

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No. 154 of 2010

JUDGMENT:

This appeal is preferred against order dated 13.11.2009 in O.A.A.No.275 of 2004 on the file of Railway Claims Tribunal, Secunderabad (for short 'the Tribunal').

2. Respondents 1 to 4 herein submitted a claim application under Section 125 of Railways Act, 1989 read with Section 16 of Railway Claims Tribunal Act, 1987 seeking compensation of Rs.4,00,000/- for the death of Golkonda Yadaiah @ Yadagiri, contending that he died in an untoward incident. The claimants contended that the deceased purchased a passenger train journey ticket from Secunderabad to Hyderabad and boarded train No.165 Kazipet-Hyderabad passenger in general compartment, while travelling, he slipped and fell down accidentally from running train at the end of platform No.3 of Secunderabad railway station, as a result, he sustained severe multiple injuries and died on the spot.

3. The Railways i.e., the appellant herein disputed the claim of the claimants and contended

that the deceased was not a *bona fide* passenger and their enquiries revealed that the deceased did not die due to fall from the train and he must committed suicide or might have fallen under the train in a drunken state.

4. On these allegations, Tribunal conducted enquiry, during which, one witness is examined and 11 documents are marked on behalf of the claimants, whereas no witness is examined and no document is marked on behalf of the appellant.

5. The Tribunal, on a consideration of evidence on record, held that the deceased was a *bona fide* passenger and died in an untoward incident and granted compensation of Rs.4,00,000/-. Aggrieved by the said order, Railways preferred the present appeal.

6. Heard both sides.

7. Advocate for appellant submitted that the deceased was not a *bona fide* passenger and no material was produced on behalf of the claimants to show that the deceased purchased ticket for passenger train No.165 from Secunderabad to Hyderabad and boarded the train and fell down accidentally from running train. He submitted that though there

was no evidence on behalf of the claimants, the Tribunal accepted their version and gave a finding that the deceased was a *bona fide* passenger and the same is not correct. He further submitted that body of the deceased was found on the track and circumstances only indicate that the deceased might have committed suicide or fallen under the train in a drunken state but not from a running train, and that the Tribunal has not accepted this version only on the ground that no evidence was produced on behalf of the Railways. It is submitted that the order of the Tribunal is not legal and liable to be set aside.

8. On the other hand, advocate for claimants submitted that when the body of the deceased was found within the premises of Railways, it is for the Railways to place evidence to support their version, but they have not examined any witness and not produced any documents, and that the Tribunal rightly held that the deceased died due to an untoward incident and there are no grounds to interfere with its findings. He further submitted that when the claimants have produced evidence to show that the deceased is a *bona fide* passenger of train No.165 Kazipet-Hyderabad passenger, there is no rebuttal evidence on behalf of the Railways. He further submitted that though there

was an eyewitness for the incident, he could not be examined, as he died before commencement of trial. He submits that Tribunal rightly appreciated the evidence on record and that there are no grounds to interfere.

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

Whether the judgment in O.A.A.No.275 of 2004 on the file of Railway Claims Tribunal, Secunderabad, is legal, proper and correct?

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POINT :

10. As seen from the material, the first and foremost objection of the appellant is that the deceased is not a *bona fide* passenger. On behalf of the claimants, the 1st claimant is examined as A.W.1 and she deposed in her evidence supporting the petition averments. Through her, post-mortem report, inquest report, F.I.R., etc. are marked. She specifically deposed that the deceased informed her that he was going to Nampally from Secunderabad by train No.165 Kazipet-Hyderabad passenger to meet his friends at Santinagar and Aghapura on his personal work and that he also informed that he would go to Kukatpalli from

Hyderabad railway station by the available MMTS local train and left for Secunderabad railway station around 8.00 a.m. She also deposed that the deceased purchased a passenger train journey ticket from Secunderabad to Hyderabad and boarded train No.165 in a general compartment at Secunderabad railway station and while travelling in the train, he fell down accidentally from running train at the end of platform No.3 and as a result he died on the spot.

11. Though the appellant contended that the deceased was not a *bona fide* passenger of train No.165, they have not produced any evidence to support their plea. The specific plea taken by the Railways is that their enquiries revealed that the deceased committed suicide or fell down under the train due to intoxication. But the Railways have not produced any evidence as to what enquiries they have conducted and what was the result of that enquiry, except taking a plea, nothing was placed before the Tribunal to support their version. As rightly pointed out by the advocate for claimants, the Tribunal has rightly not accepted the objection of the Railways, since there was no evidence to support their plea.

12. Advocate for claimants submitted that

Division Bench judgment of Calcutta High Court held in ***Asharani Das Vs. Union of India and another***^[1], “even though ticket is not there and dead body is found within the premises of Railways, the burden is with the Railways to prove that the deceased was not a *bona fide* passenger”. He submitted that the same view is also taken by this Court in ***Union of India rep. by its General Manager, S.C. Railways, Secunderabad Vs. Borra Vijayalakshmi and others***^[2]. As seen from the order of the Tribunal, the Tribunal also, after taking into consideration various decisions of the Apex Court, held that it is for the Railway Administration to prove that the deceased was a ticketless traveller or not a *bona fide* passenger, and as they have not discharged their burden, the evidence of A.W.1 is accepted and compensation was granted. I do not find any wrong in the approach of the Tribunal in accepting the plea of the claimants treating the deceased as a *bona fide* passenger and that the death was due to an untoward incident. It is well-settled law that any amount of pleadings without evidence is of no use, when the Railways failed to prove that the deceased was a *bona fide* passenger and the death was not on account of an untoward incident. As seen from the material, the dead body of the

deceased was noticed towards the end of platform No.3 and this circumstance was taken into consideration by the Tribunal and held that the deceased died due to an untoward incident, on the basis of documentary evidence produced by the claimants particularly FIR and inquest report. On a scrutiny of the material, I am of the view that the Tribunal has not committed any error either in appreciating the evidence or in discarding the plea of the Railways. Therefore, there are no grounds to interfere with the orders of the Tribunal.

13. In the result, the Civil Miscellaneous Appeal is dismissed.

14. Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

12th April, 2016
cbs

HON'BLE SRI JUSTICE S. RAVI
KUMAR

C.M.A.No. 154 of 2010

12th April, 2016

cbs

This appeal is preferred questioning judgment dated 10.11.2006 in M.V.O.P.No.670 of 2005 on the file of IV Additional District Judge-cum-Motor Accident Claims Tribunal, Kurnool.

2. Appellant herein filed claim petition before

Motor Accident Claims Tribunal claiming a sum of Rs.1,00,000/- for the injuries sustained by her in a motor accident that took place on 09.12.2001. She contended that while she along with her three sons was traveling in a auto bearing No.AP 09 V 2096 from Kodumur to Puttapasam, after the auto crossed Vemugodu Village, one RTC bus came in opposite direction from Yemmiganur side at high speed in a rash and negligent manner and dashed auto that resulted injuries to her. She contended that she was hospitalized, underwent operation and spent Rs.30,000/- towards medical expenses and attendant charges and she was hale and healthy prior to accident and running a kirana shop and earning Rs.36,000/- per annum and due to injuries she was unable to do her kirana shop business and that she is entitled for Rs.1,00,000/-.

3. First respondent filed counter and 3rd respondent-Insurance Company filed separate counter disputing the claim of appellant and the main ground on which Insurance Company opposed the claim is that there is no fault on the part of the auto and on the contentions and rival contentions of both parties, Tribunal conducted enquiry during which two witnesses are examined on behalf of claimant and four documents are marked and on behalf of respondents' side two

witnesses are examined and three documents are marked. On a overall consideration of oral and documentary evidence, particularly the evidence of Medical Officer, who assessed the disability of appellant at 25%, the Tribunal granted compensation of Rs.55,000/- as a whole with interest from the date of petition till the date of deposit at 7.5% p.a. and partly allowed the claim petition. Aggrieved by the quantum, claimant preferred the present appeal.

4. Heard arguments.

5. Advocate for appellant submitted that Tribunal failed to see the fracture to the left upper arm of appellant was not united and she has got difficulty to do any work as there is movement restriction of right elbow and that Tribunal ought to have taken it as permanent disability. He further submitted that Tribunal ought to have taken into consideration that appellant spent towards medicines and materials like rods used for surgery, but no amount is awarded and that award of Tribunal is unsustainable. He submitted that the claim of appellant of Rs.1,00,000/- is quite reasonable and Tribunal ought to have granted that amount but arbitrarily fixed Rs.55,000/- and the same has to be enhanced.

6. On the other hand, advocate for Insurance

Company submitted that the disability was only 25% and there is no evidence on record to show that on account of this disability she is prevented from doing her earlier profession and that the Tribunal has rightly granted compensation and that there are no grounds to interfere.

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

Whether the judgment in M.V.O.P.No.670 of 2005 on the file of IV Additional District Judge-cum-Motor Accident Claims Tribunal, Kurnool, is legal, proper and correct?

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POINT :

8. There is no dispute with regard to accident so also, existence of valid Insurance Policy as on the date of accident i.e., on 09.12.2001. As seen from the record, the version of appellant is that she received grievous injuries both on right leg and right hand and iron rods were fixed and she suffered disability due to the above referred injuries. Medical Officer, who treated the appellant, is examined as PW.2 and he deposed in his evidence that out of the two fractures one fracture is united and one fracture has not united by the date of his examination and that there is restriction of movement of right elbow joint. He assessed the percentage of the disability at 25%,

which he said that it is partial and permanent and in the cross-examination also he stated the same thing. Considering the percentage of disability and also the age of the injured with reference to the nature injuries, Tribunal fixed compensation at Rs.55,000/- and directed that respondent Nos.2 and 3 together has to bear 50% and respondent No.1 has to bear remaining 50% of the compensation. Now, the main grievance of appellant is that Tribunal has failed to take into consideration, medicine charges, operation charges and materials like rods etc., As seen from the material, appellant has not specifically deposed the details of amounts spent towards medicines, amount paid towards operation charges and amount spent towards purchase of metal like rods etc., and she has not even examined any person to establish those facts, which are now raised in the appeal. She only claimed a consolidated figure of Rs.30,000/- towards medical and attendant charges and Tribunal on a consideration of bunch of medical bills marked as Ex.A.3 fixed the compensation. As rightly pointed out by advocate for Insurance Company, there is absolutely no error in the award of the Tribunal and the amount of Rs.55,000/- granted by Tribunal is in proportion to the percentage of disability assessed by the

Medical Officer, I do not find any wrong in the approach of Tribunal and it rightly fixed compensation and that there are no grounds to interfere with the same.

9. For these reasons, I am of the view that the appeal is devoid of merits and the same is liable to be dismissed.

10. Accordingly, this appeal is dismissed.

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

S. RAVI KUMAR, J

22nd February 2016.

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[\[1\]](#) AIR 2009 Calcutta 205

[\[2\]](#) 2005(2) ALT 86