

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.Nos.904 of 2010 & 637 of 2012

COMMON JUDGMENT:

These two appeals are preferred against order dated 20.07.2010 passed in O.A.A.No.114 of 2005 on the file of Railway Claims Tribunal, Secunderabad Bench, Secunderabad ('the Tribunal', for brevity).

2. CMA No.904 of 2010 is preferred by Railways aggrieved by the compensation granted to claimants, whereas, CMA No.637 of 2012 is filed by claimants aggrieved by order of Tribunal in respect of grant of interest.

3. Parties are hereinafter referred to as 'claimants' and 'Railways' for convenience sake.

4. Claimants submitted an application under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124, 124-A & 125(2) of the Railways Act, 1989, contending that deceased Yelamanchali Venu died due to fall from train No.471 passenger while traveling from Gullipadu to Narsipatnam on 18.01.2005. It is the contention of claimants that deceased was a season ticket holder with ticket No.K.23185565, which was valid up to 25.01.2005 and as he died in an untoward incident, they are entitled for compensation of Rs.4,00,000/-.

5. Railways resisted the claim contending that deceased is not a *bona fide* passenger and claimants have to strictly prove that deceased died in an untoward incident to make the Railways liable to pay compensation.

6. On these contentions, Tribunal conducted enquiry during which, two witnesses are examined and eight documents are marked on behalf of claimants, whereas, one witness was examined and two documents are marked on behalf of Railways. Tribunal also examined one Court witness and marked one document as Court document and on a consideration of oral and documentary evidence, recorded a finding that deceased was a *bona fide* passenger and died in an untoward incident on 18.01.2005 and granted compensation of Rs.4,00,000/- with interest at the rate of 6% per annum from the date of order till date of actual payment.

7. Heard both sides.

8. Advocate for Railways submitted that Tribunal erred in granting compensation of Rs.4,00,000/- without there being any evidence to show that deceased was a *bona fide* passenger. She further submitted that Tribunal disbelieved the version of Railways only on the basis of report of DRM, which is exhibited as Ex.R.2 and order of Tribunal cannot be sustained.

9. On the other hand, advocate for claimants submitted that when the report of DRM clearly discloses that deceased was a *bona fide* passenger and died in an untoward incident, objection of Railways is not tenable and Tribunal has rightly granted compensation of Rs.4,00,000/-. He further submitted that Tribunal erred in not granting interest from the date of application and in view of the decision of Hon'ble Supreme Court in ***Thazhathe Purayil***

Sarabi and others Vs. Union of India and another¹, order of Tribunal has to be modified with regard to interest.

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

Whether the order dated 20.07.2010 passed in O.A.A.No.114 of 2005 on the file of Railway Claims Tribunal, Secunderabad Bench, Secunderabad, is legal, proper and correct?

POINT :

11. It is the specific case of claimants that deceased died on 18.01.2005 while travelling in train No.471 from Gullipadu to Narsipatnam on a season ticket. ID card of deceased is filed and marked as Ex.A.8 and its genuineness is not disputed by Railways. As seem from the material, FIR, Inquest Report and death report were also marked as documents which would clearly indicate that deceased fell down from a running train and his maternal uncle by name Nammi Gudupuraju saw the body of deceased and informed the same to family members of deceased. On behalf of Railways, DRM report is marked as Ex.R.2 which supported the version of claimants. As per DRM report, a person who was near the doorway, had fallen down from train, but it says that it was due to negligence of deceased. From DRM report, the fact remains that deceased was travelling in train No.471 passenger and fell down from it.

12. Hon'ble Supreme Court, in **Union of India Vs. Prabhakaran Vijaya Kumar and others**², held "if a person falls from a moving train, with a *bona fide* ticket or not, is entitled for compensation" and

¹ 2009 ACJ 2444

² (2008) 9 SCC 527

in view of the same, objection of Railways with regard to non-production of season ticket is not tenable. When own document of Railways, i.e., Ex.R.2 indicate that deceased had fallen down from running train, Railways cannot contend that deceased was not a *bona fide* passenger. As rightly pointed out by advocate for claimants, Tribunal has rightly discarded the objection of Railways on the basis of evidence available on record. On a scrutiny of material, I do not find any wrong in the approach of Tribunal in recording such a finding. Therefore, there are no grounds to interfere with compensation granted to claimants.

13. Advocate for Railways has not disputed the principle laid down by Hon'ble Supreme Court in ***Thazhathe Purayil Sarabi***'s case (1 *supra*) in respect of grant of interest. Considering the submissions of both advocates and also considering the above referred decision of Hon'ble Supreme Court, claimants are entitled for interest at the rate of 6% per annum from the date of application till the date of award and thereafter, at the rate of 9% per annum from the date of award till realization.

14. Accordingly, CMA No.904 of 2010 is dismissed; and, CMA No.637 of 2012 is allowed by modifying the award of Railway Claims Tribunal in respect of interest payable to the extent indicated above. No costs. Miscellaneous petitions, if any, pending in both these appeals, shall stand dismissed.

S. RAVI KUMAR, J

02nd September, 2016
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