

Andhra High Court

Godisela Rajamma And Ors. vs Union Of India (Uoi) on 7 June, 2002

Equivalent citations: 2003 ACJ 1404, 2002 (4) ALD 632, 2002 (4) ALT 370

Author: . M Naik

Bench: M B Naik, G Rohini

JUDGMENT Dr. Motilal B. Naik, J.

1. This appeal is filed assailing the order made in OAA No. 66 of 1998 dated 10-9-1999 by the Railway Claims Tribunal, Secunderabad.

2. Appellants, six in all, residents of Budigadda Basthi, Bellampally, Adilabad District, instituted the said OAA No. 66 of 1998, seeking compensation of Rs. 4 lakhs for the death of Godisela Rajaiah. The 1st appellant is the wife, 2nd appellant is the mother and appellants 3 to 6 are the daughters of the deceased Godisela Rajaiah. The case of the appellants before the Tribunal was that on 8-3-1998 Godisela Rajaiah was travelling in D.N. Mangala Express train from Chandrapur to Ramagundam in a general compartment with ticket bearing No. 25674. He accidentally fell down from the train at the place between Rechini RD/Bellampally at Kms.239/20-22 and died on the spot. On account of the death of Godisela Rajaiah, the appellants herein claimed a compensation of Rs. 4 lakhs.

3. On behalf of the Railways, a written statement was filed denying the fact that the death was caused on account of falling from any train. However, the respondent admitted the fact that the ticket bearing No. 25674 is a II class ticket issued at Chandrapur on 8-3-1998.

4. On the basis of the pleadings, the Railway Claims Tribunal framed the following issues:

(1) Whether the applicants are dependants of the deceased?

(2) Whether the deceased was a bona fide passenger?

(3) Whether the accidental fall as alleged is not an untoward incident?

(4) To what relief?

5. On behalf of the appellants-applicants, the wife of the deceased G. Rajamma, who is the 1st appellant, was examined as AW.1. Certified copies of final report and post-mortem examination report were marked as Exs.A5 and A6. The Photostat copies of ration card and dependant certificate were marked as Exs.A.8 and A 9. On behalf of the respondent, one N. Venkataiah, was examined as RW.1, The Govt. Railway Police produced the record of the original ticket bearing No. 25674 and the voter identity card was also produced on behalf of the Railways.

6. On the basis of the material, the Railway Claims Tribunal (hereinafter referred to as "the Tribunal"), on issue No 1 held that all the applicants are the dependants of the deceased. On issue No. 2, the Tribunal, on the basis of the record relating to the issuance of ticket bearing No. 25674 on 8.3.1998 for the journey from Chandrapur to Ramagundam, held that that the deceased was a bona

fide passenger. On issue No. 3, the Tribunal held that since no material is placed before the Tribunal to show that the deceased had an accidental fall from a train and in view of the report of the Deputy Superintendent, Bellampally that one male dead body aged about 40 years is lying inside of Down line between Rechini Road/ Bellampally at Kms. 239/20-22, there was no accidental fall from a particular train in which the deceased supposed to have travelled. The Tribunal further held that there is no substantial evidence to show how the body was brought to the accident site. Relying on a decision of the Supreme Court in Union of India and Ors. v. Sunil Kumar Ghosh, , the Tribunal decided the 3rd issue against the applicants as if there was no accidental fall by the deceased from the train. Having decided the 3rd issue against the applicants, with regard to issue No. 4, which relates to granting relief, the Tribunal held that no relief could be granted and accordingly dismissed the OAA by order dated 10-9-1999, It is this order, which is assailed before this Court in the present appeal:

7. It is submitted by the learned Counsel for the appellants that the Tribunal though held that the deceased was a bona fide passenger having purchased valid ticket and that the applicants are the dependants of the deceased, yet the Tribunal applying the ratio laid down by the Supreme Court in the decision (supra) rejected the claim of the appellants on the ground that there was no accidental fall and the accidental fall has necessarily to be preceded by an accident as defined under Section 124-A of the Railways Act, 1989. The learned Counsel stated that the Tribunal has totally ignored Clause 'c' to Section 123, through which necessary amendment (Act 28 of 1994) was brought to Section 123. Under Clause "c" the expression "untoward under incident" was also brought under Chapter 13, which provides for determination of liability on the Railway Administration, for the death and injury to the passengers due to accident. The learned Counsel stated that as provided under Clause 'c' of Section 123 and Sub-clause (2) of Section 123 of the Act, accidental fall of any passenger from a train carrying passengers would also amount to untoward incident Laying emphasis on the provision, the learned Counsel stated that the Legislature visualized such instances of deaths which are difficult to prove by cogent evidence and as such this provision has been inserted for granting appropriate compensation. The learned Counsel took us to the document filed on behalf of the applicants i.e., certified copy of final report Ex. A.6, in which it is categorically mentioned that from the investigation done and from the evidence collected it is established that the deceased G. Rajaiah s/o. Aarkaiah r/o Bellampally was travelling in DN Mangala Express Train on 8-3-1998 from Chandrapur to Ramagundam on ticket No. 25674 and at KM No 239/20-22 between Rachine Road and Bellampally Railway Station, the deceased fell down from the running train and received injuries and died on the spot. It is further mentioned in the final report that it is a clear case of accident and there was no foul play or suspicion about the death of the deceased. Relying on Ex.A.6 final report submitted by the Sub-Inspector of Railway Police, R.P.S., Bellampally, the learned Counsel submitted that Ex.A.6 final report itself would speak that the death of the deceased is due to accidental fall from the running train and that this is a vital document, which has been ignored by the Tribunal only on the basis of the ratio laid down by the Supreme Court in the decision (supra), which is prior to the amendment brought to Section 123 of the New Act and stated that this is a fit case for granting compensation.

8. We have also heard Sri Ramakrishna Rao, learned Counsel appearing on behalf of the respondent, who opposed the claim of the appellants on the ground that the claimants have not

proved the cause of death by adducing cogent evidence to show that the deceased died on account of falling from the train and as such, the Tribunal is justified in dismissing the claim of the appellants.

9. In the light of these submissions, the point for consideration is whether the Tribunal is justified in rejecting the claim of the appellants for compensation only on the ground that the manner of the accident and the cause of the death of the deceased have not been proved by the claimants?

10. Admittedly the decision of the Supreme Court (supra) relied on by the Tribunal was rendered in the year 1984. The facts obtaining in the said case are that the respondent-Sunil Kumar was travelling by a train as a bona fide passenger. While the bogie in which he was travelling was being shunted at a Railway Station, he accidentally fell down from the train near the water column at the end of the platform and his right hand was crushed by that part of the train which was being shunted. The respondent laid a claim before the District Judge seeking compensation under Section 82-A of the Railways Act, 1890. It was contended on behalf of the Railways that the respondent sustained injury while going to the rear end of the train and possibly boarding one of the bogies which was being detached during the shunting operation and in this process he appears to have been hit by the water column when these bogies were being moved during the shunting operation. On the basis of these pleadings, the District Judge did not accept the version of the respondent that the bogie in which he was travelling received a sudden jerk and he fell down on that account. Aggrieved by rejection of compensation, the respondent preferred an appeal before the Madhya Pradesh High Court. The Madhya Pradesh High Court while considering the provisions under Section 82-A of the Act, 1890, held that "Any mishap or misfortune in the working of a railway involving a passenger train or apart thereof resulting, in the death of or personal injury to a passenger travelling therein, during his rail journey is an accident within the ambit of Section 82-A." By holding so, the Madhya Pradesh High Court allowed the claim of the passenger (Sunil Kumar). The Railways, however, carried the matter before the Supreme Court. The Supreme Court, while interpreting the provisions under Section 82-A of the Railways Act (9 of 1890), observed thus:

"In the case of a mishap to the passenger in such circumstances it cannot be said that there has been an accident to the train and the mishap has nexus with it. The liability under Section 82-A will not, therefore, be attracted in such cases. Or in the case of a mishap to a passenger in similar circumstances, such as an injury sustained on account of falling down whilst getting on or off a running or stationary train or sustained when he slips in a compartment or when something falls on him whilst travelling. All such mishaps, when not connected with the accident to the train, or a part of it, would be accidents to the passenger only. And until both the mishaps take place, one to the train and another, a sympathetic one, to the passenger, the liability under Section 82-A of the Act will not be attracted."

11. Thus, while interpreting the provisions under Section 82-A of the Railways Act, 1890, the Supreme Court held that any injury sustained on account of falling down whilst getting on or off a running or stationary train or sustained when a passenger slips, while not connected with the accident to the train or a part of it would be accidents to the passenger only and unless both accidents, viz., one to the train and one to the passenger in the same transaction take place, the liability on the part of the Railways under Section 82-A would not be attracted. In those

circumstances, the Supreme Court held that since no accident has taken place to the train, there is no liability on the part of the Railways to pay compensation.

12. However, under the Railways Act, 1989 (New Act) the liability of the Railway Administration has been dealt with under Section 123 in Chapter 13. Section 123 deals with the definitions of 'accident' and 'dependant' etc. Section 124 deals with the extent of liability and Section 124-A deals with compensation on account of untoward incident. By amendment (Act 28 of 1994) Clause 'c' was inserted to Section 123 through which 'untoward incident' is also included. As per Clause V of Section 123, 'untoward incident' means:

"(1)(i) the commission of a terrorist act within the meaning of Sub-section (1) of Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity: or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or (2) the accidental falling of any passenger from a train carrying passengers."

13. From a reading of Sub-section (2) of Section 123 and Clause "c" of Section 123 as provided in the New Act, 1989, if there is an accidental fall of any passenger from a train carrying passengers, such accidental fall would come within the ambit of 'untoward incident'.

14. Coming to the facts of the instant case, on a perusal of the final report Ex.A6, it is clear that the deceased was travelling by DN Mangala Express Train on 8-3-1998 from Chandrapur to Ramagundam with a valid ticket bearing No. 25674 and that the deceased fell from the said train between Rechini and Bellampally Railway Station, and died on the spot. When the Investigating Authority itself submitted the final report Ex.A6 narrating the incident, there is no reason for the Tribunal to disbelieve the said report only relying on the decision of the Supreme Court (supra), which is rendered in the year 1984 which has arisen under the Railways Act, 1890. The Tribunal, as discussed above, has not referred to the amended provision inserted by amendment Act (28 of 1994) under Clause 'c' to Section 123 defining 'untoward incident', and has only placed reliance of the decision of the Supreme Court cited (supra) and rejected the claim of the appellants. We are of the view, the impugned order of the Tribunal, rejecting the claim of the appellants, without even considering the amended provisions brought under Amending Act 28/94 to Section 123 of the Act, cannot be sustained.

15. We may further add that through amendment (Act 28 of 1994) Section 124-A was also inserted, which deals with the determination of compensation on account of untoward incident Section 124-A reads as under:

"124-A: Compensation on account of untoward incident:--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 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 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 passengers 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."

16. However, as indicated above, five exceptions are provided in Section 124-A and if the death of the passenger falls in any of those exceptions, no liability can be fastened on the Railway Administration for payment of compensation to the dependants of such deceased. If the Railway Administration satisfactorily proves the case that the death of the deceased falls within the five exceptions provided to Section 124-A, then only the Tribunal can decline payment of compensation to the dependants. Mere it is not the case of the respondent that the cause of death of the deceased falls within the five exceptions provided under Section 124-A of the Act

17. In CMA Nos.2374 of 1998 and batch, by a separate judgment, we have discussed as to what extent the burden could be cast on the claimants to claim compensation and the true meaning to be given to the provisions under Sections 123, 124 and 124-A of the Railways Act, 1989 in detail and held that even if there is any default on the part of a passenger, the Railways are liable to pay compensation regardless of such default. In this case, as discussed above, it is proved beyond doubt that the deceased had purchased a valid ticket bearing No. 25674 for the journey from Chandrapur to Ramagundam and the said fact was proved by cogent evidence. Therefore, in the absence of any evidence to the contrary, the inescapable presumption is that the deceased was travelling in DN Mangala Express train on 8-3-1998 as was reflected in the report of the Investigating authority under Ex.A.6 on 2-6-1998.

18. In view of our discussion in the foregoing paragraphs, we hold that the Railways is liable to pay the statutory compensation of Rs 4 lakhs to the appellants-applicants and the Tribunal is not justified in rejecting the claim of the appellants in the manner narrated by us.

19. For all the reasons, we allow the appeal with costs and set aside the judgment, dated 10-9-1999 made by the Railways Claims Tribunal, Secunderabad in O.A.A. No. 66 of 1998 by awarding a compensation of Rs. 4,00,000/- with interest at 9% per annum from the date of filing of the claim petition till the date of realization. The respondent shall deposit the above compensation along with costs and interest within a period of three months from today to the credit of OAA No. 66 of 1998 on the file of the Railway Claims Tribunal, Secunderabad.

20. There are six applicants in the claim petition, 1st applicant is the wife, 2nd applicant is the mother and applicants 3 to 6 are the daughters of the deceased. As on the date of filing of the claim petition, the age of the mother of the deceased-applicant No. 2 was shown as 68 years and applicants 4 to 6 were shown as minors. By now applicants 4 to 6 would have attained majority. As the 1st applicant is the wife, and applicants 3 to 6 are the daughters of the deceased, they shall be entitled to compensation at the rate of Rs. 70,000/- each and the 2nd applicant, who is the mother of the deceased, shall be entitled to compensation of Rs. 50,000/-. The applicants shall be entitled to withdraw the entire amounts allotted to them along with accrued interest.