

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

CIVIL MISCELLANEOUS APPEAL No.371 of 2007

JUDGMENT:

This appeal is filed against the orders dated 31.1.2007 in O.A.A.No.346 of 2002 passed by the Railway Claims Tribunal, Secunderabad Bench, Secunderabad.

The applicants are wife, two children and mother of one Sri Mallikarjuna who died in a railway accident on the intervening night of 4/5.5.2002. The case of the applicants is that the deceased came to Chirala Railway Station along with one P. Uma Maheswara Rao and purchased a second class ticket to travel from Chirala to Vijayawada and boarded the Train No.7487 Tirumala Express. As there was heavy rush, he was standing near the door and due to the sudden jerk and speed of the train, the deceased fell down from the moving train and died. The application is, therefore, filed claiming compensation.

The respondent denied that the deceased is a *bona fide* passenger and also pleaded that the identity of the dead body could not be established and, therefore, the railways are not at all liable to pay any compensation whatsoever.

On behalf of the applicants, AW.1 and AW.2 were examined. AW.1 is the wife of the deceased and she filed Exs.A1 to A5. AW.2 is one Uma Maheshwara Rao who states that he accompanied the deceased to the station at Chirala and left him there.

On behalf of the Railways, no evidence was adduced, either oral or documentary.

After considering the available evidence, the Tribunal came to the conclusion that the deceased is not a *bona fide* passenger and dismissed the claim. It is this order which is impugned in this appeal.

This Court has heard Sri J.Pramod Goud, Advocate for the appellants and Ms.T.Balajayasree, Standing Counsel for the Railways.

The first and foremost submission of the learned counsel for the appellants is that the deceased was a *bona fide* passenger. He was dropped at the station on the fateful day by AW.2. Later, AW.2 left and the deceased boarded the train, where he met with the accident. This part of the claim is corroborated by the evidence of AW.2 who states that he has dropped the deceased at the railway station and then he left.

The learned Standing Counsel for the Railways states that AW.2 is an interested witness who is a friend of the deceased for seven years and, therefore, his evidence cannot be considered.

There is nothing on record to show that he is an “interested witness”. Usually the passengers are dropped at the station by the acquaintances/relatives or friends only. Therefore, the fact that AW.2 dropped the deceased at the railway station does not lead to a conclusion that he is an interested witness. Common course of human conduct cannot be ignored. Friends, relatives drop passengers at a station and leave. There is nothing unnatural in this.

In similar circumstances, in the case of General Manager, South Central Railway v. Rama Mohan Rao and another¹ the

¹ 2004 (6) ALD 283

learned Single Judge of this Court relied upon the statement of a person who accompanied the deceased to the railway station and deposed that he saw him buying ticket. This statement is not rebutted in the cross examination. In this case also, AW.2 came and deposed that he had come and dropped the deceased at the railway station and immediately left. The cross examination of AW.2 does not in any way go against what he is stated in his chief examination. The Tribunal came to conclusion on matters which are not even suggested to the witnesses let alone directly put in cross examination. Therefore, this Court is inclined to believe the evidence of AW.2.

Learned Standing Counsel argued that no ticket was recovered from the body of the deceased or from any other place nearby and therefore, he cannot be treated as a *bona fide* passenger.

It is well settled particularly by a series of the judgments of this Court also wherein it is clearly held that the burden is on the railways to prove that the deceased is not a *bona fide* passenger. It is presumed that every passenger on a train or person within the precincts of a station is deemed to be a *bona fide* passenger. This presumption has to be rebutted by the railways. This Court, on an examination of the pleadings and the evidence of AWs.1 and 2, has come to the conclusion that what is stated by the appellants is sufficiently corroborated by the evidence of AW.2 and the documents like the FIR/Inquest report. The respondent-railways did not file any documentary evidence or examine any witness to show that the deceased was not a *bona fide* passenger or that the

accident has not occurred as mentioned in the complaint. This Court, therefore, holds that the deceased is a *bona fide* passenger.

It is the submission of the learned Standing counsel for railways that the body of the deceased was divided into small pieces and it does not appear that the accident occurred as mentioned by the appellants. A reading of the entire case makes it apparent that the deceased fell down from the moving train and the body was recovered later in the morning. It is not known many trains might have run over the body due to which the body was shattered into pieces.

In similar circumstances, the Hon'ble Supreme Court in the case of ***Union of India v. Prabhakaran Vijaya Kumar and others***² held that the liability is strict and absolute in such cases. Unless and until the railway proves that the case comes within the exceptions provided under Section 124 of the Railways Act, the liability of the railways to pay compensation cannot be brushed aside. It is the rule of strict liability that has been applied in the case of railway accidents.

Therefore, following the decision of the Hon'ble Supreme Court in the case of ***Prabhakaran Vijay Kumar's case (supra 2)*** this Court has no hesitation in holding that the impugned order is not as per the law and it deserves to be set aside.

Therefore, impugned order in OAA.No.346 of 2002 dated 31.1.2007 is set aside. The applicants are entitled to compensation of Rs.4,00,000/- along with interest at the rate of 8% p.a. from the date of the application till the date of realization. The appeal is allowed without costs.

² 2008 (9) SCC 527

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

D.V.S.S.SOMAYAJULU, J

Date: 20/02/2018

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