrong train which will not go to her destination, suddenly she alighted from the train and the moment she was alighting from the train, the train started at that moment or probably the train might have just started, due

to which the deceased lost her balance and accidentally fell down from the train and sustained fatal injuries and died at the spot. It is contended that the Tribunal committed an error in holding that it is a case of deliberate jumping on to the platform from moving train and hence, the judgment impugned is improper and liable to be set aside. The counsel would vehemently contend that utmost, it amounts to mere negligence, but not amounts to criminal negligence as held by the Apex Court in the judgment of **JAMEELA VS. UNION OF INDIA**. The Tribunal ought not to have dismissed the claim petition, though the respondent has not led any evidence to show that no untoward incident has taken place. Hence, it requires interference of this Court.

9. Learned counsel for the appellants, in support of his argument, relied upon the judgment of the Bombay High Court in **SMT. MEERABAI WD/O. ARJUN GAWANDE & ORS. VS. UNION OF INDIA** in **FIRST APPEAL NO.1072 OF 2019** reported in **2020 NEAR LAW (BOMBAY HC NAGPUR) ONLINE 173**, wherein discussion was made that there is no

dispute that deceased had purchased tickets at Railway Station, Akola and he boarded in a wrong train i.e., Kurla – Bhubaneswar Express. There is no dispute that deceased died when he was alighting from running train at Badnera. Learned counsel also brought to notice of this Court the discussion made in the said judgment i.e., the judgment of the Apex Court in **JAMEELA & ORS. VS. UNION OF INDIA** reported in **2010 AIR (SC) 3705**, wherein it is held that “when deceased died while alighting the train due to his own negligence, it is not a criminal act and, therefore, Railway cannot deny its liability”. Learned counsel also brought to notice of this Court Para No.7 of the judgment, wherein the Apex Court has discussed the judgment of the Apex Court in **UNION OF INDIA VS. PRABHAKARAN VIJAY KUMAR & OTHERS** reported in **2008 (5) ALL MR 917**, wherein it is held that “Section 124A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation”. The counsel also brought to notice of this Court Para No.8, wherein the judgment of the Apex Court in **UNION OF INDIA VS. RINA DEVI** reported in **2018**

AIR (SC) 2362 is discussed and it is held that "Death or injury in course of boarding or de-boarding train will be "untoward incident". Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor". Learned counsel also brought to notice of this Court Para No.9, wherein the judgment of the Apex Court in **UNION OF INDIA VS. ANURADHA AND ANOTHER** reported in **2014 ACJ 856** is discussed and it is held that "Even the deceased boarded in a wrong train having a valid journey ticket and died while alighting the train that does not mean that he was not a bona fide passenger and on that ground claim cannot be rejected".

10. The counsel also brought to notice of this Court the judgment of High Court of Judicature at Bombay, Nagpur Bench, Nagpur in **SMT. RATTA WD/O. SUBHASH MESHAM VS. THE UNION OF INDIA** in **FIRST APPEAL NO.116 OF 2022** pronounced on **13.05.2022**, wherein it is discussed with regard to 'untoward incident' within the meaning of clause (c)(2) of Section 123 of the Railways Act and in Para No.22 of the

judgment, discussed the judgment of the Apex Court in **RINA DEVI's** case referred (supra) and extracted Para Nos.20 to 25 of the said judgment. In Para No.23 of the judgment, explained the concept of 'self-inflicted injury', wherein it is held that the principle of contributory negligence cannot be invoked in the case of liability based on 'no fault theory'. It is also held that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of victim as a contributing factor.

11. The counsel also brought to notice of this Court the judgment of the Apex Court in **CIVIL APPEAL NO.4945 OF 2018** decided on **9th May, 2018** and brought to notice of this Court Para No.8(iii) of the judgment, wherein it is observed that whether attempt of getting into or getting down a moving train resulting in an accident was a case of self inflicted injury so as to entitle to any compensation or no such concept could not apply under the scheme of law which casts strict liability to pay compensation by the Railway.

12. The counsel also relied upon the judgment of the High Court of Andhra Pradesh at Hyderabad in **UNION OF INDIA AND OTHERS VS. UGGINA SRINIVASA RAO AND OTHERS** reported in **2003 ACJ 402**, wherein it is observed that defence that injury was self-inflicted since they were trying to board running train and they were not bona fide passengers, Railways Claims Tribunal found that injured was traveling in train on valid monthly ticket, he was a bona fide passenger, element of rashness or negligence either on the part of the victim or on the part of Railways is not relevant and held that claimant was injured in an untoward incident and awarded compensation – whether the injured/deceased persons were passengers, they met with untoward incident within the meaning of Section 124-A and claimants are entitled to compensation and they come within the meaning of Explanation (i) or (ii); accidental fall from any part of compartment is covered by untoward incident.

13. The counsel also relied upon the judgment of the Apex Court in **KAMUKAYI & ORS VS. UNION OF INDIA AND ORS.** in **CIVIL APPEAL NO.3799 OF 2023** decided on

16.05.2023, wherein the judgment of the Apex Court in **RINA DEVI's** case and **RADHA YADAV's** case is discussed and an observation is made that death is proved due to outcome of untoward incident of the deceased being bona fide passenger, the adequate amount of compensation may be awarded. The Railways Tribunal also held that if the compensation, including interest is less than Rs.8,00,000/-, compensation of Rs.8,00,000/- has to be awarded.

14. Learned counsel for the respondent would vehemently contend that it is a clear case of an attempt made to deboard from the running train, when it was noticed that wrong train is boarded. The counsel, in support of his argument, relied upon the judgment of the Kerala High Court in **JOSEPH P.T. VS. UNION OF INDIA** reported in AIR **2014 KERALA 12**, wherein the Division Bench has held that self-inflicted injury or untoward incident, passenger attempting to board moving train from off side, act of claimant highly careless and imprudent, injury suffered would be self-inflicted injury and not untoward incident, claimant not entitled to claim compensation. The word 'self-

inflicted injury' means to board a moving train from the off side unmindful of his age and fully aware of the positional disadvantageous and dangers of boarding a train from a level lower than the footboard of the train. The footboard and handrails at the doors of the compartment are designed to suit the convenience of the passengers for boarding from and alighting to the platform. And at the same time, when a person is trying to board the train from the non-platform side, he will be standing on the heap of rubbles kept beneath the track and that too in a lower level. The probability of danger is increased in arithmetic progression, when the train is moving. Learned counsel referring this judgment would vehemently contend that the said judgment is aptly applicable to the facts of the case on hand.

15. In reply to the argument of the learned counsel for the respondent, learned counsel for the appellants would vehemently contend that the said judgment is not applicable to the facts of the case, since in the said case, the passenger attempted to board the moving train from off side and in the

case on hand, it is not an attempt made from off side and the said judgment is not applicable and recent judgment of the Apex Court is very clear with regard to strict liability and the same not comes within the meaning of Section 124-A or 123(C) of Railways Act. Hence, the appellants are entitled for compensation.

16. Having considered the grounds urged in the appeal memo as well as the arguments of the learned counsel for the appellants and learned counsel for the respondent, this Court has to analyze the material available on record and having analyzed the material on record, the points that would arise for consideration of this Court are:

- (1) Whether the Tribunal has committed an error in rejecting the claim petition in coming to the conclusion that it is a self-inflicted injury and hence, the appellants are not entitled for compensation, since such a fall which is result of a deliberate and voluntary act on the part of the deceased does not amount to an accidental fall within the meaning of Section 123(C) of the Railways Act?

(2) What order?

Point No.(1)

17. The claim petition is filed under Section 16 of the RCT ACT, 1987 read with Sections 124-A and 125 of Indian Railways Act, 1989, this Court would like to refer Section 124-A of the Indian Railways Act, 1989 which reads as hereunder:

*"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 in 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 may be prescribed and to that extent only of 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”.

18. Having perused Section 124-A of the Indian Railways Act, 1989, it is clear that no compensation would be payable if the passenger dies or suffers injury due to suicide or attempted suicide by him; self-inflicted injury; his own criminal act; any act committed by him in a state of intoxication or insanity and any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

19. Having considered the proviso, it is very clear that one of the exceptions contemplated in the above proviso is that in the event of self-infliction of injuries, the respondent-Railways is exonerated from their liability and the Court has to take note whether the same comes within the meaning of Section 124-A of the Indian Railways Act, 1989, that too, with an exception of

self-inflicted injury. The Tribunal has also discussed in detail with regard to the same in Para Nos.13 to 17 and the reasoning given by the Tribunal in Para No.18 is that, even assuming for a moment that the deceased boarded a wrong train i.e., Tuticorin Express instead of Tirupathi Passenger, since the train had already started moving and she ought to have continued the journey till the next halt but not to resort to the safety, instead alighted from the moving train, thus endangering her life.

20. The principles laid down in the judgments, particularly in the case of **JAMEELA & ORS. VS. UNION OF INDIA** reported in **2010 AIR (SC) 3705** referred (supra), the Apex Court has held that "when deceased died while alighting from the train due to his own negligence, it is not a criminal act and, therefore, Railway cannot deny its liability". No doubt, in the case on hand, the deceased made an attempt to alight from the train, since she has boarded wrong train, but her sister also alighted from the train and while alighting from the train along with her sister, she accidentally fell down.

21. It is also important to note that the Apex Court in the case of **UNION OF INDIA VS. PRABHAKARAN VIJAY KUMAR & OTHERS** reported in **2008 (5) ALL MR 917**, held that "Section 124A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation". When such principle is laid down, then Railways is liable to pay the compensation and the principle of strict liability is also to be taken note of as provided under Section 124-A of the Indian Railways Act, 1989. It is also important to note that, in the case of **UNION OF INDIA VS. RINA DEVI** reported in **2018 AIR (SC) 2362**, the Apex Court held that "Death or injury in course of boarding or de-boarding train will be "untoward incident". Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor".

22. It has to be noted that the Tribunal passed the judgment on 28.04.2016. But, the judgment in **RINA DEVI'S** case is subsequent to passing of the judgment by the Tribunal.

But, the earlier two judgments i.e., **JAMEELA's** case and **PRABHAKARAN VIJAY KUMAR's** case are earlier to the judgment of the Tribunal and both the judgments are not taken note of by the Tribunal while passing the judgment. It is also important to note that, in similar set of circumstances, the Apex Court in the judgment in **UNION OF INDIA VS. ANURADHA AND ANOTHER** reported in **2014 ACJ 856** which is prior to passing of the judgment by the Tribunal, the Apex Court held that "Even the deceased boarded in a wrong train having a valid journey ticket and died while alighting the train that does not mean that he was not a bona fide passenger and on that ground claim cannot be rejected".

23. No doubt, the Tribunal not arrives at a conclusion that the deceased was not a bona fide passenger, but rejected the claim only on the ground that it is a self-inflicted injury. It is also important to note that, in the recent judgment of the Apex Court in **KAMUKAYI & ORS VS. UNION OF INDIA AND ORS.** in **CIVIL APPEAL NO.3799 OF 2023** decided on **16.05.2023**, the Apex Court discussed the judgment in **RINA DEVI's** case

and in terms of the provisions contained in Section 124-A of the Indian Railways Act, 1989 and Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants are entitled to claim compensation. The Apex Court also discussed in detail with regard to the same in Para No.20, extracting Para No.18 of the judgment in **RINA DEVI's** case and also taken note of the judgment of the Apex Court in **RADHA YADAV's** case and observed that, even when awarding compensation in view of the amendment made to the Railways Act in the year 2017, while awarding compensation, even if the basic figure would be Rs.4,00,000/-, if after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/-, the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible.

24. Having considered the principles laid down in the judgments referred (supra), though the respondent contend that it is a case of negligence on the part of the deceased and it is an untoward incident and self-inflicted injury, in the judgment of the Kerala High Court relied upon by the learned counsel for the respondent, the Court has not discussed the judgments which have been passed by the Apex Court prior to delivering the said judgment in 2014 and not considered the judgments passed by the Apex Court in the year 2008 and 2010 and consequent upon the judgments of the Apex Court in **RINA DEVI'S** case and **KAMUKAYI'S** case. Having considered the strict liability under Section 124-A of the Indian Railways Act, 1989 and also the judgment of the Apex Court in **ANURADHA'S** case, the said judgments are applicable to the facts of the case on hand.

25. No doubt, the deceased made an attempt to alight from the train which she wrongly boarded, the Court has to take note of the fact that her sister, who was with her also alighted from the train which was wrongly boarded and in the process of alighting from the said train, that too, in the railway station

itself, she accidentally fell down and the Tribunal committed an error in invoking Section 124-A of the Indian Railways Act, 1989, that too, particularly arriving at a conclusion that it is a self-inflicted injury and the reasoning given by the Tribunal is erroneous and the judgments which have been referred above by the learned counsel for the appellants comes to the aid of the appellants. The Tribunal committed an error in answering issue No.1, though answered issue No.2 that the deceased is a bonafide passenger, but wrongly invoked Section 124-A of the Indian Railways Act, 1989 and arrived at an erroneous conclusion that it is a self-inflicted injury and the judgment of the Apex Court in **RINA DEVI'S** case is very clear that "Death or injury in course of boarding or de-boarding train will be "untoward incident". Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor". Hence, it requires interference of this Court and accordingly, I answer point No.(1) as 'affirmative'.

Point No.(2)

26. In view of the discussion made above, I pass the following:

ORDER

- (i) The miscellaneous first appeal is allowed.
- (ii) The impugned judgment passed in OA II U 062/2014 dated 28.04.2016 by the Tribunal is hereby set aside. Consequently, the claim application is allowed.
- (iii) The appellants are entitled for compensation to the tune of Rs.4,00,000/- along with interest @ 7% p.a., from the date of filing the claim application till its realization. It is made clear that after applying the rate of interest, if the final figure is less than Rs.8,00,000/-, then the appellants shall be entitled to Rs.8,00,000/-.
- (iv) The amount of compensation be satisfied by the respondent within a period of eight weeks.
- (v) No order as to costs.

**Sd/-
JUDGE**

ST