

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No. 105 of 2010

JUDGMENT:

This appeal is preferred questioning order dated 29.10.2009 in O.A.A.No.148 of 2005 on the file of Railway Claims Tribunal, Secunderabad (for short "the Tribunal").

2. Respondents 1 and 2 herein filed application before the Tribunal contending that their son went to Secunderabad for coolie work and on the evening of 19.06.2005, he purchased a ticket for Anakapalli and boarded train No.7008 Hyderabad-Visakhapatnam Godavari Express and while travelling in the said train, he fell down accidentally at Km.649/3032 between Gollaprolu and Ravikampadu stations and died on the spot during the early hours on 20.06.2005. The applicants have claimed a sum of Rs.4,00,000/- as compensation with interest and costs and the Tribunal, on a consideration of evidence of A.W.1 and documents Exs.A.1 to A.5 on behalf of applicants and evidence of R.W.1 and Exs.R.1 to R.3 on behalf of Railways, discarded the objection of the Railways and granted compensation of Rs.4,00,000/-, aggrieved by which, Railways preferred the present appeal.

3. Heard both sides.

4. The main ground urged on behalf of the appellant is that the deceased fell down due to his own negligence and the appellant is no way concerned with the fall of the deceased from the train and that the appellant is not liable to pay any compensation. It is further contended that the Tribunal has not properly appreciated the objection of the Railways, therefore, order of the Tribunal dated 29.10.2009 is liable to be set aside.

5. On the other hand, advocate for applicants supported the order of the Tribunal and contended that there are no grounds to interfere with the compensation granted in favour of the applicants.

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

Whether the judgment in O.A.A.No.148 of 2005 on the file of Railway Claims Tribunal, Secunderabad, is legal, proper and correct?

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POINT :

7. As seen from the material, the deceased K. Parameshwar boarded train No.7008 Hyderabad-Visakhapatnam Godavari Express at Secunderabad to go to Anakapalli. According to the applicants, the deceased fell down from running train between Gollaprolu and Ravikampadu stations due to the speed jolt and jerks of the train and as a result, he died on the spot. Though the appellant contended that the deceased was not a *bona*

fide passenger, from the evidence on record and the ticket, which is marked as Ex.A.1, F.I.R. and Inquest, which are marked as Exs.A.2 and A.3, Claims Tribunal did not accept the contention of the appellant. I have perused the evidence of A.W.1 and documents Exs.A.1 to A.3. On a perusal of this material, objection of the Railways with regard to *bona fide* passenger is not tenable and the Tribunal has rightly discarded the objection and rightly accepted Exs.A.1 to A.3.

8. The other contention of the appellant is that deceased died due to his own negligence and not on account of an untoward incident. It is the specific case of applicants that deceased boarded Godavari Express on 19.06.2005 and the incident happened during the early hours of 20.06.2005 and as seen from the inquest report, the cause of death was due to accidental fall from running train. When the deceased was the *bona fide* passenger travelling in Godavari Express, it is for the Railways to show that it is not an untoward incident and there is no negligence on the part of the Railways.

9. A Division Bench of this Court in ***Union of India rep. by its General Manager, S.C. Railway Vs. Uggina Srinivasa Rao and others***^[1] held that accidental fall from any part of compartment is to be treated as 'untoward incident', when it is established that the injured or

deceased was a *bona fide* passenger. The said view was taken by Division Bench relying on decisions of the Hon'ble Supreme Court in ***Union of India Vs. Sunil Kumar***^[2] and ***Union of India Vs. Prabhakaran Vijaya Kumar and others***^[3]. In these two decisions, Hon'ble Supreme Court has explained the expression 'untoward incident' and held that Section 124-A of Railways Act, 1989 places strict liability on Railways and it was observed that it will not make any difference whether the deceased was actually inside the train, when he or she fell down or whether the passenger was only trying to get into the train and in either case it would fall within the ambit of accidental fall of a passenger from a train and, therefore, it would be an untoward incident as defined in Section 123-C of Railways Act, 1989.

10. In this case, admittedly the deceased was a *bona fide* passenger having a valid ticket travelling in Godavari Express from Secunderabad to Anakapalli and he fell down from running train in between Gollaprolu and Ravikampadu stations. Therefore, in view of the above-referred decisions, the objection of the Railways that the death was due to negligence of the deceased, cannot be accepted. The Tribunal rightly negated their objection and granted compensation. On a scrutiny of the material, I am of the considered view that absolutely there are no grounds to interfere with the findings of the Tribunal and

that the appeal is devoid of merits.

11. Accordingly, the Civil Miscellaneous Appeal is dismissed.

12. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

12th April, 2016
cbs

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[\[1\]](#) 2001 (3) ALT 429 (D.B.)

[\[2\]](#) AIR 1984 SC 1737

[\[3\]](#) (2008) 9 SCC 527