

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.805 of 2016

ORDER:

1 This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'the Act'), is filed by the respondents in O.A.A.No.38 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench, challenging the order dated 09.02.2016 whereby and whereunder the Tribunal awarded an amount of Rs.4.00 lakhs to the applicants towards compensation.

2 The parties to this Civil Miscellaneous Appeal will hereinafter be referred to as they were arrayed before the Tribunal in order to avoid confusion.

3 The facts leading to the filing of the present Civil Miscellaneous Appeal, in brief, are as follows:

4 On 06.07.2006, one person by name Nella Koteswar Rao (hereinafter referred to as 'the deceased') purchased a railway ticket No.20896325 at Repalle railway station and boarded the train No.129 Repalle to Guntur Passenger to go to Bhattiprolu. When the train started at Repalle railway station, the deceased accidentally fell down from the train at the end point of Repalle railway station and died on the spot. The first applicant is the wife and applicant Nos.2 and 3 are son and daughter of the deceased, who are dependents on his income. Hence the applicants filed an application under Section 16 of the Act seeking compensation of Rs.4.00 lakhs. The respondent filed written statement denying all the averments made in the application inter *alia* contending that the deceased intentionally

jumped from the train with an intention to commit suicide and hence the application is not maintainable.

5 Basing on the above pleadings, the Tribunal framed the following issues:

- i. Whether the applicants are dependents of the deceased?
- ii. Whether the deceased was a bona fide passenger of Train in question?
- iii. Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
- iv. Whether the applicants are entitled to claim compensation of Rs.4,00,000/-
- v. To what relief?

6 During the course of trial, on behalf of the applicants A.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. To dislodge the case of the applicants, on behalf of the respondent, R.W.1 was examined and Ex.R.1 was marked.

7 Basing on the oral, documentary evidence and other material available on record, the Tribunal allowed the application by awarding compensation of Rs.4.00 lakhs to the applicants with interest @ 6% p.a. from the date of application till the date of order and @ 9% p.a. from the date of order till the date of realisation. Hence the present Civil Miscellaneous Appeal.

8 The learned standing counsel for the respondent submitted that the deceased intentionally jumped from the train with an intention to commit suicide and that aspect was not considered by the Tribunal and allowed the application on assumptions and presumptions; hence it is a fit case to allow the appeal.

9 *Per contra*, the learned counsel for the applicants submitted that the deceased accidentally fell down from the moving train. He

further submitted that there is no evidence much less legally admissible evidence to establish that the deceased jumped from the moving train with an intention to commit suicide. He further submitted that the findings recorded by the Tribunal are based on evidence, much less, legally admissible evidence, therefore, it is not a fit case to allow the appeal.

10 Now the points that arise for consideration in this Civil Miscellaneous Appeal are **(1)** Whether the deceased jumped from the train to commit suicide? **(2)** Whether there are grounds to allow the appeal?

Point No.1:

11 The Tribunal has given a specific finding that the deceased was a bona fide passenger. At the time of arguments, the learned standing counsel for the respondents, in all fairness, submitted that the deceased purchased ticket. The material available on record clinchingly establishes that the deceased purchased a valid ticket at Repalle railway station to go to Bhattiprolu. Therefore, the deceased was a *bona fide* passenger. The findings recorded by the Tribunal on this aspect are based on evidence much less legally admissible evidence.

Point No.2:

12 A.W.1 is the widow of the deceased, A.W.2 is brother and A.W.3 is the son of the deceased. As per the testimony of these witnesses, the deceased accidentally fell down from the train at Repalle and died on the spot. As per the recitals of Ex.A.2 inquest report, Ex.A.3 Post-mortem examination report the deceased died due to the injuries

sustained by him by falling down from the moving train. As per the testimony of R.W.1 also, the deceased died at Repalle railway station.

13 Now the crucial point that arises for consideration is whether the deceased jumped from the moving train with an intention to commit suicide?

14 A.Ws.1 to 3 are the best persons to speak about their family affairs and the ailments, if any, suffered by the deceased. In the cross-examination of these three witnesses nothing is elicited positively to establish that the deceased was suffering with ailments as on the date of death. Mere putting suggestions would not amount to proof of stand taken by the respondent. The respondent did not choose to examine the villagers of the deceased to establish that the deceased was suffering with ailments due to which he committed suicide intentionally jumping from the train. There is no mention in Ex.A.3 Post-mortem examination report about the alleged ailments of the deceased. The testimony of R.W.1 is no way helpful to establish that the deceased committed suicide. The Tribunal considered the oral and documentary evidence available on record in right perspective and arrived at a conclusion that the respondents failed to prove that the deceased jumped from the moving train to commit suicide. On the other hand, the material available on record clinchingly establishes that the deceased accidentally fell down from the moving train and died on the spot.

15 The Tribunal, after considering the material available on record, arrived at a conclusion that the deceased died as a result of an untoward incident of accidental fall from the moving train. The Tribunal has assigned reasons much less cogent and valid reasons to

its findings. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal. I am fully endorsing with the findings recorded by the Tribunal.

16 In the light of the foregoing discussion, I have no hesitation to hold that the death of the deceased will fall within the ambit of untoward incident as defined under Clause (C) of Section 123 of the Act.

17 At the time of arguments, the learned counsel for the applicants submitted that during the pendency of the appeal, the first applicant died. Applicant Nos.2 and 3 are children of the first applicant and the deceased. Therefore, being son and daughter of the first applicant, the applicant Nos.2 and 3 are equally entitled to the compensation amount awarded to the first applicant i.e. Rs.1,00,000/- each. For the foregoing discussion, this court is of the considered view that the appeal lacks merits and *bona fides*.

18 Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the order dated 09.02.2016 passed in O.A.A.No.38 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench. No order as to costs. As a sequel, miscellaneous petitions if any pending in this Civil Miscellaneous Appeal shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 5th September, 2018
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