

HONOURABLE SRI JUSTICE S.RAVI
KUMAR

C.M.A.No.66 OF 2011

Dated 16-6-2016

Between:

Union of India represented by its General Manager,
East Coast Railways, Bhuvaneshwar.

..Appellant.

And:

Devara Ramana.

..Respondent.

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JUDGMENT:

This appeal is preferred against the order dated 9-11-2010 in O.A.A.No.219 of 2006 on the file of Railway Claims Tribunal, Secunderabad Bench.

Respondent herein submitted application under Section 16 of Railway Claims Tribunal Act and under Sections 124-A and 125 of Railways Act contending that on 11-12-2005, he purchased ticket at Vizianagaram Railway Station to go to Visakhapatnam and boarded general compartment in Chennai Mail and when the train reached Kantakapalli Railway Station, it developed jerks and due to heavy crowd in the compartment, he accidentally fell down from moving train and his right leg went under the wheels of the train and he was taken to Vizianagaram Hospital in Palasa passenger train by the Railway Police and he was treated as inpatient from 11-12-2005 and later he took treatment as out patient. He contended that his right leg was amputated at Government Hospital, Vizianagaram and he incurred medical expenses between Rs.75,000/- to Rs.1,00,000/- and he also spent money for artificial limb and claimed compensation of Rs.4,00,000/-.

Railways disputed claim of the claimant and contended that the incident does not attract provisions of section 123 (c) of Railways Act and injury was due to his own negligence and that he is not entitled for compensation.

On these contentions, Claims Tribunal examined one witness on behalf of claimant, two witnesses on behalf of railways besides three documents on behalf of claimant and four documents on behalf of railways and on a consideration of oral and documentary evidence, held that the applicant sustained injuries in an untoward incident and entitled for compensation of Rs.2,00,000/-. Questioning the same, present appeal is preferred.

Heard both sides.

Advocate for appellant submitted that the claimant has not produced his ticket and evidence on record would disclose that the train was running smoothly and there was no untoward incident and injury was only due to the own negligence of the claimant and therefore, appellant has no liability but the Claims Tribunal has not taken into consideration, therefore, the order of Claims Tribunal is liable to be set aside. He further submitted that injured was a hawker and as he has not produced any evidence to show that he purchased ticket, he cannot be treated as bonafide passenger.

On the other hand, advocate for claimant submitted that from the evidence on behalf of railways, it is clear that the injured sustained injuries in an untoward incident and that he was passenger travelling in Chennai Mail on the date of alleged incident and that the Claims Tribunal has rightly granted compensation and that there are no grounds to interfere with the same.

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

POINT:

There is no dispute with regard to the fact that applicant received injuries on 11-12-2005 while travelling in general compartment of Chennai Mail. The injured himself was examined as A.W.1 and got marked Exs.A.1 to A.3 and he reiterated his petition averments. From this evidence and documents, the fact remains that his leg was amputated below the knee, Deputy Superintendent of Kottavalasa Railway Station was examined as R.W.1 and he deposed that he was on duty at Kantakapalli from 8 hours to 16 hours on 11-12-2005, some passengers of Chennai Mail shouted that one person had fallen down from the train and he immediately directed his staff to proceed to the spot and that he also proceeded there and rendered first aid and thereafter, injured was sent to hospital in Visakhapatnam Palasa passenger and that he gave a message to SR/DMO, Vizianagaram. Guard of the train was examined as R.W.2 who stated that train left Khurda started at right time and at the time of alleged incident, train was running smoothly without any jerks and that there was no untoward incident of pulling chain and that there was no information from any of the passenger about incident. But this part of evidence of guard is quite contrary to the evidence of Deputy Station Superintendent who is examined as R.W.1.

From the material, it is clear that the injured was travelling Chennai Mail and he fell down from a running train, as a result, he sustained injury and leg was amputated. It is settled law that burden is on the railways to show that the injured was not a bonafide passenger. The evidence on record disclose that he was travelling in a train. Admittedly, no material is placed before the Tribunal to show that he was not a bonafide passenger, therefore, the objection of the railways that the injured has not produced his ticket is not at all tenable. Simply because the ticket is not produced, the fact that he was travelling in the train cannot be ignored. These aspects were considered by tribunal and recorded a finding that the injured was a bonafide passenger and sustained injury in an untoward incident. I do not find any wrong in the approach of the railway claims tribunal in

appreciating the material on record. As rightly pointed out by Advocate for claimant, Claims Tribunal has properly appreciated evidence and came to a right conclusion and that there are no grounds to interfere with the same.

For these reasons, I am of the view that there are no grounds to interfere with the findings recorded by Railway Claims Tribunal so also the compensation granted.

Therefore, appeal is dismissed. No costs.

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

JUSTICE S.RAVI
KUMAR

Dated 16-6-2016.

Dvs.

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