

D.Srinivas Vs. Union of India

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Court : Karnataka

Decided On : Jul-17-1998

Reported in : 2000ACJ889; ILR1999KAR187

Judge : B.K. Sangalad, J.

Acts : [Railway Claims Tribunal Act, 1987](#) - Sections 82 - A and 82 - H; [Evidence Act, 1872](#) - Sections 101 to 104

Appeal No. : Miscellaneous First Appeal No. 1150 of 1995

Appellant : D.Srinivas

Respondent : Union of India

Advocate for Def. : Sri N.S. Sanjay Gowda for ;Sri N.S. Srinivasan, Central Government Standing Counsel

Advocate for Pet/Ap. : Sri A.V. Gangadharappa, Adv.

Judgement :

1. The appellant has preferred this appeal against the order dated 28-4-1995 passed by the Railway Claims Tribunal, Bangalore Bench, in O.A. No. 85 of 1992 dismissing the application filed by him.

2. The appellant is the applicant who filed the application for compensation on account of the accident. Once his application was dismissed as not maintainable.

Then the applicant approached this Court. He succeeded. Again the Tribunal has held that the application is not maintainable.

3. It is the case of the applicant that on 17-2-1992 at about 6.45 p.m. when he was about to board the Bangalore-Hyderabad Express to go to Raichur in Bangalore Cantonment Railway Station, a heavy iron girder which was loosely and carelessly fixed for electrification work of Bangalore Jolarpet Railway line suddenly fell upon the train and in turn fell upon the applicant causing grievous injuries to him and also to the co-passenger Mr. Gajendra. The applicant sustained the fracture of both Tibia and Fibula of the right leg on the upper $\frac{2}{3}$ and $\frac{1}{2}$ of femur. As such, he claimed the compensation of Rs. 2 lakhs. The defence taken by the respondent is that there was no accident to the train at the Bangalore Cantonment Railway Station. It is also contended that the applicant was ticketless traveller and found travelling on the footboard negligently stretching his legs outside. It is also stated that on account of stretching his legs outside, he was injured when a ladder trolley came in contact with his legs between Bangalore Cantonment and Bangalore East Stations. Therefore, for the act of the negligence of the appellant, he is not entitled for any compensation.

4. The Tribunal has framed three issues namely.-

1. Whether the applicant was a bona fide passenger on the train in question?
 2. Whether the applicant sustained injuries as claimed in the application and if so what is the nature and extent of the injuries sustained by the applicant and what compensation, if any, he is entitled to?
 3. Whether the applicant actually lost any luggage/personal effects etc., in the accident as claimed in the application and if so of what value?
5. The Tribunal has recorded the evidence of some witnesses namely A.Ws. 1 to 4 including the applicant and for the respondents R.Ws. 1 to 4.
6. The Tribunal relying upon the evidence of R.Ws. 1 to 4 has held that there was no accident and as such, the appellant is not entitled to any compensation.

7. Mr. Gangadharappa, learned Counsel for the appellant submitted that the respondent has not taken pains to produce the relevant documents although it is admitted in the cross-examination. According to him, withholding of the documents has resulted in miscarriage of justice. He also submitted that the respondent-authority have not prosecuted and have not taken any action against the appellant. Hence the contention that he was a ticketless traveller has to be negated. On the other hand, Mr. Sanjay Gowda for Sri N.S. Srinivasan, learned Counsel for the respondent supported the order of the Tribunal and also relied upon the judgment in the case of Union of India and Others V Sunil Kumar Ghosh. According to Mr. Gowda, unless there is accident to the train and consequence of which is the result of the injury, the claim is not maintainable. It is quite interesting to note that the learned Counsel for the appellant has relied upon the same decision. Now in this decision it is laid down as follows.-

'That the 'accident' envisioned by the first part of Section 82-A(1) is an accident to the train' or 'a part of the train' is self evident. The section speaks of an accident by reason of either (1) collision or (2) derailment or (3) other accident to a train. There is therefore no room for any ambiguity on that score'.

8. In the case on hand, the first two are ruled out as there is no collision or derailment. Now, it is to be seen whether it can be brought under other accidents to the train.

9. The respondent does not dispute regarding the injuries suffered by the appellant. Even along with the appellant another person by name Gajendra was also injured. It is also admitted fact that on the date of accident, the train left the Cantonment railway station. Now there is controversy as to the place of accident. According to the appellant, the accident took place in the Cantonment Railway Station when the appellant was about to enter into the general bogie next to the engine. But, according to the respondent, the alleged accident did not take place on the railway platform at all. In the first instance, there is total denial and alternatively it is pleaded that the trolley ladder kept between two tracks might have come in contact with this appellant who was sitting by stretching his legs i.e., projecting his leg outside carriage. The applicant is examined as A.W. 3. Even

assuming his testimony is self-serving one. It is to be seen how he has sustained the injuries. It is noticed that the injuries to the appellant are admitted. Soon after some passengers in that carriage, pulled the chain and the train stopped in between Cantonment Railway Station and Bangalore East Railway Station and the train was brought to the Bangalore East Railway Station.

10. Now in the first place it is to be seen whether the respondent has produced all the documents alleged to have been in their possession. R.W. 1 who was working as Additional Divisional Railway Manager of Bangalore Division on 17-2-1992 on the information from the control office, in the evening that the Train No. 7086 Bangalore-Hyderabad express had been stopped at Bangalore East Station, he proceeded to the East Station. He has seen the appellant whose leg below the knee had been fractured. In addition to this, there was loss of blood. According to him these persons were ticketless travellers. It is also stated by him in the examination-in-chief itself that an OHE ladder kept between the two tracks fell because of the vibration of the train momentarily infringing the moving dimensions and hit two persons who were sitting in the front doorway of SLR 6080, next to train engine. This evidence goes to show that the appellant was very much present in the first carriage next to the engine and these two persons sustained fractures on the knee level. The defence taken by the respondent looks very artificial. Even assuming for a moment that the appellant was travelling sitting at the door, it cannot be believed that he was stretching his legs in such a way as to be hit by the ladder. Nobody likes to invite the trouble. He was in the general compartment. This was long distance train. Naturally there is rush in the general compartment. It is not unusual to see the persons standing at the doors. Even assuming for a moment that he was sitting at the door, it cannot be said that he was sitting in that artificial manner. The evidence of the respondent has to be disbelieved in totality.

11. It is also admitted fact that the chain was pulled down and the train was stopped. So, it was an unusual stop. For such unusual stoppings, there are journals as stated by the authorities meant for recording the reasons. These documents were not produced before the Tribunal. Unfortunately the Tribunal also has not called upon the officers to produce these documents. Mere say that they

are in possession of the documents, is not a guarantee certificate of truthful version. Non-production of these documents clearly compel the Court to draw an inference that they are not in possession of these documents. In the evidence of R.W. 2. he states that he was working as Assistant Clerk in charge of Bangalore East Station. He also states that after some time the train was brought back to Bangalore East Station and he came to know that two passengers were injured. From his evidence, it is also clear that the appellant and another person were injured.

12. The next point that is to be seen is whether the application of the appellant should be thrown out if he failed to establish that the accident had taken place in the Cantonment Railway Station. In this case, the appellant is helpless man. On the other hand, the respondent is mighty institution. So many other authorities and its employees are at its beck and call. It is not difficult for the respondent to manipulate certain documents through its employees. I do not understand why the respondent is so rigid instead of meeting the case of the appellant on humanitarian considerations. According to the appellant when he was about to enter into the carriage, the girder fell on his leg. If the version of the respondent is true then in the normal course, both the legs of the appellant should have been shattered into pieces. It appears that there is grain of truth in the version of the appellant that the girder which was used for installation of the electrification fell on the carriage and subsequently fell on his leg. It is an impossible task to visualise as to how and at what angle it fell on the carriage. The appellant has no ill-will against the respondent. He has knocked the door of the Tribunal for justice as he sustained injuries in this unfortunate accident. Even assuming for a moment the evidence of the respondent appears to be correct, even then also they are liable because they have not taken due care in the normal circumstances to provide safety measures in the railway station. It is the bounded duty of the respondent to keep in mind the safety of all the passengers who are travelling in the train. It is elicited in the cross-examination of R.W. 1 that the distance between the edge of the ladder trolley base and the foot step of the coach with the trolley kept between the tracks would be approximately 100 mm or 4". The admission of R.W. 1 clearly indicates that the railway authorities were so reckless and careless. It appears the respondents have not taken due care because they have kept the ladder so close to the railway

track. It also indicates that no safety measures were taken by the authorities concerned. If this is believed then it goes without saying that the respondent was negligent. According to the definition 'the accident to the train' does not mean that it should cause first to the carriage and then to the passengers. Looking to the facts and circumstances of the case, it may be so intricate. Without hitting the carriage, there is possibility of hitting the passenger first and then to the carriage. This possibility cannot be ruled out but this does not mean that there is no accident to the train. In my opinion the incident as narrated by the respondent eloquently speaks that there was accident to the train and as a result the appellant has sustained injuries. Hence, in my opinion the finding of the Tribunal is liable to be set aside.

13. Another finding is that the appellant was ticketless traveller as such he is not entitled for compensation. If he was a ticketless traveller it must be proved that he was travelling without ticket. There is machinery for detecting the ticketless travellers. It is not the case of the respondent that soon after the accident, this appellant ran away. He was taken to the hospital, treated in the hospital and he was under the supervision of the respondent for so many days. Nothing prevented them to initiate proceedings for ticketless travelling. The Tribunal is not justified in holding that he was ticketless traveller. In the light of this observation, the following order is passed.

In the result, the appeal is allowed and the order of the Tribunal is set aside and the appellant is entitled for compensation. The compensation has to be assessed and awarded in accordance with law by the Tribunal as early as possible.