



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6th DAY OF DECEMBER, 2024

BEFORE

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

MISCELLANEOUS FIRST APPEAL NO.2556/2011 (RCT)

BETWEEN:

- 1 . THE UNION OF INDIA
REPRESENTED BY ITS GENERAL MANAGER,
SOUTH WESTERN RAILWAY,
HUBLI. ... APPELLANT

(BY SRI H.SHANTHI BHUSHAN, ADVOCATE)

AND:

- 1 . SRI. A. MOHAN,
S/O ARUNACHALAM,
AGED ABOUT 53 YEARS.
- 2 . SMT. VADIVU W/O MOHAN,
AGED ABOUT 52 YEARS

BOTH RESIDING AT
D.NO.9, II FLOOR,
MINSHI SHAIK AHMED LANE,
JALI MOHALLA,
BANGALORE-560 053. ... RESPONDENTS

(VIDE ORDER DATED 14.09.2023,
NOTICE TO R1 AND R2 HELD SUFFICIENT
BY WAY OF PAPER PUBLICATION)

THIS M.F.A. IS FILED UNDER SECTION 23(1) OF THE RAILWAYS CLAIMS TRIBUNAL ACT, AGAINST THE ORDER DATED 28.12.2010 PASSED IN OA NO.II U 151/2009 ON THE FILE OF THE RAILWAY CLAIMS TRIBUNAL, BANGALORE, AWARDED A COMPENSATION OF Rs.4,00,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF APPLICATION TILL THE DATE OF ORDER AND 9% FROM THE DATE OF ORDER TILL THE ACTUAL PAYMENT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 28.11.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

1. Heard the learned counsel for the appellant and respondents unrepresented.

2. The factual matrix of claimants before the railway Tribunal in O.A.No.II U 151/2009 is that the deceased on 14.02.2009 came to Whitefield railway station and purchased one journey ticket from Whitefield to Kuppam and boarded the train Mysore-Tirupati passenger. Further the case of the claimant that the train was heavily crowded and that when the train reached Kuppam railway

station due to the incoming and outgoing passengers the deceased could not get down at Kuppram station but tried to reach the doorway and in the meantime due to sudden jerk and jolt of the train travelling between Kuppram and Mallanur railway station, he accidentally slipped and fallen down from the train on the midnight of 14.02.2009 and sustained serious injuries and died on the spot.

3. The respondent appeared and filed objection contending that he is not a bonafide passenger and the deceased was holding a ticket to travel from Whitefield to Kuppram and his body was lying beyond Kuppram railway station and that itself shows that the deceased is not a bonafide passenger. Hence, the claimants are not entitled for any compensation.

4. In this M.F.A challenge is made allowing the claim petition filed by the claimants and granting the compensation and only ground urged in the appeal memo is that Railway Tribunal committed an error that the deceased

had purchased a ticket only upto Kuppam. Admittedly, the body of the deceased had been found about 5 kms away from Kuppam, thus it was clear from the fact that deceased was not a bonafide passenger and it was therefore clear that railway could not liable for the death of the deceased who had not having a valid ticket or pass to travel in the train beyond Kuppam. The Tribunal committed an error that in coming to the conclusion that he was a bonafide passenger is only incorrect and deceased only an educated man would not stood on the door way and would not have missed getting down at the schedule stop. The reason given by the Railway Tribunal is erroneous and Tribunal has committed illegality in not noticing this apparent facts. This Court already made it clear that respondents are unrepresented and held sufficient in view of the paper publication issued against them.

5. Based on the pleadings of the parties, the Tribunal framed the following Issues:

- 1) *Whether was there any untoward incident?*
- 2) *Whether the deceased was a bonafide passenger?*
- 3) *Whether the applicants are the dependents of the deceased?*
- 4) *Whether the applicants are entitled for the interest as prayed for in the application?*
- 5) *To what relief?*

6. The Railway Tribunal allowed the claim petition having considered the material on record and hence the present appeal is filed challenging the award. Having considered grounds urged in the appeal as well as the contentions of the counsel appearing for the appellant that he had traveled beyond the place for which he had taken the ticket and having considered the ground urged in the appeal memo and also contention of the appellant's

counsel, the point that would arise for consideration of this Court are:

- 1) *Whether the Tribunal committed an error in granting the compensation in not taking note of the fact that the deceased traveled beyond the destiny?*
- 2) *What Order?*

7. Having perused the pleadings of the parties and also the evidence available before the Court and also the reasoning given by the Railway Tribunal, answered the issues as affirmative and comes to the conclusion that inspite of travel beyond the destiny, Railway Tribunal is liable and contend in the appeal that the Tribunal committed an error in awarding the compensation and it requires interference. The main contention urged in the appeal memo also that deceased has purchased a ticket only upto Kuppam. Admittedly, the body of the deceased found about 5 Kms away from Kuppam and hence he was

not a bonafide passenger and railway could not be made liable. Having taken note of the ground urged in the appeal memo and also the judgment of the Apex Court in a case of ***Union of India V/s Prabhakaran Vijayakumar and other reported in 2008 (2) TAC 777 (SC)*** held that since the provisions for compensation in the railways act is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. It is held that interpretation which advances the object of the statute and serve its purpose should be preferred under such circumstances Court has to bear in mind the very purpose of this enactment and also held that in this case in my view, the passenger who has traveled beyond his destination in such a situation would be covered within the definition of the passenger with a valid ticket.

8. The Bombay High Court in the judgment reported in ***2023 SCC Online Bom 2298*** in case of ***Sonali and Others V/s Union of India*** also discussed the similar

issue whether the deceased was bonafide passenger travelling with valid ticket, however, due to above stated unfortunate situation he over-traveled wherein also the Bombay High Court taken note of similar question of consideration of the co-ordinate bench of Bombay High Court in case of ***Vaishali V/s Union India*** reported in ***2011 ACJ 106*** the similar set of facts the Court has observed that unintentionally over travels beyond the destination he could not be held to be unauthorized passenger provided he possess a valid ticket for a journey upto his desired destination, merely because of over travel or travel beyond the destination the deceased could not be said to be a passenger without valid ticket. The Bombay High Court referring the said judgment i.e., in the judgment referred supra, also allowed the claim petition.

9. This Court also would like to rely upon judgment reported in ***AIR 2012 Raj 46*** in case of ***Smt. Anokhi Devi and others V/s Union of India through general***

Manager wherein also a similar set of facts the dead body of the Kanhaiyalal was found two kilometers away from Bandikui Railway Station and he was also not found have been possessing valid ticket; he cannot therefore be considered as a bona-fide passenger and the same was addressed and the Rajasthan High Court also even discussing the judgment of the Apex Court in paragraph Nos.14 and 19 of the judgment in case of **Jamirul Nisha's V/s Union of India** discussed even the provisions of Section 123(c) of Railways Act.

10. Having taken the principles laid down in the judgment of Apex Court and also taking into note of with the advance of industrialization, the Laissez Faire Theory was gradually replaced by the theory of the Welfare State, and in legal parlance there was a corresponding shift from positivism to sociological jurisprudence and the Court has to take note of liberal approach and the same was taken note of by the Railway Tribunal. The very same judgment is also

discussed in the judgment of Rajasthan High Court and even taken note of Prabhakaran Vijaya Kumar case referred supra. The deceased might have fallen while trying to get down and in that process he could have received injuries, which the fact is in line with the statement of witnesses and also the post mortem report. The fact that the deceased was travelling in the train is not in dispute, but only mistakenly he traveled beyond destiny and also the Apex Court in the Prabhakaran's case also held that principles of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

11. This Court also in the judgment M.F.A.No. 3651/2016 taking into of the factual aspects of the case relied upon the Prabhakara Vijayakumar and others referred supra and also taken note of the fact that Section 124(a) of the Railway's 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. This Court also taken note of the judgment of the ***UNION OF INDIA v. RINA DEVI reported in AIR (SC) 2362*** discussed and held that "Death or injury in course of boarding or de-boarding train will be 'untoward incident'. Even in the case of wrong train boarding the same in case of ***Union of India V/s Anuradha and another*** reported in ***2014 ACJ 856*** discussed and held that even the deceased boarded in a wrong train having journey ticket and died while alighting the train that does not mean that he was not a bonafide passenger and on that ground the claim cannot be rejected. Even in the judgment of the Apex Court in Civil Appeal No.4945 of 2018 decided on 9th May, 2018 also in paragraph 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. Having perused the principles laid down in the judgment referred supra and also the factual aspects of the case, the fact that he had traveled in the very same train is not in dispute, but the fact is that body was found away from 5 kms of his destiny. The Tribunal also while awarding compensation discussed in detail and the very ground urged by the appellant's counsel cannot be accepted since Section 124(a) of the Railway's Act, 1989 casts strictly liability on the railway even the deceased died due to his own fault and the railway is liable to pay compensation. In Prabhakaran Vijayakumar's case also held that even travel beyond his destiny, the same cannot be ground to discard the claim of the claimants and hence, I do not find any error committed by the Trial Court in allowing the claim and granting the compensation and no merit in the appeal to set-aside the order of the Railway Tribunal.

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

ORDER

The Appeal is ***dismissed.***

Sd/-
(H.P. SANDESH)
JUDGE

RHS