

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

CIVIL MISCELLANEOUS APPEAL No.1011 of 2009

JUDGMENT:

This appeal is filed against the orders dated 7.8.2009 in O.A.A.No.264 of 2005 passed by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad.

The application is filed by the wife and minor children of Sri Rajagopal who died in an accident on 16.7.2005.

It is the case of the applicants that the deceased boarded Ramagiri Passenger (Train No.322) at Mancherial Station and when the train started with a jerk, he fell down and died. The accident occurred in Mancherial station itself. Claiming compensation of Rs.4,00,000/- for the said accident, the claim is filed. The respondent did not accept the claim and the matter went before the Railway Claims Tribunal. After perusal of the evidence and documents, the Railway claims Tribunal dismissed the claim on the ground that the deceased was not a "*bona fide* passenger". In para-15 of the order, it is clearly held that the deceased fell to his death from a train and was a victim of an untoward incident but was not a *bona fide* passenger. Therefore, conclusion on issue no.4 is as follows"

"Since the deceased was not a bona fide passenger, though he met his death on account of a fall from the train which was an untoward event, the applicants who are his dependents are not entitled to any compensation from the respondents."

This Court has heard Sri S.Chandra Sekhar, Counsel for the appellants and Sri T.S.Venkata Ramana, Counsel for the respondent.

In view of the fact that the death of the deceased at Mancherial railway station is accepted to be an untoward incident by the Railway Claims Tribunal, the only two points that survive for consideration are a) whether the deceased was a *bona fide* passenger and b) if so, what is the compensation the appellants are entitled to.

The fact that the accident occurred in the premises of the railway station is not in dispute. AW.2 who is a vendor, deposed that he saw deceased doing business and selling his chips to local travellers in Singareni Colliery areas. He deposed that the chips were prepared by the deceased and sold at Mancherial and other areas. He further deposed that for the purpose of his business, he travels regularly. From the evidence, it is also clear that the accident occurred in the railway premises. As per the settled law reported in various cases, every person travelling in a train is a *bona fide* passenger. This presumption has to be rebutted by the railways by introducing proper evidence. In this case, there is no evidence to show that the deceased is not a *bona fide* passenger. Merely because the ticket was not found on the body of the deceased does not lead to a conclusion that the deceased is not a *bona fide* passenger. Even the DRM report, marked as exhibit, does not throw any light on the matter. On the other hand, it clearly shows that the deceased fell down from the passenger train at the end of the plat form no.2 at Mancherial station. In addition, no oral evidence was also adduced to show that the deceased was actually an hawker. The Hon'ble Supreme Court of India in the case of ***Union of India v. Prabhakaran Vijay Kumar and***

others¹ clearly held that when there is an untoward incident, the railways are bound to pay compensation. The liability is strict and is absolute. The said judgment applies to the facts of this case. Therefore, this Court is of the opinion that dismissal of the claim by the Railway Claims Tribunal on the ground that the deceased was not a *bona fide* passenger is not supported by any evidence. The railways did not introduce any evidence to rebut the presumption that the deceased was not a genuine passenger. In the absence of any such evidence, this Court holds that the deceased was a *bona fide* passenger and the appellants are entitled for the compensation.

The last point that is urged by the learned counsel for the appellants is that in view of the judgment of the Hon'ble Supreme Court in the case of **Rathi Menon v. Union of India**² compensation is payable as per the standards prescribed at the time of making order for the payment. The learned counsel for Railways strongly opposed this submission and argued that rights are to be determined as on the date of the accident only.

In **Rathi Menon's** case (supra 2), the accident occurred in 1996 and the compensation was awarded after a revision was made by the Central Government in the year 1997. Therefore, the Hon'ble Supreme Court held that compensation should be as per the standards prescribed in the rules at the time of making order for payment of compensation. It is not in dispute that the railways have enhanced the compensation for death to Rs.8,00,000/- in the latest guidelines. In that view of the matter and in the lines of the judgment of the Hon'ble Supreme Court in **Rathi Menon's** case

¹ 2008 (9) SCC 527

² 2001 SCC (Cri) 1311

(supra 2), the judgment and order passed by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad, is set aside and the appeal is allowed. This Court holds that the appellants are entitled to compensation of Rs.8,00,000/- with 6% interest from the date of the application till the date of payment. No order as to costs.

Needless to say, Court fee is payable by the claimants for the amount awarded over and above what is initially claimed in the claim statement.

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

D.V.S.S.SOMAYAJULU, J

Date: 20/02/2018

lkv

