

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.624 of 2010

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railways Claims Tribunal Act, 1987, is directed against the order, dated 22.07.2010, in O.A.A.No.511 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal').

Learned counsel for the appellant relies on a judgment rendered by a learned Single Judge of this Court in CMA.No.1207 of 2009, dated 25.08.2011, wherein this Court observed that at the time of incident, the deceased was standing within the precincts of the railway station waiting for a train to board after purchasing a ticket and, therefore, it accounts for violent attack within the meaning of Section 123 (c) of the Railways Act, 1989 (for short, 'the Act') and thereby allowed the appeal setting aside the order of the Railway Claims Tribunal in O.A.A.No.508 of 2005 dated 12.11.2009. Learned counsel would submit that the fact-situation occurring in the said judgment is akin to the one in the present case.

The fact-situation in the present case would show that on the date of incident, while the appellant – applicant was waiting on platform No.1 for train No.535 Secunderabad – Kurnool passenger, due to gale and heavy rain, asbestos cement sheets from the top of water cooler room, which was situated in the railway station on platform No.1, were blown off and fell on the right leg of the applicant, resulting the fracture of both tibia and fibula. The Tribunal, having assessed the evidence on record,

opined that the incident does not fall within the ambit of Section 123 (c) of the Act.

Learned Standing Counsel for the respondent would submit that in the present case, the injuries sustained by the applicant were on account of Act of God, as asbestos cement sheets fell on the right leg of the applicant due to gale and heavy rain.

When this Court, in the judgment relied on by the learned counsel for the appellant, held that similar acts would have to be construed as violent attack within the meaning of Section 123 (c) of the Act, it is difficult to deviate from the view expressed by this Court in the relied judgment.

Hence, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 22.07.2010, in O.A.A.No.511 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, and the matter is remanded to the Tribunal for assessing the compensation keeping in view, the relevant factors.

Miscellaneous Petitions, if any, pending in the present appeal, stand closed. No order as to costs.

A. SHANKAR NARAYANA, J

26.06.2018

v v