

(2005) 07 AP CK 0063

Andhra Pradesh High Court

Case No: C.M.A. No. 1220 of 1999

Union of India (UOI)

APPELLANT

Vs

Aggala Dilleswara Rao

RESPONDENT

Date of Decision: July 13, 2005

Acts Referred:

- Railway Claims Tribunal Act, 1987 - Section 13(1), 16, 17, 17(2), 2
- Railways (Amendment) Act, 1994 - Section 13(1)
- Railways Act, 1989 - Section 123, 124, 124A, 125, 128
- Terrorist and Disruptive Activities (Prevention) Act, 1987 - Section 3(1)

Citation: (2006) 3 ACC 652 : (2006) ACJ 1470 : AIR 2005 AP 444 : (2005) 5 ALT 541 : (2005) 2 APLJ 472

Hon'ble Judges: V. Esvaraiah, J

Bench: Single Bench

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

Final Decision: Dismissed

Judgement

V. Esvaraiah, J.

Aggrieved by the order of the Railway Claims Tribunal, Secunderabad Bench, in O.A.A. No. 60 of 1998 dated 10-11-1998, the Union of India represented by its General Manager, South Central Railway, Secunderabad, filed this appeal u/s 23 of the Railway Claims Tribunal Act, 1987.

2. Respondent herein is the claimant who filed the said claim application on the file of the Railway Claims Tribunal. The parties herein are referred to as they are arrayed in the said claim application.

3. It is the case of the applicant that on 3-6-1993 with a view to go to Secunderabad from Palasa, for contract coolie work, he along with his mother and other members went to Palasa Railway Station, which is nearest to their native village, Ganguvada

and purchased tickets. All of them boarded the train No. 2119 Bhubaneswar-Secunderabad Konark Express in a general compartment. As there was heavy rush, the applicant and his mother was standing in the compartment near the door holding the edge of shelf meant for luggage. Meanwhile, the train started with a jerk and due to that impact, he was thrown out of the compartment and fell down between the compartment and the edge of the platform, as a result of which his both hands were crushed, cut and separated by the moving train and he went unconscious due to heavy bleeding. Immediately, the applicant was shifted to Government Hospital, Palasa by Railway Police and from there he was shifted to S.K.C.G. Medical College, Berhampur for better treatment and subsequently he was treated by the Government Hospital, Srikakulam. He submits that the nature of the injuries sustained by him is traumatic amputation of both hands up to elbow and thereby he sustained permanent disability. Accordingly, he claimed Rs. 2,00,000/- towards compensation.

4. As against the said contention the railways filed a written statement stating that the incident took place on 3-6-1993 and as such the same does not attract the provisions of Section 124A of the Railways Act, 1989 as contended by the applicant and therefore, the tribunal has no jurisdiction to entertain the application. Without admitting the contentions of the applicant the railways stated that there was no scope for the applicant alone falling from the train since according to the applicant, himself and his mother was standing in the compartment near the door holding edge of the shelf meant for luggage. Therefore, if the applicant's statement were to be true, both himself and his mother would have fallen from the train. Even assuming that the incident occurred due to the fall from the said train the same was due to the negligence and carelessness of the applicant on account of standing at the door step, which is totally prohibited. Hence, no negligence can be attributed to the railways. Therefore, the allegations of the applicant are incorrect and untrue and the applicant is not entitled for any compensation.

5. Based on the above pleadings, the tribunal framed the following issues:

- (1) Whether the applicant is a bona fide passenger?
- (2) Whether the alleged accidental fall of the applicant is not an untoward incident?
- (3) What is the nature and extent of injuries suffered by the applicant?
- (4) To what amount of compensation the applicant is entitled to?
- (5) To what relief?

6. It is pertinent to note that the said claim application was filed with delay. To condone the said delay an application in I.A. No. 41 of 1998 was filed u/s 17(2) of the Railway Claims Tribunal Act, 1987 read with Section (sic. Rule) 44 of the Railway Claims Procedure Rules, 1989, wherein a counter has been filed by the railway administration. The tribunal allowed the said application by order dated 17-4-1998

and the said order has become final. Therefore, it is not open for the railway administration to contend that the delayed claim petition filed by the applicant is unsustainable.

7. The applicant, A. Dilleswara Rao, examined himself as P.W.1 and stated that on 3-6-1993 he was travelling along with his mother and brother from Palasa to Secunderabad by train No. 2119 Konark Express in search of employment. As there was heavy crowd in the general compartment of the said train he was standing near the door of the compartment. When the train started from Palasa, he felt some pressure on him by the crowd who were also standing inside the compartment and he was unable to keep his balance and fell down from the coach and went under the wheels. He sustained serious injuries and both his hands were crushed and cut. In the said incident his mother lost the tickets. The applicant filed the following documents - Ex.A-1 is the General Diary of the GRP regarding the accident; Ex.A-2 is also the General Diary of the GRP Palasa, regarding the admission of the applicant in Berhampur hospital, Ex.A-3 is the orthopaedically handicapped certificate, Ex.A-4 is the Concession certificate for orthopaedically handicapped people and two photographs of the witness after the injury are marked as Ex.A-5. The tribunal observed that the right forearm has been amputated on the elbow while his left forearm has been amputated below the elbow at about 3" from the elbow. The cross-examination was with regard to the tickets purchased for himself and his mother to which the applicant stated that he does not know what happened to the tickets as he gave the tickets to his mother. He denied the suggestion that the alleged accident never occurred and that he was not a bona fide passenger. Except these two simple questions in the cross-examination the railway administration has not adduced any oral or documentary evidence. Exs.A-1 and A-2 alone support the averments made by the applicant in his oral deposition. The said exhibits disclose that the applicant fell under the Train No. 2119 Konark Express, his both hands were cut and was sent for First-Aid through Railway Police Constable 336 along with a memo and the said constable shifted the applicant from Palasa to Berhampur head quarters hospital.

8. As against the evidence of the applicant that he has purchased a journey ticket for himself and his mother, kept them with his mother, boarded the train at Palasa railway station; due to heavy rush in the general compartment he was standing near the door of the compartment and when the train started there was a jerk and due to which he fell down from the train, sustained injuries, both his hands were crushed and cut and in the process his mother lost tickets, the tribunal held that the applicant and his mother could not have ventured to travel such a long distance from Palasa to Secunderabad without tickets and the contention that they lost the tickets appears to be genuine. Simply because the applicant was not able to produce the ticket it cannot be concluded that he was travelling without a ticket and accordingly believed the statement of the applicant otherwise the presumption should always be in favour of a law abiding nature of a citizen rather than a citizen

who has committed an offence and accordingly held that the applicant was a bona fide passenger.

9. There is no dispute with regard to the issue No. 3 relating to the nature of the injuries as the applicant was seen by the tribunal and found that his right fore arm was amputated above the elbow and his left fore arm was amputated at the level of 3" below the elbow.

10. As far as issue No. 2 is concerned the tribunal held that the injured lost both arms by falling from the train on 3-6-1993 as stated by the applicant. The Section 124A inserted in the Railways Act, 1989 by the Railways Amendment Act, 1994 with effect from 1-8-1994 and the corresponding amendments to the Railway Claims Tribunal Act by inserting certain provisions such as Section 13(1)(a) and Section 24 go to show that the Parliament did not envisage Section 124A to operate prospectively but only with retrospective effect. Accordingly, the tribunal allowed the application limiting the compensation up to Rs. 2,00,000/- alone.

11. The learned Senior Counsel, Sri T. Ramakrishna Rao, appearing for the railways contended that the tribunal erred in presuming that the applicant was a bona fide passenger. It is further stated that the alleged accident took place on 3-6-1993, but Section 124A was inserted in Railways Act, 1989 came into force with effect from 1-8-1994 and therefore, the claim application filed u/s 124A of the Act claiming compensation for an untoward incident is not maintainable. The incident occurred on 3-6-1993. Therefore, the tribunal has no jurisdiction to entertain the application claiming compensation filed u/s 124A of the Railways Act, 1989.

12. The Parliament by the Railways Amendment Act, 1994 (Act 28 of 1994) made certain amendments to the Railways Act, 1989 inserting Clause (c) to Section 123, which reads as follows:

(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 (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 stations; or

(2) the accidental falling of any passenger from a train carrying passengers.

13. By the same Railways Amendment Act of 1994 the relevant provisions of the Railway Claims Tribunal Act, 1987 were also amended. In Section 2 of the definitions

Clause 2(n) was inserted which reads as "untoward incident" shall have the meaning assigned to it in Clause (c) of Section 123 of the Railways Act, 1989. u/s 123(c)(2) untoward incident also means accidental falling of any passenger from a train carrying passengers. Therefore, the injured or the legal heirs of the deceased are entitled for the compensation on account of untoward incident u/s 124A. Section 13(1)(a) was inserted by Amendment Act 28 of 1994 empowering the claims tribunals to exercise on and from the date of the commencement of the provisions of Section 124A of the Railways Act, 1989, all such jurisdiction, powers and authority as were exercisable immediately before that by any Civil Court in respect of claims for compensation now payable by the railway administration u/s 124A of the said Act or the rules made thereunder. With regard to limitation certain amendments were made to Section 17 of the Railway Claims Tribunal Act, 1987 clarifying that the claims tribunal is entitled to admit the application u/s 13 within one year of the commencement of the accident. Section 13(1)(a) was inserted with effect from 1-8-1994. No doubt, as on the date of the incident i.e., 3-6-1993 the amended sections were not inserted in the Railways Act and they were inserted with effect from 1-8-1994 but the railways claims tribunals were empowered to entertain the application one year prior to 1-8-1994. Therefore, it cannot be said that the railway claims tribunal has no jurisdiction to entertain the claim petition in respect of the untoward incident occurred on 3-6-1993 as Section 124A was inserted by way of amendment and it relates back to the date of the original Act. But, however, the limitation was prescribed entitling the applicants to approach the tribunal within one year prior to 1-8-1994. Of course, the tribunal has the power to condone the delay u/s 17(2) of the Railway Claims Tribunal Act, 1987, if the applicants satisfy the claims tribunal that there is sufficient cause or reason for not making the application within the said period.

14. Therefore, the question that arises for consideration is as to whether Section 124A, which was inserted by Act 28 of 1994, with effect from 1-8-1994 is prospective or retrospective?

15. The judgment relied upon by the learned Counsel for the appellant in the case of *S. Meenakshi Chandra Rao v. General Manager, South Central Railways, Secunderabad*, in L.P.A. No. 109 of 1998 dated 9-7-1998 has no application to the contentions of the learned Counsel for the appellant to hold that Section 124A is prospective for the reasons that admittedly the Railways Act, 1989 came into force with effect from 1-7-1980 whereas the incident in the said case occurred on 4-6-1990 i.e., prior to the Act came into operation. Therefore, the Division Bench rightly held that claimants are not entitled for compensation under the Railways Act, 1989.

16. The Supreme Court of India in the case of *Rathi Menon v. Union of India* while considering similar contentions whether the injured is entitled for compensation as prescribed at the time of determination of compensation held that the liability of the railway administration to pay compensation to such extent as may be prescribed u/s

124 and 124A of the Act and hence at the time at any rate the payment is important to determine as to what is the extent of the compensation which is prescribed by the Rules to be disbursed to the claimant. The Apex Court held that the determination of the amount by the claims tribunal shall be based on the relevant rules as on the date of determination. In the said case the incident occurred on 3-9-1996. At the time of the accident the Railway Accident Compensation Rules, 1990 were in operation fixing the amount of compensation payable for the death and injuries. Thereafter, the said rules were amended with effect from 1-11-1997 enhancing the compensation payable for death and injuries. The contention of the railways that amended rules are not operative for the accident occurred prior to 1997 was rejected by the Apex Court.

17. In the case of Union of India and Anr. v. Gayatri Srivastava the Division Bench of Allahabad High Court while considering the similar contentions with regard to the alleged prospective effect of Act 28 of 1994 held that the language used in Section 124A of the Act is couched in a very wide and general terms and is not restricted to take within its embrace only such accidents wherein a passenger has been injured or killed subsequent to that date. It was further held that the expression untoward incident given in Section 123(c) of the Act must be extended to the accidents occurred prior to the amended Act came into force. In the said case the Division Bench considered the contention of the appellant that the insertion of the Sections 123(c) and 124A have no application and rightly held that Section 124A is not restricted to accidents occurred subsequent to 1-4-1994.

18. Any section if inserted in the original enactment it relates back to the date of the original Act. It is not an amendment intended to come into operation with prospective effect. It is an amendment to deal with all untoward incidents as contemplated u/s 123(c) for the purpose of payment of compensation to an act of untoward incident. As already noticed Section 125 was also amended permitting to file an application for compensation before the claims tribunal on account of an untoward incident. The relevant provisions of the Railway Claims Tribunal Act were also amended and certain provisions were inserted and the limitation prescribed to entertain an application was one year prior to the date of Amended Act 28 of 1994. Of course, there is also power to condone the delay u/s 17(2) of the Railway Claims Tribunal Act. Therefore, a combined reading of Sections 123(c), 124A, 125 and 128 of Railways Act, 1989 read with Sections 2(n), 13(1)(a), 16 and 17 of the Railway Claims Tribunal Act, 1987 goes to show that Section 124A is not prospective it has retrospective effect entitling the claimants to claim compensation for the accidents occurred prior to the insertion of the Section 124A. Therefore, I do not see any merit in the contentions of the appellant.

19. Insofar as the other contention that the claimant is not a bona fide passenger as the ticket was not traced and the accident occurred due to carelessness and negligence on the part of the applicant it is stated that the railways have not

adduced any evidence with regard to the negligence and carelessness on the part of the applicant. It is the case of the applicant that as the general compartment was filled with passengers and as he could not enter into the compartment, he held the shelf meant for the luggage but not the door or the door handle and when the train started, there was a jerk and due to the jerk he was thrown out of the train and in the process he met with an accident. Therefore, I am of the opinion that the said incident is an untoward incident within the meaning of Section 123(c)(2) of the Railways Act, 1989 as it was accidental falling from the train carrying passengers. Insofar as the ticket is concerned he clearly gave an explanation that he handed over the ticket to his mother and when the accident occurred, his mother in a confused state of mind had lost the ticket, which contention was not at all rebutted by the railway administration. Therefore, it cannot be said that the applicant was not a bona fide passenger as contemplated u/s 124 of the Act. The railway claims tribunal rightly presumed that the applicant would not have ventured to travel from Palasa to Secunderabad along with his mother without purchasing the ticket and the tribunal rightly believed the contention of the applicant.

20. I do not see any illegality in any of the findings recorded by the tribunal either in law or on the facts. Therefore, I do not see any merit in the appeal.

21. The Civil Miscellaneous Appeal is accordingly dismissed. There shall be no order as to costs.