

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.432 OF 2010

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred under Section 23 of the Railway Claims Tribunal Act, 1987 by the applicants aggrieved over the dismissal of claim petition in O.A.A. No.26 of 2003, by order, dated 22.01.2010, passed by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad (for short 'Tribunal').

2. The appellants herein are the applicants, who are wife, children and parents of deceased, B. Kanakarao and respondent is arrayed as such before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid O.A.A. before the Tribunal.

4. The facts relevant for the purpose of disposal of the present appeal are, the deceased - B. Kanakarao had go to Anakapalli from Visakhapatnam and having had Darshan of Goddess Durga (Nukalamma) in order to go to Visakhapatnam, he returned to Anakapalli Station and purchased a ticket (No.38717863) to travel by an Express Train and as there was time, he was crossing the track of Platform No.1 to make a phone call to his wife and at that juncture, he was hit and ran over by a goods train, resulting in his death.

i) The applicants being wife, three children and parents sought a compensation of Rs.4,00,000/- with interest and costs.

5. The sole respondent while controverting the allegations, would contend that the death was on account of getting hit by a goods train while crossing the track which constitutes an act of trespass and does not come within the purview of an untoward incident as defined in Section 123 (c) of the Railways Act, 1989 (for short 'Act, 1989') and also does not fall in any of the provisions of Section 124 of the Act, 1989.

i) It is also contended that as per Section 123 (c) of the Act, 1989, an untoward incident meant the commissioning of a terrorist act, the making of a violent attack or robbery or dacoity, rioting or shootout, or accidental falling of a passenger from a train, and since the nature of accident was not covered by any of the provisions of Section 123 (c) of the Act, 1989, the Railways is not liable to pay compensation under Section 124 of the Act, 1989.

6. It appears, initially, a preliminary issue was framed and later again issues were framed on 12.09.2006 as many as five in number, and when inquiry was conducted on behalf of the applicants, applicant No.1 examined herself as A.W.1 and exhibited Exs.A-1 to A-6. The respondent did not adduce any evidence on its behalf.

7. Issue Nos.1 and 2 were taken up by the Tribunal together for common discussion and holding that there was foot over bridge which was available at station and there is no positive evidence from the applicants' side that it was unusable, and that there was no extenuating circumstances to explain why the deceased had to cross from the underside of the goods train standing on the platform No.1 to make a phone call, and holding that merely a statement by A.W.1 that she was told so by others is not enough and also pointing out that the friend, who stated to have been with the deceased on the platform, was not produced to show why the deceased did what was so obviously dangerous that it would definitely fall in the category of self-inflicted injury, and further holding that only because of an accident took place in railway premises, it cannot make the Railway liable to pay compensation for a foolhardy act of the deceased, dismissed the application by rejecting the claim, by order, dated 22.01.2010.

8. The said order is now challenged in the present appeal by the applicants.

9. Heard Sri T.L. Krishna Prasad, learned counsel for the appellants - applicants, and Sri T.S. Venkata Ramana, learned standing counsel for respondent.

10. The learned counsel for the applicants once again reiterated the grounds urged in the present appeal, contending that the Tribunal dismissed the application on hyper technical grounds and, in fact, foot over bridge was unusable as could be seen from the evidence of PW.1 and to rebut the same, Railway has not let in any evidence and, therefore, it is a case, where the Tribunal ought not to have dismissed and ought to have awarded compensation.

11. The learned standing counsel would submit that in fact, no material is placed to show that the foot over bridge was not usable and the burden entirely rests on them and even the answers given by the applicant No.1 as A.W.1 would clearly show that the foot over bridge was at some distance and perhaps on account of the same, the deceased instead of climbing foot over bridge, resorted to crossing the track and, therefore, there is no evidence on record to show that the deceased was compelled on account of not having any other way to cross the track. Incidentally, his submission is that even ticket is also not produced though, the applicants refer to a ticket number in the pleadings. His next submission is that the said Adari Narayanrao was not examined, who according to the case of the applicants, was, in fact, accompanying the deceased and he was available at the Railway Station Platform.

12. Now, the point that arises for consideration is:

Whether the order under challenge is legally infirm warranting interference?

13. Though, the applicant No.1 as A.W.1 got averred in the affidavit in chief that she learnt from her father-in-law, elder brother of the deceased and Adari Narayanrao that flyover bridge was in poor and damaged condition and the passengers are not using the same and, as such, when the deceased went to Platform No.1 through the yard from inside, the said incident occurred, but in the cross-examination, she answers to a question that she did not file any document to show that the flyover bridge was in poor and damaged condition and the passengers are not using the same. When the entire burden rests on her to prove that the deceased was compelled to cross the track, rather than using the flyover bridge, it is obligatory on her part to prove that flyover-bridge at the station was in poor and damaged condition and it is unusable. This one ground itself would completely disfavour the applicants. The other ground that she failed to examine Adari Narayanrao, who according to the case of applicants, was, in fact, available on the platform and he was accompanying the deceased also disfavours the case of the applicants. This apart, even the ticket was not produced though, the ticket number is mentioned in the claim petition. Thus, when kept in view, these three circumstances, certainly, there is no legal infirmity in the order passed by the Tribunal, and the finding recorded does not suffer from any patent

illegality warranting interference. There is no merit in the present appeal.

14. Accordingly, the Civil Miscellaneous Appeal is dismissed.

In the circumstances, there is no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand closed.

A. SHANKAR NARAYANA, J

June 13, 2018.
Mgr

