

THE HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1245 of 2009

JUDGMENT:

This appeal is preferred against order dated 30.11.2009 passed in O.A.A.No.172 of 1998 on the file of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad ('the Tribunal', for brevity).

2. Appellants herein are claimants who submitted an application under Section 125 of the Railways Act, 1989, read with Section 16 of the Railway Claims Tribunal Act, 1987, seeking compensation of Rs.4,00,000/- for death of P.Kanaka Rao. It is contended that on 20.06.1998, deceased, along with one T.Rama Rao (A.W.2), with a view to go to Guntur to attend Band Melam at a marriage function, went to Tenali Railway Station and T.Rama Rao purchased two journey tickets for their travel and kept with him and boarded train No.407 Tenali – Narsaraopet passenger in general compartment and while traveling, deceased accidentally slipped and fell down from running train at Sangam Jagarlamudi Railway Station and sustained severe multiple injuries and that he was shifted to Government Hospital, Guntur, and there, he died while undergoing treatment.

3. Railways resisted the claim mainly on the ground that no untoward incident took place at Sangam Jagarlamudi Railway Station. According to their version, driver of same train informed by walkie-talkie to authorities that one male person aged about 30 years was lying on track with injuries in unconscious state and that he rendered first aid and loaded him in front SLR of his train

with the help of Assistant Driver and handed over him with a memo to Deputy Station Supervisor, Guntur, and that the train was detained for nine minutes between Sangam Jagarlamudi and Vejendla Railway Stations on account of this incident.

4. On these contentions, the Tribunal conducted enquiry and on a consideration of oral and documentary evidence, claim petition was dismissed against which, claimants have preferred appeal to this Court, and this Court remanded the case on 09.01.2009 as per orders in CMA No.2687 of 2003 giving opportunity to claimants to adduce further evidence and after remand, claimants have examined A.W.3, who is son of A.W.2 and the Tribunal, on a consideration of evidence of A.W.3, did not accept the version of claimants and again dismissed the claim petition aggrieved by which, present appeal is preferred.

5. Heard both sides.

6. Advocate for appellants submitted that A.W.3 clearly deposed in his evidence that he was also a member of Band Melam Troop and that he boarded in a different compartment, but he noticed incident and that he was deputed to inform the incident to wife of deceased and his evidence is corroborated and supported with the version of A.W.2, which was not rebutted by any other evidence, but the Tribunal wrongly discarded the evidence of A.W.3. He further submitted that though it is contended that engine driver informed railway authorities over walkie-talkie about lying of injured in unconscious state on track, said driver was not examined and, therefore, the same remained unproved. He further

submitted that as the evidence of A.Ws.2 and 3 is convincing and trustworthy, the Tribunal ought to have accepted the same and granted compensation.

7. On the other hand, advocate for Railways submitted that A.W.3 is no other than son of A.W.2 and his very presence is doubtful in view of the fact that his name was not referred anywhere in records, either in the FIR or in Inquest Report. She further submitted that the Tribunal has rightly appreciated the evidence of A.W.3 and recorded a finding that he was a planted witness and that there are no grounds to interfere with the findings of the Tribunal.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 30.11.2009 passed in O.A.A.No.172 of 1998 by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad, is legal, proper and correct?

POINT :

9. It is the specific case of claimants that deceased, along with A.W.2, went to Tenali Railway Station on 20.06.1998 to go to Guntur in connection of marriage function, as a member of Band Melam Troop. In original claim petition, there is no reference about A.W.3 as a member accompanied Band Melam Troop. This A.W.3 was brought into picture for the first time only after remand. As seen from record, name of A.W.3 was not figured in the list of witnesses that were examined during inquest. If really A.W.3 was

also present and one among the Band Melam Troop, he should have been examined during inquest, because the accident took place on 20.06.1998 and death of deceased was on 29.06.1998. As rightly pointed out by advocate for Railways, name of A.W.3 was not at all figured in any of the official proceedings during investigation. Even after remand, claimants have not examined any one in connection with inquest report, whom police have examined as eye-witnesses. The Tribunal, on a proper appreciation of entire material with reference to evidence of other witnesses examined on behalf of both parties, rightly recorded a finding that version of A.W.3 cannot be accepted and he was only brought into picture to help claimants. I do not find any wrong in appreciation of evidence and in discarding the evidence of A.W.3 by the Tribunal. The Tribunal rightly considered each and every aspect and came to a right conclusion, therefore, I do not find any grounds to interfere with orders of the Tribunal.

10. For these reasons, the appeal is dismissed, being *de void* of merit. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

S. RAVI KUMAR, J

31st August, 2016.
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