

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1036 OF 2009

Dated 4-3-2016

Between:

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

..Appellant.

And:

Maloji Jayavanth Bhadarge and another.

..Respondents.

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C.M.A.No.1036 OF 2009

JUDGMENT:

This appeal is preferred questioning the order dated 13-9-2005 in O.A.A.No.250 of 1998 on the file of Railway Claims Tribunal, Secunderabad.

Respondents 1 and 2 are the parents of deceased Sambaji Maloji Bhadarge. They submitted application under Section 16 of Railway Claims Tribunal Act, 1987 read with 124 of Railways Act claiming compensation for the death of their son in a untoward incident happened on 12-8-1998 contending that the deceased while getting into train slipped and fell down, that resulted his death and that they claimed a sum of Rs.4,00,000/- as compensation.

Appellant herein resisted the claim of respondents on the ground that deceased is not a bonafide passenger and thereby, the claimants are not entitled for compensation and consequently, there is no fault on the part of railways, even according to own version of claimants that due to negligence, deceased fell down and sustained injuries which ultimately resulted in death.

Railways Claims Tribunal recorded evidence of A.Ws.1 and 2 and also marked documents and on a consideration of oral and documentary evidence, has not

accepted the objection of the railways and granted compensation to R.1 and R.2 herein. Aggrieved by the said order, railways preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that on behalf of claimants, two witnesses are examined, A.W.1 is eye witness to the incident and AW.2 is father of deceased and they have not produced any documents to support their plea of purchase of ticket for the journey but the tribunal on presumption, treated the deceased as bonafide passenger and granted compensation and that the same is not correct. She further submitted that even as seen from the Inquest Report, no documents are seized either from the deceased or from A.W.1 and as per Section 2(29) of Railways Act, only a person having valid ticket or pass is to be treated as passenger and deceased cannot be termed as passenger and as such, the claimants are not entitled for any compensation.

She further submitted that when the evidence on record would disclose that the deceased fell due to his own negligence, railways cannot be held liable and tribunal erred in granting compensation and the same is to be set aside.

On the other hand, advocate for claimants submitted that the eye witness i.e., A.W.1 is no other than the close relative of deceased and both of them used to travel daily in a train to go to the college and on the fateful day, A.W.1 purchased tickets for himself and the deceased but did not preserve them knowing the consequences and that was considered by railway claims tribunal and rightly drawn presumption and granted compensation.

It is further submitted that from the evidence of A.W.1, it is clear that while deceased was getting into the train, he lost his balance and fell down and that act do not fall under the exception given in proviso to Section 124 A of Railways Act, therefore, objection of the appellant is not

tenable and the appeal is liable to be dismissed.

Now the point that would arise for my consideration in this appeal is whether the order impugned is proper, legal and correct?

POINT:

There is no dispute that deceased died on 12-8-1998 at Dharmabad Railway station at about 5-30 P.M., while he was getting into train to go to Umri. A.W.1 is examined to prove that the deceased and himself boarded train on the fateful day. He deposed that on that day, the deceased while getting into train, the train started and deceased lost his balance and fell down and dragged by the train and after dragging for some distance, train was stopped but by that time, the deceased received multiple injuries.

One of the objection raised on behalf of appellant is that though A.W.1 contended that in the previous year, he had season ticket and for that year, same could not be taken as study certificate was not given but he has not produced even earlier season ticket nor the ticket said to have purchased for himself and the deceased and the tribunal without considering the same, on presumption accepted that the deceased was a bonafide passenger. No doubt, the witness A.W.1 did not produce the tickets said to have been purchased for himself and deceased. As rightly pointed out by advocate for claimants, in an incident like this, witnesses being close relatives of the deceased may not think of preserving tickets for the purpose of claiming compensation.

As seen from the evidence, immediately after the accident, he went back to his village Umri to inform the parents of deceased and again came to accident spot only on the next day morning by which time inquest was already in progress. So, Railway Claims Tribunal considering this aspect accepted testimony of A.W.1 and believed his version that he purchased tickets for himself

and the deceased, I do not find any wrong in the approach of tribunal in accepting the evidence and explanation of A.W.1 for non-production of railway ticket. Therefore, the objection of appellant's counsel with regard to non-production of ticket the deceased has to be treated as bonafide passenger cannot be accepted.

The other objection of the appellant is that the deceased fell down from the train due to his own negligence and for that railways cannot be held responsible.

According to advocate for claimants, proviso to Section 124 A of Railways Act gives exemption for the liability of the railways and this cause of self negligence is not one among the exceptions and therefore, the contention of the railways is not tenable.

It may be relevant to extract Section 124 A of Railways Act which reads as follows:

"Compensation on account of untoward incident.-When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident.

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;*
- (b) self inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary*

due to injury caused by the said untoward incident.”

As seen from the evidence, while deceased was getting into the train, it appears that train started due to which deceased lost balance and fell down and thereafter, he was dragged by the train and therefore, it cannot be termed as self negligence of the deceased. Even otherwise self negligence is not among the exceptions given to Section 124-A as a proviso. Only exception is self inflicted injury which is not the case of appellant. Further, this was not raised before the Claims Tribunal and is raised for the first time at appellate stage which is not permissible.

On a scrutiny of evidence and material, I am of the view that the objections raised on behalf of appellant are not tenable and that Railway Claims Tribunal has rightly appreciated material on record and came to a right conclusion and that there are no grounds to interfere with its order dated 13-9-2005.

For these reasons, this C.M.A. is dismissed as devoid of merits. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 4-3-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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