

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CMA No.1092 of 2006

ORDER:

This appeal arises out of an order dated 18.08.2006 in OAA.No.297 of 2001 on the file of the Court of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad.

The facts of this case, in brief, are that the applicant Sri S.S.Pardesi is husband of one Smt.Savitri. Smt.Savitri boarded train No.7031 from Mumbai to Hyderabad on 16.09.2001 at Dadar Station. She was traveling to Hyderabad along with her brother and niece. Brother and niece had confirmed tickets and were traveling by sleeper class, whereas the deceased was traveling in an unreserved general compartment. As per the averments in the application, she accidentally slipped and fell down in the early hours on 17.09.2001 and died. Therefore, the application was filed seeking compensation for the death of the deceased Smt.Savitri.

The respondent-Railway Board filed a detailed counter denying the entire case. They averred in their counter that the death was not due to accident and therefore, no compensation is payable.

On behalf of the applicant, the husband was examined as AW.1 and the brother, who traveled on that day was examined as AW.2. On behalf of the Railways, one witnesses

was examined, who was a driver of the goods train, who noticed the dead body first. Exs.A.1 to A.5 were marked for the claimant and Ex.R.1 was marked for the respondent.

During the course of submission before the Railway Tribunal, it was argued that the deceased was mentally unsound and that there was a stainless steel chain to her leg along with a lock. Therefore, the respondents argued that the deceased was mentally insane and had committed suicide and hence, the Railways has no liability.

After hearing the matter, the Member Judicial vide his order dated 13.06.2006 held that the Railways are liable to pay the compensation, while the Member Technical held that the Railways is not liable to pay the compensation. The matter was referred to the Chairman of the Tribunal, who agreed with the findings of Member Judicial and held that there is no evidence to prove that the deceased committed suicide or that she was insane and directed payment of compensation. This order is assailed in the appeal.

Heard Mrs.Y.Kamala Rani, learned counsel, for the appellant and Mr.A.K.Kishore Reddy, learned counsel, for the respondents.

A perusal of the record shows that the deceased was a *bona fide* passenger. Her ticket was found and marked as Ex.A.1. A.W.1 is her husband, who has no personal knowledge about the accident, but it is noticed, the plea of the Railways that the deceased was insane, was not raised in

the cross-examination of the husband. Similarly, AW.2 was the brother of the deceased, who traveled in the same train but in a different compartment on that day. He could have been cross-examined about the mental status of the deceased either on the date of the accident or her earlier state.

In this case, both the witnesses were examined at length, but no attempt was made to cross-examine the witness on the point in issue, namely the mental state of the deceased. Therefore, this Court concurs with the finding that the Member Judicial and the Chairman of the Railways Tribunal and holds that the respondent failed to prove that the applicant was mentally insane and committed suicide. It is also pertinent to note that even if a person is insane, the right of the legal heirs and others to claim compensation is not ruled out merely because of the insanity. Only if it is proved that the death was due to any of the exceptions covered under Section 124-A of the Railway Act, 1989, can the Railways escape from their liability. In this case, there is no such evidence.

The learned counsel for the Railways also argued that the body was found without adequate clothing etc., on her and therefore, it has to be presumed that she is insane. However, Ex.A.4 postmortem requisition and Ex.A.5 report of the investigation show the presence of clothes. Even otherwise, if a person falls out of a moving train, and dies of the injuries, certain dishevelment of the clothing cannot be

ruled out. In any view of the matter, the insanity of the deceased is not proved. There are no grounds to hold the deceased died due to her insanity and not due to accident.

For all these reasons, this Court is of the opinion that the applicant was a *bona fide* passenger and that therefore, Railways are liable to pay the compensation urged. No other ground was urged during the course of hearing except the insanity of the deceased.

This court, therefore, holds that there are no merits in the appeal and the same is accordingly dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 21.11.2017
KLP

D.V.S.S. SOMAYAJULU, J

