

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.368 of 2009

Date:14.06.2016

Between:

The Union of India
rep by the General Manager,
South Central Railway, Secunderabad.

... Appellant.

AND

A. Mani and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.368 of 2009

JUDGMENT:

This appeal is preferred against orders dated 14-11-2008 in O.O.A.No.80/2005 on the file of Railway Claims Tribunal, Secunderabad Bench.

2. Respondents herein filed application before the Railway Claims Tribunal under Section 16 of the Railway Claims Tribunal Act read with Section 124-A & 125 of Indian Railways Act contending that they are the parents of the deceased-Thyagarajan, who was employed in

Indian Army as Sepoy. That on 14-01-2005, the deceased along with his father i.e., first applicant went to Chennai on some work and in the return journey, they were returning, they purchased a II Class journey ticket to Vijayawada and boarded to Train No.6362, Trivandrum – Howrah Express in a general compartment and when the train while passing from Gudur Railway Station, due to speed and jerks, the deceased accidentally slipped and fell down between the train and the platform at Gudur railway station and died instantaneously. They contended that they are entitled for compensation of Rs.4,00,000/- for the death of the deceased in an untoward incident of accidental fall from the train. Railways resisted the claim of the parents of the deceased mainly on the ground that the deceased was not a bonafide passenger and that the incident is not an untoward incident as defined under Section 123 of the Railways Act. On these contentions, Claims Tribunal conducted enquiry during which, one witness was examined and six documents were marked on behalf of the claimants and one witness was examined and no documents were marked on behalf of Railways and on a over all consideration of oral and documentary evidence, Claims Tribunal disbelieved the objection of the Railways and granted compensation of Rs.4,00,000/-. Now aggrieved by the award of the Claims Tribunal, Railways preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that the Tribunal ought to have seen that the body of the deceased was found on down line track near Gudur and it is not known whether he fell from running train or not, and therefore, he is not a bonafide passenger and the findings of the Claims Tribunal are not legal and contrary to the settled law.

5. On the other hand, Advocate for claimants submitted that the burden is on the Railways to show that the deceased was not a bonafide passenger as the body was found within the platform area and the Claims Tribunal rightly awarded the compensation and that there are no grounds to interfere.

6. Now the point that would arise for my consideration in this appeal is whether order of the Claims Tribunal is legal, proper and correct?

7. **Point:-** There is no dispute that the dead body of the deceased was found near Gudur Railway Station. As per the inquest report, opinion of the Panchyatdars is that the deceased boarded Train No.6323, Trivandrum – Howrah Express on 14-01-2005 in the morning hours, in a general compartment to go to Vijayawada and at about 12:30 hours, the train moved speedily on Gudur Platform and due to the jerks of the train, he accidentally slipped and fell down from the door way and died on the spot. This is the unanimous opinion of the panchyatdars recorded in the inquest report. It is settled law that burden is on the railways to prove that the person who found travelling in a train is not a bonafide passenger and admittedly, no evidence is produced on behalf of the railways to show that deceased was not a bonafide passenger. Here the first claimant, who is no other than father of the deceased, deposed in his evidence that he was travelling with his son in Train No.6323 on the fateful day. So the evidence on record would clearly indicate that the deceased boarded Train No.6323 and fell down from the train at Gudur platform due to jerks of the train and therefore, it is an untoward incident. The Claims Tribunal has considered all these aspects including the evidence of A.W.1 and inquest report marked as Ex.A2 and recorded a finding that the deceased had fallen from

Train No.6323 Express and that the railways are liable to pay compensation. I do not find any wrong appreciation of evidence or wrong application of law in recording a finding that the deceased was a bonafide passenger who had fallen from Train No.6323 on 14-01-2005 at Gudur Railway Station.

8. On a scrutiny of the material, I am of the view that the objection of the appellant is not tenable and the Claims Tribunal has rightly negatived the same and that there are no grounds to interfere with the same.

9. For these reasons, appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:14.06.2016

mrh