

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.434 OF 2016

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 22.01.2016, in O.A.II (U) No.128 of 2006 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased P.Karunamma in an untoward incident of railway accident that took place on 15.11.2005, was dismissed.

2. Heard the learned counsel for the appellants/applicants, the learned Standing Counsel for the respondent/Railways and perused the material on record.

3. Learned counsel for the appellants/applicants would contend that the deceased P.Karunamma had fallen from a running train on 17.11.2005 while travelling from Guntur to Tenali and she was found with injuries by the side of the railway track between Tenali and Angalakuduru and she was admitted in the hospital and thereafter, she succumbed to the injuries; that there is evidence of A.Ws.1 and 2 to support the same; that the journey ticket was lost by the deceased P.Karunamma in the accidental fall; that the subject death is an outcome of the accidental fall from the train, which amounts to an untoward incident of accident, as

defined under Section 123(c) of the Railways Act; that the Tribunal erroneously dismissed the application and ultimately, prayed to set aside the impugned order and allow the appeal. In support of his contentions, learned counsel has relied on a decision reported in **Union of India v. A. Geetha and others**¹.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that as per Ex.A-3 - Post Mortem Examination Report placed before this Court, there is no amputation of upper or lower limbs and there are contusions and other crush injuries and those injuries are possible only when a person comes under a train; that the appellants/applicants have stated that the deceased P.Karunamma had travelled by train No.410 Passenger on 17.11.2005 from Guntur to Tenali, but the said train was cancelled on that day and there is evidence of R.W.1 to that effect; that the entire case of the appellants/applicants is false; that neither the deceased P.Karunamma was a *bona fide* passenger nor died in an untoward incident of accidental fall from any train on 17.11.2005 and ultimately, prayed to sustain the impugned order by dismissing the appeal.

5. In view of the submissions made by the learned counsel on either side, the points that arise for determination are:

- “1. Whether the deceased P.Karunamma was a bona fide passenger of train No.410 passenger on 17.11.2005, travelling from Guntur to Tenali?***
- 2. Whether the deceased P.Karunamma died in an untoward incident of accidental fall from the said train?***
- 3. Whether the order, dated 22.01.2016, in O.A.II (U) No.128 of 2006 passed by the Tribunal is liable to be set aside? and***

¹ 2018 ACJ 941

4. To what relief?"**6. POINT Nos.1 & 2:-**

To substantiate the case, on behalf of the applicants, A.W.1 – son of the deceased P.Karunamma and A.W.2 – sister of the deceased P.Karunamma were examined and Exs.A-1 to A-4 were got marked. Ex.A-1 is the attested copy of F.I.R, Ex.A-2 is the attested copy of Inquest Report, Ex.A-3 is the attested copy of Post Mortem Report and Ex.A-4 is the Family Member Certificate.

7. A.W.1, in his evidence, stated that he received a phone call on 18.11.2005 stating that his mother had fallen from train No.410 Guntur to Tenali Passenger and thereafter, succumbed to the injuries. The same is the pleading in the subject application. A.W.2 stated that the deceased P.Karunamma wanted to travel from Guntur to Tenali by train. For that, she left the railway station. Admittedly, there are no direct witnesses to state that the deceased P.Karunamma was travelling by train No.410 or any other train on 17.11.2005. Further, no journey ticket was found anywhere either at the place of the alleged fall or in the apparels of the deceased P.Karunamma. It is also the evidence of R.W.1, who was the Station Manager, Guntur, that train No.410/409, Guntur-Tenali-Guntur Passenger and train No.484/483, Guntur-Narasaraopet-Guntur Passengers were cancelled on 17.11.2005 due to engineering block. His evidence establishes that no trains plied in between Guntur and Tenali on that day. It appears that looking at the schedule of train No.410/409, a pleading was made and evidence was laid.

8. Para No.13 of the aforestated decision reads as under:-

“The dictum in the decision supra rendered by a Division Bench of this court, of which one among us, was a constituent member, is also relevant in the context and is extracted herein below:

“(8) We have considered all the relevant inputs. To us it appears that Chapter XIII of the Railways Act reflects the vibrant compassion of the legislature in favour of the victims of untoward incidents that take place during the operation of the Railways. Even though there is no specific liability known to law on established legal principles obliging the Railways to compensate the victim of such untoward incidents, law declares that Railways shall compensate the victims. More than enforcement of a legal right, the statutory provision recognises compassion and concern which the railway administration must show to the unfortunate victims of the untoward incidents. An anxious perusal of the relevant statutory provisions and the rules must convince that the framers of the statute and the rules did not reckon the proceedings as an adversarial litigative process at all. If there be any semblance of doubt on this aspect it will be appropriate to frequent oneself with the stipulations of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (as amended in 2007). Rules 7 to 10 clearly show that the burden is on the local police and the officers of the force to conduct an inquiry/investigation into the cause of the incident and come to appropriate conclusion. To us it appears that the provisions clearly reveal due recognition and acceptance of the helplessness of the claimants who may be far away from the scene/venue of the incident and consequentially incapable of adducing very compelling evidence in support of their claim. The realistic acceptance of the plight of the victims is perfectly clear from the mechanism stipulated for inquiry/investigation under the Railway Passengers (Manner of Investigation of

Untoward Incidents) Rules, 2003. The burden really is not placed entirely on the shoulders of the victims or claimants. But, the burden is placed on the shoulders of the Railways and its officials to conduct a proper inquiry to ascertain whether claimants are really entitled to amounts or not.”

In the said decision, it is held that the entire burden is not on the shoulders of the victims or claimants, who file the claim application, under Section 16 of the Railways Act.

9. At this stage, learned counsel for the appellants/applicants would contend that the deceased P.Karunamma had travelled by some other train and fallen down.

10. The said submission is required to be supported by some oral or documentary evidence. Absolutely, there is no evidence at all. Further, the submission is contra to the pleadings and the evidence of A.W.1. So, it cannot be accepted.

11. As determined in several cases, the initial burden is on the claimants or injured, as the case may be. The same is required to be discharged, which is not done in the instant case. Therefore, the decision relied on by the learned counsel for the appellants/applicants has no application to the subject appeal. This aspect was elaborately dealt with by the Tribunal. As seen from the P.M.E. report of the deceased P.Karunamma, the injuries found on the dead body of the deceased P.Karunamma are possible when a person comes under a train by mistake or to commit suicide. Under these circumstances, it is not appropriate to hold that the findings of the Tribunal are erroneous and set aside the

impugned order. There is no infirmity in the impugned order. The appeal is devoid of merit and is liable to be dismissed.

12. **POINT Nos.3 & 4:-**

Accordingly, the appeal is dismissed confirming the order, dated 22.01.2016, in O.A.II (U) No.128 of 2006 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. There shall be no order as to costs.

13. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Date : 12.12.2018
AMD

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