

(2004) 07 AP CK 0001

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No. 882 of 1999

Union of India (UOI)

APPELLANT

Vs

S. Yadagiri @ Yadaiah
and Another

RESPONDENT

Date of Decision: July 22, 2004

Acts Referred:

- Railways Act, 1989 - Section 123, 124, 124A
- Terrorist and Disruptive Activities (Prevention) Act, 1987 - Section 3(1)

Citation: (2005) 3 ACC 839 : (2005) 2 ACC 324 : (2006) ACJ 2589 : (2004) 5 ALD 361

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: T. Ramakrishana Rao, for the Appellant; K.S.N. Murthy, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

This Civil Miscellaneous Appeal arises out of the order, dated 23-10-1998, passed by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad in O.A.A. No. 11 of 1998.

2. The respondents filed O.A.A.11 of 1998 claiming that their son, S. Chiranjeevi, a student of Intermediate, boarded the Secunderabad-Guntur Golkonda express at Aler Station on 27-10-1997 to go to the house of his uncle at Kazipet duly purchasing the ticket. It is stated that after he boarded the train, he slipped from it and fell down accidentally and died on the spot. They claimed compensation of Rs. 2,00,000/- in accordance with the provisions of the Railways Act, 1989, (for short "the Act") and the rules made there under.

3. The appellant filed a written statement alleging that the cause of the death of the deceased was the attempt by the deceased to board the speeding train in a dangerous manner and that he died on account of his own carelessness and

negligence. It is pleaded that the deceased died on account of an untoward incident and in that view of the matter, they are not liable to pay the compensation.

4. Before the Tribunal, the first respondent was examined as P.W.1 and an eye witness to the incident was examined as P.W.2. On behalf of the appellant, R.W.1, Guard of the train was examined. Certain documents were also marked. On appreciation of oral and documentary evidence, the Tribunal took the view that the respondents are entitled to be paid the compensation of Rs. 1,00,000/-. It apportioned the amount between the respondents 1 and 2 equally.

5. Mr. T. Ramakrishan Rao, learned counsel for the appellant submits that the deceased died on account of his own negligence or lack of proper care and in that view of the matter, the same needs to be treated as a self-inflicted injury. Placing reliance upon the Judgment rendered by a Full Bench of this Court in [Union of India \(UOI\), South Central Railways Vs. Kurukundu Balakrishnaiah and Others](#), he submits that where an accident, resulting in injury or death of a passenger takes place on account of lack of proper care or negligence on the part of such passenger, the railway administration is not at all under obligation to pay the compensation.

6. Mr. K.S.N. Murthy, learned counsel for the respondents, on the other hand, submits that except stating that the accident has taken place on account of negligence on the part of the deceased, no evidence worth its name was placed by the respondents before the Tribunal and in that view of the matter, no exception can be taken to it.

7. It is not in dispute that the deceased Chiranjeevi died on 27-10-1997 when he was boarding

the Golkonda express at Aler station. The respondents specifically pleaded that he slipped from the compartment after he has gained entry into it. The appellant however, pleaded that the deceased fell from the compartment when he was on the steps, and steps cannot be treated as part of the compartment. It was also their case that the deceased attempted to board the train when it was in motion. P.W.1 is the father of the deceased. He is not an eye witness to the incident and as such his evidence is of no use. P.W.2 has witnessed the entire incident. He is also a native of the same village. Either his presence in the station or his ability to recognise the deceased have not been doubted by the appellant. R.W.1 is the Guard of the train. Though he is present in the same train, he cannot be expected to witness the manner in which the accident took place. At the most he can vouch for the fact that the accident occurred and the deceased died on the spot.

8. The only ground on which the appellant seeks to avoid its liability to pay compensation is by treating the accident as a "self-inflicted injury" mentioned in Section 124-A of the Act.

9. Section 124 of the Act, provides for payment of compensation for the loss occasioned by the death, or injury to a passenger in the event of collision between trains; one of which is carrying passengers or derailment or other accidents to a passenger train. Section 124-A provides for payment of compensation on account of death or bodily injury to the passengers in an untoward incident. The untoward incident is defined under clause (c) of Section 123 to mean as under:

"(c) "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; 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."

The present case can be brought into the category of accidental fall of a passenger from train carrying passengers.

10. The liability to pay compensation u/s 124-A is almost absolute. Once it is proved that an accident resulting in death or injury to a passenger has taken place, the neglect or default on the part of the railway administration is immaterial and irrelevant. However, it is not every incident of death or injury that brings about the liability on the railway administration. As many as five exceptions are carved out in the proviso. The proviso reads as under:

"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."

Learned counsel for the appellant submits that the death of the deceased in the present case occurred on account of self-inflicted injury. If the appellant is able to establish that the death of the deceased occurred on account of self-inflicted injury, it can certainly extricate itself from the liability to pay compensation.

11. The expression "self-inflicted injury" is not described or defined under the Act. However, it is not difficult to understand its scope. The infliction of the injury should be by the person himself upon his body and out of his own volition. It pre-supposes the state of mind wherein the person accused of it had conceived an idea of inflicting an injury to himself. This in turn pre-supposes the person being in a state of mind to take an independent decision. When these aspects are established in relation to a person while travelling in a train, the railways cannot be held responsible to pay the compensation.

12. The burden to prove that a passenger died or sustained injuries on account of a self inflicted injury, squarely rests upon the railways. It is not as if that as and when it is proved that a passenger has sustained injury, a simultaneous presumption that the injury is self-inflicted, has to be drawn. It is only when necessary ingredients are proved touching on the allegation of self infliction that it can be treated so. In case of deaths, which result on account of self-inflicted injuries, the burden is still heavier. First it needs to be established that the passenger in question had inflicted any injury upon himself, being conscious of the consequence thereof. Secondly, that the injury in turn had resulted in his death. These aspects are conspicuously absent in the present case. It was not even alleged by the appellant that the deceased has a pre-meditated plan to inflict an injury upon himself by slipping from the train and that the same has resulted in his death. Hence the contention advanced on behalf of the appellant cannot be accepted.

13. The learned counsel for the appellant further submits that there was negligence on the part of the deceased in taking proper care while boarding the train and but for such negligence, he would not have fallen from it. Placing reliance upon a Full Bench Judgment of this Court *Union of India V K. Balakrishnaiah* (1 supra), the learned counsel submits that the appellant cannot be made to pay compensation.

14. It is true that a full bench of this Court held that the expression "self-inflicted injury" takes in its fold, the absence of requisite degree of care and prudence, or negligence on the part of the injured or deceased passenger. The relevant portion reads as under:

"Para-72:On the above analysis we hold that the expression self-inflicted injury in Clause (b) of the proviso to Section 124-A of the Act denotes and includes an injury suffered as a direct, proximal and reasonably expected consequence of a victim's wrongful act, default, negligence or the absence of the requisite degree of care and prudence on his part."

In view of the law laid down by the Full Bench of this Court, the railway administration cannot be mulcted with the liability, in case the accident takes place on account of the absence of care and prudence or any wrongful act or negligence on the part of the said passenger. However the question as to whether there was negligence or absence of prudence on the part of the deceased is always a matter of

evidence and the burden to prove this fact rests with the railways. There is nothing on record either to suggest or to prove that there was negligence or absence of prudence on the part of the deceased.

15. For the foregoing reasons, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.