

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.782 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 06.01.2016 passed in O.A.A.No.528 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, 'the Tribunal'), wherein and whereby the application filed by the applicants under Section 16 of Railway Claims Tribunal Act was allowed by granting compensation of Rs.4,00,000/- with interest at the rate of 6% per annum from the date of filing of application till the date of order and 9% per annum from the date of the order till the entire amount is realised.

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

3. The facts leading to filing of the present appeal are briefly as follows: On 05.07.2005 one Smt.Induri Venkata Subbamma (hereinafter referred to as 'the deceased') purchased a ticket bearing No.K3839449 at Nellore to go to Chennai and boarded the train bearing No.178 Nellore-Chennai MEMU Passenger at Nellore. When she was getting down from the train at Chennai, she accidentally fell down from the train and sustained injuries. The deceased was shifted to Government General Hospital, Chennai, wherein she died while undergoing treatment on 07.07.2005. Hence, the applicants filed the application under Section 16 of the Railway Claims Tribunal Act (for short, 'the Act') claiming compensation of Rs.4,00,000/-.

4. The respondent filed written statement denying all the averments made in the application *inter alia* contending that the deceased died due to ill-health. Hence, the application is liable to be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

- (1) Whether the applicants are dependants of the deceased?
- (2) Whether the deceased was a *bona fide* passenger of train No.178 Nellore-Chennai Memu passenger, travelling from Nellore to Chennai on 05.07.2005?
- (3) Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
- (4) To what relief?

6. To substantiate the case, on behalf of the applicants, A.Ws.1 and 2 were examined and Exs.A.1 to A.8 were marked. On behalf of the respondent, R.Ws.1 and 2 were examined and Exs.R1 and R.2 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the deceased was a *bona fide* passenger and she accidentally fell down from the train and died, and consequently, allowed the application.

8. Feeling aggrieved by the order dated 06.01.2016 passed in O.A.A.No.528 of 2005, the respondent-Union of India preferred the present appeal.

9. Sri T.S.Venkata Ramana, the learned Standing Counsel for the Railways, strenuously submitted that the Tribunal failed to consider that the deceased died due to sickness. He further

submitted that the findings recorded by the Tribunal are not based on evidence much less legally admissible evidence; therefore, it is a fit case to allow the appeal.

10. *Per contra*, Sri T.L.Krishna Prasad, learned counsel for the applicants, submitted that the findings recorded by the Tribunal are based on evidence much less legally admissible evidence. He further submitted that the oral and documentary evidence placed before the Tribunal clichingly establishes that the deceased was a *bona fide* passenger and the deceased died as a result of an untoward incident of accidentally fell down from the train; therefore, it is not a fit case to allow the appeal.

11. Basing on the rival contentions of both parties, the points that arise for consideration in this appeal are:

1. Whether the deceased died as a result of an untoward incident of accidental fall from the train ?
2. Whether the deceased was a *bona fide* passenger?
3. Whether there are any grounds to allow the appeal?

Point No.1:

12. It is not in dispute that AWs.1 and 2 and RWs.1 and 2 are not eye witnesses to the incident. As seen from the testimony of RWs.1 and 2, the deceased was found on the platform at Chennai Central. Their testimony further reveals that the Railway Authorities shifted the deceased to Government General Hospital, Chennai, wherein she died while undergoing treatment on 07.07.2005. As per the recitals of Ex.A.2-F.I.R., Ex.A.3-inquest report and Ex.A.8-post-mortem report, the deceased sustained injuries on various parts of the body. There is no mention in Ex.P.8-post-mortem report that the deceased died due to sickness.

On the other hand, the recitals of Ex.A.8-post-mortem report clearly reveal that the deceased died due to head injury. The material available on record clinchingly establishes that the deceased fell down from the train at Chennai Central Station and sustained injuries. By examining AWs.1 and 2 and marking Exs.A.1 to A.8, the applicants clearly established that the deceased died due to injuries sustained by her by falling from the moving train. The deceased was found in the Railway Station itself. The Tribunal considered the oral and documentary evidence in right perspective and arrived at a conclusion that the deceased died as a result of an untoward incident of accidental fall from the train bearing No.178 Nellore-Chennai Memu Passenger. Hence, this point is answered in favour of the applicants and against the respondent.

POINT No.2:

13. As seen from the testimony of AWs.1 and 2, on 05.07.2005, the deceased boarded the train at Nellore and fell down from the train in question at Chennai Railway Station. The ticket bearing No.K3839449 was seized from the possession of the deceased. It is not the case of the respondent that this ticket was not issued on 05.07.2005 by Station Master, Nellore Railway Station. On the other hand, Ex.R.2 report clearly reveals that the ticket, which was seized from the possession of the deceased, was issued on 05.07.2005 at Nellore Railway Station. Ex.R.2 report also clearly establishes that the deceased purchased the ticket at Nellore Railway Station. The material available on record clearly establishes that the deceased was a *bona fide* passenger. The Tribunal considered the oral and documentary evidence in right

perspective and arrived at a conclusion that the deceased was a *bona fide* passenger. The finding recorded by the Tribunal is based on evidence much less legally admissible evidence. I am fully endorsing with the finding recorded by the Tribunal on this aspect. Hence, point No.2 is answered in favour of the applicants and against the respondent.

POINT No.3:

14. If the findings recorded by the Tribunal are not based on evidence much less legally admissible evidence, then this Court can upset the findings recorded by the Tribunal. As observed earlier, the findings recorded by the Tribunal are based on oral and documentary evidence. The Tribunal has assigned reasons much less cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal.

15. In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 11.09.2018

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