

Bunga Satyam Vs. General Manager, South Central Railway

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Court : Andhra Pradesh

Decided On : Dec-10-2002

Reported in : 2005ACJ58

Judge : G. Yethirajulu, J.

Acts : [Railways Act, 1989](#) - Sections 123(2) and 124A; Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 - Rule 3

Appeal No. : A.A.O. No. 976 of 1997

Appellant : Bunga Satyam

Respondent : General Manager, South Central Railway

Advocate for Def. : D. Srinivas, Adv.

Advocate for Pet/Ap. : Sreedhar Reddy, Adv.

Disposition : Appeal allowed

Judgement :

G. Yethirajulu, J.

1. This is an appeal preferred by an unsuccessful claimant against the award of the Railway Claims Tribunal, Secunderabad in O.A.A. No. 11 of 1995..

2. The facts leading to the filing of the application and preferring of this appeal are briefly as follows:

Applicant is the father of the deceased boy aged about 21 years who was studying in B.Sc. 1st year. The deceased boy travelled in Tirumala Express on 24.3.1995 and after reaching Poola Railway Station he jumped from the train in his anxiety to alight at the railway station, though there was no halt for the train. On account of the fall, he sustained injuries and died instantaneously. Therefore, the applicant made a claim for Rs. 2,00,000 (rupees two lakh) towards compensation under the [Railways Act, 1989](#) ('the Act' for brevity).

3. The respondent while resisting the claim contended that the deceased was not a bonafide passenger of Tirumala Express on 24.3.1995 from Nidadavolu to Eluru Railway Station, that the applicant is put to strict proof that the deceased had fallen from the train and died on the spot, that the applicant is not entitled for any compensation since there was no negligence on the part of the railway administration. The petition is therefore liable to be dismissed with costs.

4. The claimant adduced oral evidence through PWs 1 and 2 and marked Exhs. A-1 to A-7 in support of his claim. RW 1 was examined on behalf of the respondent.

5. The claimant got himself examined as PW 1. In his evidence PW 1 deposed that the deceased went to Gouripatnam by bus to attend a festival and he had advised his son to return by Tirumala Express by availing the facility of the family pass issued for the family of the applicant for the journey from Howrah to Mahaboobnagar and back. PW 1 further stated that he was working as a Gangman in Railways. Therefore, he was given this facility along with his family members to utilize the pass. PW 1 also stated that during the night of 24.3.1995 the deceased who was expected to return, did not return. On the next morning he received a telephonic message that the deceased was found dead by falling from a running train Tirumala Express at Poola village. PW 1 further stated in his evidence that Poola is not a halting station for Tirumala Express. PW 1 conceded that he is not able to say as to why he did not furnish the particulars of the train in which the deceased travelled during the inquest.

6. PW 2 a person by name Nagaraju of Poolla village deposed that on 24.3.1995 the deceased and himself went to Gouripatnam to attend a jatara. Later they had returned to Nidadavolu at about 6.30 p.m. The deceased entered the Tirumala Express at Nidadavolu and he went to Tanuku as there he was studying in ITI. Later he came to know through newspaper that the deceased died.

7. The claimant filed a relationship certificate covered by Exh. A-1, death certificate, Exh. A-2, S.S.C. certificate of the deceased, Exh. A-3, inquest report, F.I.R. and the post-mortem report.

8. Against the above evidence, the respondent examined the Guard of the Mail with Head Quarters at Rajahmundry as RW 1. He deposed that on 24.3.1995 he was on duty as Guard of Tirumala Express from Visakhapatnam to Vijayawada. The train does not have any stoppage at Poolla. During his trip from Visakhapatnam to Vijayawada he did not notice anything unusual or abnormal incident for the entire running period. Nobody complained to him of any untoward incident involving any passenger.

9. The respondent did not dispute the death of the deceased and the cause of death. The contention of the respondent is that since there was no halt for Tirumala Express at Poolla Station, there is no scope to say that there was any negligence on the part of the railway administration resulting in the death of the deceased. It was further contended that since the deceased did not travel as a bonafide passenger, the railway administration is not liable to pay any compensation for his death.

10. The learned counsel for the claimant submitted that since the petitioner is working as a Gangman in the Railway Department, the deceased travelled with the pass issued by the Railways in his name and also in the name of his family members and, therefore, the deceased cannot be treated as an unauthorised passenger. The learned counsel has further submitted that since the slipping of the deceased from the running train can be treated as an untoward incident as defined under the Act, it comes within the scope of the Act and the petitioner is entitled for the compensation as prayed for. In support of his submissions the learned counsel relied on a Division Bench judgment of this court in Union of India

v. B. Koddekar, : AIR 2003 AP23 , wherein the Division Bench held as follows:

'Section 124A of the [Railways Act, 1989](#) provides that 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, a passenger who was injured or killed is entitled for compensation. Therefore, as provided in this section, there is no obligation on the part of the injured-claimants of the deceased to prove whether there was a wrongful act, neglect or default on the part of the railway administration. Suffice it to say, if any bona fide passenger having a ticket, as defined under clause (29) of Section 2 of the Act dies in an untoward incident, it is incumbent upon the Railways to pay the compensation to the victim/claimants of the deceased without putting up any dispute, provided the death of the deceased does not fall within any of the five exceptions (a) to (e), as indicated above, of the said Section 124-A of the Act. Under Explanation (ii) of Section 124-A of the Act, a valid platform ticket-holder is also brought within the fold of the term 'passenger' and if such a platform ticket-holder dies in any untoward incident, his legal heirs are entitled to seek compensation.'

11. In view of the above Division Bench judgment, there is no obligation on the part of the claimant to prove whether there was a wrongful act, neglect or default on the part of the railway administration. The Division Bench also held that the burden does not lie on the dependants of the deceased to prove that the deceased was a bonafide passenger and the burden is on the railway administration to prove that the deceased was a ticketless traveller or was not a bona fide passenger. As a result of the amendment brought to Sections 123 and 124 of the Act, the burden is on the Railways to prove that the deceased is not a bona fide passenger with a valid ticket and the nature of death falls within any of the exceptions to Section 124-A of the Act.

12. Since there is evidence to show that the deceased died on account of train accident, it can be brought within the ambit of untoward incident and in the light of the Division Bench judgment referred supra, I am of the view that the respondent cannot avoid the liability as contended by it.

13. In the light of the above circumstances, I find force in the grounds of appeal and I am inclined to allow the appeal by setting aside the order of the Railway Claims Tribunal, Secunderabad.

14. In the result, the appeal is allowed. The order dated 6.9.1996 passed by the Railway Claims Tribunal, Secunderabad in O.A.A. No. 11 of 1995 is set aside. The claimant is awarded a sum of Rs. 2,00,000 (rupees two lakh only) towards compensation on account of the demise of his son (deceased) due to train accident, but without interest and costs.

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