

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

CIVIL MISCELLANEOUS APPEAL No.718 OF 2011

JUDGMENT:

This appeal is filed against the order dated 21.03.2011 in O.A.A.No.300 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

The case of the appellants/applicants is that on 08.07.2004, the deceased (Prasad Yodi) along with his cousin while travelling from Vizianagaram to Vizag in Falaknama train, accidentally slipped and fell down from the train at Korukonda Railway Station; sustained severe injuries and died on the spot. Therefore, they filed the said O.A.A. claiming compensation of Rs.4,00,000/-. The railways denied their claim. The matter went to the Railway Claims Tribunal, where the case was filed. On behalf of the applicants, A.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, no evidence was adduced. However, the Tribunal examined C.W.1 and marked Ex.R1-Divisional Railway Manager's report. After completion of the evidence, the Tribunal dismissed the claim on the ground that the deceased is not a *bona fide* passenger and held that the evidence of A.W.2 is not believable. Questioning this order, the present appeal is filed.

Heard Sri P.Lingeswara Rao, learned counsel for the appellants and Sri T.S.Venkata Ramana, learned counsel for the respondents.

The case of the appellants is consistent from the beginning that when the deceased along with his cousin travelled from Vizianagaram to Vizag on 08.07.2004, the accident has occurred.

There is no dispute about the fact that the accident occurred on 08.07.2004. There is also no dispute about the fact that the deceased died due to the accident. A.W.2 deposed that he travelled along with his brother's son (deceased) in different general compartments in Falaknama train. The same statement was given by him to the police. The case diary, which is recorded in Crime No.95 of 2004, clearly states that he and the deceased wanted to attend a function, he purchased two tickets and they boarded Falaknama express. The statement says that as the compartment was crowded; both of them travelled separately. Later at Vizag, he realised that the deceased was not present. After surrendering his ticket to the ticket examiner at the gate, he left Vizag station. After hearing of the death of the deceased, he went to the house of the deceased once again. This evidence was consistent with what is stated in the application also. This Court finds no reason to believe that A.W.2 is a planted witness. It is also not clear on what ground, the Tribunal came to a conclusion that the police file, which was produced, was replaced with a duplicate statement. The order of the Tribunal does not indicate the basis for this. In all fairness to the applicants, M.Apparao was produced as a witness. His affidavit in chief was filed on 03.11.2005 and he was cross-examined. No suggestion was put to him that he gave two different types of statements or that what the police recorded is not the correct statement. In the absence of any foundation in the cross-examination, it cannot be held that he is a planted witness. Even in the cross-examination, his version is not shaken much and there is corroboration to what he has stated

earlier. Therefore, this Court is of the opinion that the evidence of A.W.2 cannot be brushed aside.

As far as '*bona fide*' passenger is concerned, the law is very clear on the subject. The burden is on the railways to show that the passenger is not a *bona fide* passenger. This Court in ***Shaik Mahboob Basha and others v. Union of India***¹ and in other cases held that the burden is on the railways to prove that the deceased is not a *bona fide* passenger. Similarly, in ***General Manager, South Central Railway, Secunderabad v E.Ramamohan Rao and another***² and ***The Union of India v. K.Balakrishnan*** (FB) (W.P.(C) Nos.30252 and 30271 of 2009 dated 02.12.2009), the learned Judges held that the oral evidence of a person, who is travelling along with the deceased passenger or the oral evidence of a person, who accompanied the deceased to the railway station and stated that he bought a ticket, cannot be easily ignored. If there is rebuttal evidence only, the evidence of such witnesses can be ignored. In the absence of any rebuttal evidence, this Court in the reported judgments held that the evidence has to be believed. In this case, a reading of sequence of events from the beginning till the end makes it clear that the deceased was travelled along with his cousin M.Apparao. The finding of the Railway Tribunal that there is 'substitution' in the case diary is not borne out by the record. No reasons are clearly indicated for the same. Assuming that there was some discrepancy, the same should have been confronted to the witness when he was examined as A.W.2. In the absence of any such foundation, this Court is of the opinion that the finding of the

¹ 2016ACJ 1882

² 2004(6) ALD 283

Tribunal that there is a substitution in the statement of A.W.2 or that he is a planted witness is not correct. Therefore, this Court is of the opinion that the applicants are entitled to compensation as prayed for.

In the result, the impugned order dated 21.03.2011 in O.A.A.No.300 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside and the appeal is allowed granting compensation of Rs.4,00,000/- with interest at 6% per annum from the date of application till the date of realisation. The respondent shall deposit the compensation of Rs.4,00,000/- with interest as ordered to the credit of said O.A.A. in the Tribunal within a period of six weeks from the date of receipt of a copy of this order. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 20.02.2018
ssp

D.V.S.S.SOMAYAJULU, J

