

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

MISCELLANEOUS FIRST APPEAL No.8014 OF 2016 (RCT)

BETWEEN :

MAHESH KUMAR,
S/O LATE DALU RAM,
AGED 44 YEARS,
OCC: AGRICULTURIST,
R/O MOULASIYA VILLAGE AND POST,
SHIKAR - 332 041,
TAHSIL & DIST.
RAJASTHAN STATE.

... APPELLANT

(BY SRI S.J.SANGHVI, ADVOCATE)

AND:

UNION OF INDIA,
REP. BY THE GENERAL MANAGER,
SOUTH WESTERN RAILWAYS,
HUBLI - 580 028.

...RESPONDENT

(BY SRI SATISH KUMAR, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 23(1) OF THE RAILWAY CLAIMS TRIBUNAL ACT, 1987.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR
HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Sri.S.J.Sanghvi, learned counsel for appellants and
Sri.Satish Kumar for respondent have appeared in person.

2. For the sake of convenience, the parties shall be referred to in terms of their status and ranking before the Tribunal.

3. An application came to be filed under Section 16 of the Railways Claims Tribunal Act, 1987 read with Section 124-A of Railways Act, 1989 (hereinafter referred to as 'the Act') against the respondent Railways for payment of compensation Rs.8,00,000/- (Rupees Eight Lakh only) along with 9% p.a. interest from the date of application till the disposal of the application on account of injuries sustained by one Mahesh Kumar in an untoward incident.

It is stated that the untoward on 06.07.2013, the applicant was travelling from Bangalore to Jaipur by Train No.12975 Jaipur Express and he had purchased a general ticket and slept in the train. It is said that there was heavy rush and he was trying to board the train was pushed from inside and lost balance and slipped and fell down from the

general compartment and he accidentally fell down from the train and suffered grievous injuries i.e., amputation of left leg and fracture of his right leg. It is also said that he was admitted to Government Hospital. Contending that it is an untoward incident, the applicant claimed compensation.

After issuance of notice, the Railway- Authority filed reply statement disputing the claim and denying their liability to pay the compensation. They stated that the claim made out by the applicants does not come within the ambit of Section 123(c) and Section 124-A of the Railways Act, 1989.

They contended that it is not untoward incident and it is a case of self-inflicted injury. It was also contended that the deceased was not a *bona fide* passenger as he was not travelling with journey ticket. The ticket produced is planted one. There is no eye witness to the incident. They specifically contended that there is discrepancy in the name of the applicant. Further the DRM report reveal that

the applicant was trying to get the seat in the train and under the circumstances, he fell down and sustained injuries. He tried to board the moving train. Among other grounds they prayed for the dismissal of the claim.

On the above pleadings, the Tribunal framed the issues. The first applicant examined as AW-1 and got marked documents A-1 to A-13. The respondent did not adduce any oral evidence. They filed DRM'S report which is marked as Ex.R1.

On summary of action, the Tribunal vide order dated 11.04.2016 rejected the claim. It is this order which is challenged in this appeal on several grounds as set out in the Memorandum of Appeal.

4. Learned counsel for appellant submits that the order passed by the Tribunal is not proper either in law or on facts and evidence in the case.

Next, he submitted that the Tribunal has erred in not believing the evidence of AW-1. It is submitted that the

respondent had failed to prove that the incident was not an untoward incident or was deliberate act of attempting to board the running train by producing evidence.

A further submission is made that the without appreciating the factual aspects has dismissed the claim application.

Learned counsel vehemently contended that the Tribunal erred in noticing that there is discrepancy in evidence of the applicant.

Lastly, he submitted that viewed from any angle, the order of the Tribunal is unsustainable and accordingly he submitted that the appeal may be allowed.

5. Sri.Satish Kumar, learned counsel for the Railways justified the order of the Tribunal.

Next, he submitted that the claim made out by the claimants does not come within the ambit of Section 123(c) or Section 124-A of the Act.

Lastly, he submitted that the Tribunal in extenso referred to the material on record and rejected the claim. The appellant has not made out any good grounds to interfere with the order. Accordingly, he prayed for the dismissal of the appeal.

6. Heard the contentions urged on behalf of parties and perused the records with care.

7. Now the question for determination in the instant appeal is as to whether the order is sustainable in law?

Suffice it to note that Sections 123 to 129 contained in Chapter XIII of the Railways Act deal with the liability of Railway Administration for Death and Injury to Passengers due to railway accidents.

Now it has to be examined as to whether the claim of the appellants in the instant case is covered under Section 124-A of the Railways Act or not.

I may with advantage refer to Section 124-A of the Railways Act, which reads as under:-

"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 was 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 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."

This Section was introduced by the Parliament by Railways (Amendment) Act (28 of 1994). This Section provides for awarding compensation to 'victims of untoward incident' which occurs in the course of working of a railway.

Reverting to the facts of the case, the DRM Report depicts that on 04.01.14 ASIPF/RPF/SBC examined and recorded the statement of Sri G.S.Manjunath Dy.SMR/CommI/SBC. In his statement he has stated that on 06.07.13 he was on duty from 07.00 hrs to 13.00 hrs. During his duty hours at about 13.00 hrs he received information from Sri S.R.Jaganatha CON/RPF/SBC that one male person aged about 40 years while trying to board the moving Tr.No.12975 Ex.MYS-JP arriving on PF NO.5 has

fell down on PF and trapped under the train and sustained grievous injury. Immediately he went to the spot and noticed that the injured person's both legs were bleeding. Arranged 108 ambulance and sent the injured person to Victoria Hospital Bangalore for treatment accompanied with RPHC/301/ Sri.Kadappa.

From the above enquiries, it is learnt that though the injured person was a bonafied passenger having Railway general ticket No.58610501 Ex. SBC-JP, he tried to board the moving train to grab the seat slipped, fell down and sustained grievous injuries. Here the railway department is not at fault and no way responsible for the above incident. As such there is no liability or railway to pay compensation to the complainant.

Suffice it to note that the applicant was boarding a moving train. The injuries sustained by him are self-inflicted injuries. In view of proviso to Section 124-A of the Act, no compensation shall be paid to self-inflicted injury.

The Tribunal in extenso referred to the material on record and held that the injured was a *bona fide* passenger but his act of boarding the moving train before it halts in a scheduled station amounts to negligence and rejected the claim. In my view, the order of the Tribunal is justified. The appeal is devoid of merits. I refuse to invite interference with the order of the Tribunal.

Resultantly, the appeal is ***dismissed***.

To conclude, let me take the opportunity to send a message to the general public that ***PLEASE DO NOT BOARD OR ALIGHT A MOVING TRAIN, IT CAN PROVE FATAL!!***

**Sd/-
JUDGE**

TKN