

HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.153 of
2010

JUDGMENT:

This appeal is against the Order dated 28.10.2009 in OAA.No.106 of 2006 on the file of Railway Claims Tribunal, Secunderabad bench at Secunderabad(for short 'the Tribunal').

2. Respondent Nos. 1 and 2 herein submitted an application to Railway Claims Tribunal, Secunderabad, under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A and 125 of the Railways Act, 1989, contending that the deceased—G. Nagendra Yadav, was an Assistant Loco Pilot in South East Central Railway and he died in an untoward incident on the intervening night of 23/24-12-2005 while travelling in Train No.7209—Bangalore-Kakinada Town Seshadri Express from Tirupathi to Vijayawada. The Railway Authorities objected the claim on the ground that deceased is not a *bona fide* passenger and the Tribunal after taking into consideration oral and documentary evidence produced on behalf of both parties, rejected the objection of the Railways and held that the deceased was a *bona fide* passenger and that he died while travelling in a train.

3. The respondents herein are the parents of the deceased.

4. Aggrieved by the compensation awarded by the Tribunal, the present appeal is preferred by the

appellant.

5. Heard both sides.

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

Whether the Order dt.28.10.2009 in OAA No.106 of 2006 of the Railway Claims Tribunal, Secunderabad, is legal, proper and correct?

7. **POINT:** As seen from the record, claimants/respondents herein contended that the deceased—G. Nagendra Yadav had a valid Pass and he boarded Bangalore-Kakinada Town, Seshadri Express at Tirupathi, to go to Vijayawada and while travelling in the train, he went to toilet and while coming back, he suddenly slipped and fell accidentally from the train at KM.249/10-12 between Tettu and Ulavapadu Station and died due to multiple injuries. One of the claimants is examined as AW.1 and the eye witness, who also traveled along with the deceased, as AW.2. Inquest report and FIR were marked as Exs. A.3 and A.2 respectively. AW.2 deposed that he was railway driver, who traveled along with the deceased on pilgrimage as a group and he came to know about missing of deceased only on the next day morning and thereafter he came to know about the untoward incident. Inquest report clearly disclosed that the deceased was travelling from Tirupathi to Vijayawada and till 11.00 Pm he was talking with other colleagues, who are co-passengers, and thereafter went to toilet and while coming back, he slipped and fell down from the train and died. This report is supported and corroborated with the contents

of FIR and the Railway Pass of the deceased, which shows that the Pass was issued on 10.11.2005 having validity till 9.2.2006 to travel From Kannyakumary to Raipur with break journey at Chennai, Renigunta, Gudur, Vijayawada and Visaakhapatnam. Admittedly, the deceased was a railway employee and considering the evidence of AW.2 and Ex.A.5—Pass, the Tribunal disbelieved the contention of the railways and recorded a finding that the deceased was a *bona fide* passenger and died due to untoward incident while travelling in train No. 7209—Bangalore-Kakinada Town, Seshadri Express.

8. The evidence of RW.1 is only to show that dead body was discovered on the track. Even Ex.R.3-DRM Report, which was based on Inquest Report, indicates that the deceased had fallen from the train, but the observation of Tribunal is that the deceased was not a *bona fide* passenger cannot be accepted, in view of the Pass issued by the Railways, which was marked as Ex.A.5.

9. On a scrutiny of the material, I do not find any wrong in the findings of the Tribunal and the findings are based on material evidence available on record. All the grounds urged in the appeal are not at all tenable and they are not supported by material evidence.

10. For these reasons, I am of the view that appeal is devoid of merits and is liable to be dismissed.

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

S. RAVI KUMAR, J

Date: 22-04-2016.
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