

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.596 of 2016

JUDGMENT:

This appeal is filed under Section 23 of Railway Claims Tribunal Act assailing the order dated 13.08.2015 passed in O.A.A.No.332 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 application till the date of order and thereafter at the rate of 9% per annum till its realisation.

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 01.08.2005 one Tadi Veera Raghava Reddy (hereinafter referred to as 'the deceased') boarded the train bearing No.431 at Eluru Railway Station to go to Anaparthi after purchasing the valid ticket. The deceased accidentally fell down from the train at new Godavari Bridge and died. Applicant No.1 is the wife, applicant Nos.2 and 3 are daughters and applicant No.4 is the mother of the deceased. The applicants are dependants on the income of the deceased. Hence, the applicants filed the application under Section 16 of 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 negligently fell down from the train; therefore, the applicants are not entitled to claim compensation. It is further contended that the deceased was not a *bona fide* passenger. 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.431 passenger travelling from Eluru to Anaparthi on 01.08.2005?
- (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.6 were marked. On behalf of the respondent, R.W.1 was examined and Ex.R1 was 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 he accidentally fell down from the train and died, and consequently, allowed the petition.

8. Feeling aggrieved by the order dated 13.08.2015 passed in O.A.A.No.332 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 negligently fell down from the train;

therefore, the applicants are not entitled to claim compensation in view of proviso to Section 124-A of the Act. 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 P.Lingeswara Rao, learned counsel for the applicants, submitted that the Tribunal considered the oral and documentary evidence in right perspective and allowed the application. He further submitted that the findings recorded by the Tribunal are based on evidence much less legally admissible evidence; 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 was a *bona fide* passenger??
2. Whether the deceased died as a result of an untoward incident of accidental fall from the train?
3. Whether there are any grounds to allow the appeal?

POINT No.1:

12. As seen from the testimony of A.Ws.1 and 2, the deceased purchased the ticket at Eluru Railway Station to go to Anaparthi. As per Ex.R.1-Report also the deceased purchased the train ticket. Ex.A.6 is the original ticket of A.W.2. As seen from the testimony of A.W.2, himself and the deceased purchased ticket at Eluru Railway Station. In the cross-examination of A.W.2, nothing is elicited to shake his testimony so far as purchasing of ticket by the deceased at Eluru Railway Station. There is no much dispute with regard to the factum and nature of the death of the deceased in view of recitals of Exs.A.1 to A.3. The oral testimony of A.Ws.1 and 2

coupled with Ex.A.6 clearly proves that the deceased purchased the ticket at Eluru Railway Station.

13. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased was a *bona fide* passenger. The finding recorded by the Tribunal on this aspect is supported by oral and documentary evidence. There are no grounds much less valid grounds to upset the finding recorded by the Tribunal on this aspect. Hence, this point is answered in favour of the applicants and against the respondent.

POINT No.2:

14. As seen from Ex.A.1-F.I.R., Ex.A.2-inquest report and Ex.A.3-post-mortem report, the deceased fell down from the train bearing No.431 at new Godavari Bridge. It is the contention of the respondent that the deceased negligently fell down from the train, which act of the deceased will fall within the ambit of proviso to Section 124-A of the Act. Mere averment in the written statement by itself is not sufficient to substantiate the stand of the respondent. Admittedly, RW.1 is not an eye witness to the incident. Absolutely, there is no material on record to establish that the deceased negligently fell down from the train. On the other hand, the record clearly reveals that the deceased accidentally fell down from the train. The act of the deceased will fall within the ambit of an untoward incident as contemplated under Clause (c) of Section 123 of the Act. 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. Hence, this

point is answered in favour of the applicants and against the respondent.

POINT No.3:

15. 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.

16. Learned counsel for the applicants submitted that during pendency of the appeal, the fourth applicant died. The applicants filed I.A.No.1 of 2018 seeking permission of this Court to permit the other applicants to withdraw the share of the fourth applicant. Along with the application, they filed the death certificate of the fourth applicant. Having regard to the facts and circumstances of the case, I.A.No.1 of 2018 is allowed.

17. In the result, the Civil Miscellaneous Appeal is dismissed. However, in view of allowing of I.A.No.1 of 2018, the first applicant is entitled to withdraw an amount of Rs.50,000/- granted in favour of the fourth applicant. 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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