

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

CMA No. 292 of 2007

ORDER:

This is an appeal filed against the order dated 15.02.2007 in OAA.No.258 of 2002 passed by the Railway Claims Tribunal, Secunderabad.

The case of the appellants and applicants in the lower Court is for competition of Rs.4,00,000/- for the death of late B.P.V.Narayana in an accident that occurred on 20.08.2002. It is the averment in the application filed in the lower Court that the deceased was traveling in a train on 20.08.2002 that he slipped and fell down accidentally from the running train. Due to severe injuries, he supposed to have died on the spot in the early morning of 21.08.2002. The respondents have repudiated the claim in totality and have denied all the material particulars in the application made. The lower Court, therefore, framed issues and the important issue that fell for consideration is whether the deceased was a *bona fide* passenger or not.

The first applicant was examined as AW.1 and one Sri V.Subbarayudu was examined as AW.2. For the Railways, RW.1 was examined. In the course of appraisal of evidence, the Railway Claims Tribunal noticed that Ex.A.2, which was marked in the course of the trial had some interpolation and corrections. In para 8 of the order, the lower Court noticed

that in the certified copy of the inquest report, the column witness was initially written as “not known”, but later, the same has been corrected read as “known” and the name of AW.2 was inserted. The original inquest report has not been filed and only a Xerox is marked. Based on this correction in AW.2, the Railway Claims Tribunal came to a conclusion that Ex.A.2 inquest report was not believable and that therefore, the accident did not occur as portrayed in the application. Ex.A.2 was marked through PW.1, who is the first applicant. Along with Ex.A.1, other documents were also marked as exhibits. There is absolutely no cross-examination of any of the contents of the documents. AW.2 was also examined as a witness. It is his name that is supposedly inserted or corrected in Ex.A.2. However, no questions were put to AW.2 about his presence or absence on the date of the inquest. A witness RW.1 was also examined on behalf of the Railways and Ex.R.1 was marked through him. He did not depose anything about the presence of Panchayatdars etc., at the time of the accident.

During the course of the argument, it was pointed out by the learned counsel for the appellants that the lower Court erred in not appreciating the facts in a proper perspective. The learned counsel pointed out that they were not given an opportunity to meet this issue of alleged extrapolation in Ex.A.2 and that therefore, they could not satisfactorily explain about the so-called extrapolation in Ex.A.2.

This Court also finds force in the submission of the learned counsel. The learned judges should have reopened the matter and sought clarifications on the alleged corrections of Ex.A.2. They have rightly pointed that the original inquest report was not filed. If the original inquest report or a certified copy thereof was filed, the present situation would not have arisen. It is a fact that the Tribunal has the power to assess the evidence and to come to a conclusion whether the evidence is reliable or not. But, when issues like interpolation or corrections in documents are noticed, at the time of pronouncing judgment or after hearing, it is always desirable that the parties should be put on notice of the same, particularly when the Court notices it and the same is not raised by the advocate on record. The Court by itself cannot decide when the interpolation made and how the interpolation was made without verifying either the original or the certified copy of the documents. A genuine error in a record is often corrected in certain documents. This sort of correction or interpolation does not vitiate the entire document.

In this case, the inquest report was not believed only on the basis that there are some corrections in that. This Court is of the opinion that the matter should be remanded to the Railway Claims Tribunal to decide this issue afresh after giving an opportunity to both the parties. The correctness of

the entries in the inquest report is to be proved as required by law.

Hence, this Court feels that the matter requires a fresh look particularly on the weight to be attached to Ex.A.2. Hence, the matter is remanded to the Railway Claims Tribunal, Secunderabad to dispose of the same in accordance with law after giving both the parties an opportunity to prove or disprove the contents of Ex.A.2-inquest report.

In the result, the appeal is allowed and the matter is remanded to the lower Court for the purpose of enabling the petitioner and respondents to show to the lower Court the correctness or otherwise of the contents of Ex.A.2 are correct, if necessary, by leading further evidence on the matter of Ex.A.2. In view of the fact that the appeal itself is of the year 2007, the lower Court is directed to dispose of the same as expeditiously as possible, preferably, within a period of 60 days from the date of receipt of a copy of this order without being influenced by anything stated here. No order as to costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 23.11.2017
KLP