

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No.1216 of 2009

JUDGMENT:

This appeal is preferred questioning the order dated 06.08.2009 in OAA No.371 of 2006 on the file Railway Claims Tribunal , Secunderabad Bench at Secunderabad.

2. Respondents No.1 to 4 herein submitted application before Railway Claims Tribunal (for short "lower tribunal") under Section 16 of Railway Claims Tribunal Act, 1989 read with Sections 124 and 124-A of the Indian Railways Act, 1987, claiming compensation of Rs.4 lakhs for the death of Chittiri Surappanaidu (hereinafter referred to as "the deceased") in an untoward incident. They contended that on 23.02.2006 the deceased along with his wife, father and his villagers, while traveling from Cheepurupalli to Chennai Central by train No.6003 Mail, accidentally slipped and fell down from the train between Visakhapatnam and Anakapalli railway station near Tummapala village due to heavy rush in the compartment and also due to jerks of the train. According to them, the deceased sustained grievous injuries and was taken to King George Hospital, Visakhapatnam and died on 02.03.2006 while undergoing treatment. They contended that the deceased and the co-passengers were holding journey tickets bearing No.21895, 21896, 21897 and 21900. Appellant herein resisted the claim of claimants on the ground that the deceased travelled on footboard and due to his own negligence, he fell down, and Railways has no liability to pay any compensation. It also contended that claimants have to strictly prove that the deceased was a bonafide passenger. On these

contentions, lower tribunal conducted enquiry, during which, one witness is examined and 7 documents are marked on behalf of claimants and one witness is examined and no documents are marked on behalf of appellant herein. On a over all consideration of oral and documentary evidence, lower tribunal has not accepted the objection of appellant and granted compensation of Rs.4 lakhs, aggrieved by the order of lower tribunal, appellant preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that there is a discrepancy in the legal heir certificate-Ex.A7, according to which, the second claimant, who is daughter, is not entitled for any compensation. It is further submitted that the deceased was not a bonafide passenger and this objection was not properly considered by the lower tribunal. It is further submitted that the deceased fell down due to his own negligence and that appellant has no liability to pay any compensation.

5. On the other hand advocate for claimants submitted that all the objections raised before lower tribunal are negated on proper appreciation of material on record and that there are no grounds to interfere with the findings of the lower tribunal.

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

1) Whether the Award dated 06.08.2009 is illegal, arbitrary and in accordance with law?

POINT :

7. There is no dispute with regard to the death of Chittiri

Surappanaidu, who fell down from a running train on 23.02.2006. One of the objections of appellant is that there is a discrepancy in the legal heir certificate produced by the claimants. As seen from the record, the claimants to prove their relationship filed legal heir certificate issued by Mandal Revenue Officer, G. Sigadam and the same is marked as Ex.A7. Though appellant examined witness, he did not speak anything with regard to the genuineness of Ex.A7 certificate. Further, there is no plea in the counter disputing the correctness of this Ex.A7. Lower tribunal considering these aspects discarded the objection and held that the claimants being wife, daughter and parents are entitled for compensation being dependants of the deceased. As rightly pointed out by advocate for claimants, objection of the railways with regard to Ex.A7-legal heir certificate is not at all tenable.

8. The other objection of railways is that the deceased was not a bonafide passenger. This was also dealt by lower tribunal. As seen from the material, the deceased was travelling along with his wife, father and his villagers. Wife is examined as AW.1 and she deposed that on 23.02.2006, she along with her husband, daughter, one Yendava Rama Rao and his wife of her village with an intention to go to Chennai boarded train No.6003 Howra-Madras mail in general compartment, and as there was heavy rush in the compartment, they were all standing near the door. She further deposed that when the train crossed Tadi railway station between Visakhapatnam and Anakapalli, due to sudden jerk, the deceased, who was standing near the door, slipped and fell down accidentally. She further deposed that co-passenger Y. Rama Rao pulled alarm chain and that train was stopped and all of them got down from the train and her husband was found with grievous injuries and that the same was intimated to the Guard of the train,

who in-turn intimated to the Station Master and sent the injured to the Government Hospital, Anakapalli for treatment. She also deposed that they handed over the tickets to the Guard. During her evidence, copy of ticket is marked as Ex.A4. Though appellant contended that the deceased was not a bonafide passenger, they have not questioned the validity and genuineness of Ex.A4.

9. It is settled law that burden is on the railways to prove that deceased was not a bonafide passenger. Here when the claimants produced copy of the ticket and got it marked as Ex.A4, burden is heavy on the railways to show that the deceased was not a bonafide passenger. But as seen from the record, nothing is produced to support their version that the deceased was not a bonafide passenger. Lower tribunal has considered these aspects and discarded the objection and I do not find any wrong in the approach of lower tribunal. Further, as seen from the material, immediately after the incident, a co-passenger pulled the chain and the train was stopped. Guard of the train, who is examined as RW.1 has also supported this version and these aspects would clearly disclose that the deceased fell down from the train. Therefore, the objection of appellant on this aspect is also not tenable.

10. The other objection of appellant is that deceased was travelling on footboard, and due to his own negligence, he fell down, therefore there is no liability on the part of railways. This objection was also raised before lower tribunal and the tribunal relying on decision of Supreme Court reported in ***Union of India V. Prabhakaran Vijaya Kumar and others***^[1] discarded this objection and held that if a person falls while trying to get into a

moving train or trying to get down from a moving train and falls down resulting to death or injury with a bonafide ticket is entitled for compensation.

11. So, in view of the settled law, objection of appellant with regard to award passed by lower tribunal is not at all tenable.

12. On a scrutiny of the material, I am of the considered view that the lower tribunal was right in granting compensation and that there are no grounds to interfere with the findings of lower tribunal and that the appeal is devoid of merits and liable to be dismissed.

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

S. RAVI KUMAR, J

Date: 10-06-2016.
gvl

[\[1\]](#) 2008 (2) TAC 777