

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.423 of 2009

JUDGMENT:

This appeal is preferred challenging order dated 19.09.2008 in O.A.A No.43 of 2004 on the file of Railway Claims Tribunal, Secunderabad Bench, Secunderabad.

2. Respondent herein submitted application before Railway Claims Tribunal, Secunderabad (for short "lower tribunal") under Section 16 of the Railway Claims Tribunal Act read with Section 124A of Indian Railways Act, 1989 claiming compensation of Rs.4,00,000/- contending that he sustained injuries on 03.09.2003 on account of jerks to the train, he slipped and fell down accidentally from running train in between the platform and the train and that his both legs were crushed, cut and separated below the knee and that he sustained fracture injury below the hip by wheels of the train. This claim was resisted by appellant on the ground that claimant is not a bonafide passenger and that the injury is self-inflicted injury and the claimant fell down from the running train of his own and it is not a untoward incident. On behalf of claimants, claimant himself is examined as AW.1 and 2 documents are marked and on behalf of respondent-Railways, Deputy Station Superintendent is examined as RW.1 and 3 documents are marked and on a over all consideration of oral and documentary evidence, lower tribunal has not accepted the version of railways and granted Rs.4 lakhs as compensation treating the claimant as a bonafide passenger and that the incident was an untoward incident. Aggrieved by the same, present appeal

is preferred.

3. Advocate for appellant submitted that the claimant has not produced any journey ticket to prove that he was a bonafide passenger of the train on 03.09.2003 i.e., Train No.355 Dn. Tandur to Hyderabad passenger. He further submitted that the tribunal treated it as an untoward incident but the material on record would show that the injured tried to get down from a moving train and in the process, he got injured and it was only due to his own negligence and that the injuries would amount to self-inflicted injuries and as per the proviso to Section 124A of the Act, Railways is not liable, but the lower tribunal has not properly considered the above objection, therefore, the award is liable to be set aside.

4. On the other hand advocate for claimant supported the order of the tribunal.

5. Now the point that would arise for my consideration is:

Whether the order of lower tribunal is legal, proper and correct?

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POINT:

6. As already referred above, it is specific case of claimant that on 03.09.2003 he was travelling by train No.355, Dn. Tandur to Hyderabad passenger having purchased a ticket from Tandur to Hyderabad in general compartment and that he was standing near the door. According to claimant, there was heavy rush inside the compartment and he was slipped and fell down from the running train and that he lost the ticket in the incident. Claimant as AW.1 deposed supporting his claim and stated that he purchased ticket

from Tandur to Hyderabad and standing near the door of general compartment, but as there was a heavy rush, he slipped and fell down from the running train. Though Deputy Station Superintendent is examined as RW.1, admittedly he is not an eyewitness and his office was on the platform No.1, whereas incident was on platform No.3. So, the entire evidence of RW.1 is only a hearsay evidence. The appellant has not produced any evidence to support their contention that it is not an untoward incident and the injured fell down from the running train on his own. On behalf of Railways, DRMs report is marked as Ex.R1. Even according to that, injured while boarding the train fell down and sustained injuries which is quite contra to the evidence of RW.1.

7. Considering these aspects the tribunal discarded the objection of railways and accepted the evidence of claimant and consequently granted compensation. I do not find any wrong in the approach of tribunal nor there is any incorrect appreciation of material on record. The lower tribunal by considering the decisions of Supreme Court held that it is an untoward incident and injured was a bonafide passenger and granted Rs.4,00,000/-as compensation.

8. As seen from the record, both legs of injured were amputated and left leg amputation was above the knee at middle of thigh and right leg below the knee leaving a stump of less than 3” which is evident from the medical record.

9. Considering these aspects, I am of the view that Railways Claims Tribunal has not committed any error in accepting the claim of first respondent herein and that appeal is devoid of merits and liable to be dismissed.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 14-03-2016.

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