

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.1063 OF 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 19.04.2012, passed in O.A.A.No.321 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, whereunder and whereby, the Tribunal awarded a compensation of Rs.4,00,000/- to the applicants together with interest at the rate of 6% per annum from the date of the application till the date of order and thereafter, at 9% per annum from the date of the order till the date of realisation, consequent on the death of the deceased Ch.Prabhakar Rao.

2. Heard the learned Standing Counsel for the appellant/Railways. There is no representation for the respondents/applicants.

3. Learned Standing Counsel for the appellant/Railways would contend that the factual aspects mentioned in Ex.A-1 – attested copy of F.I.R. are contradictory; that the deceased Ch.Prabhakar Rao was not a *bona fide* passenger; that the train journey ticket bearing No.19280 was planted during the course of inquest panchanama over the dead body of the deceased Ch.Prabhakar Rao and the same is mentioned in Ex.R-3 – Divisional Railway Manager's Report; that the said ticket was issued to travel from Bissam Cuttack to Parvathipuram Town and it is said that the deceased Ch.Prabhakar Rao has boarded train No.247 Rayagada – Vijayawada Pushkara Special in general compartment; that the

place of death as mentioned in F.I.R. is near LC Gate, which is far away from Parvathipuram Town Railway Station, and therefore, no presumption can be drawn that the deceased Ch.Prabhakar Rao died while getting down from the train; that the evidence of A.W.2 is highly doubtful and he is an interested witness and there is contradiction in the evidence of A.Ws.1 and 2 with regard to the information of death of the deceased Ch.Prabhakar Rao; that the Tribunal examined one person as C.W.1 and the evidence of C.W.1 is unreliable; that the applicants failed to prove that the death of the deceased Ch.Prabhakar Rao occurred while he was getting down from the train at Parvathipuram Town Railway Station and further, failed to prove that the deceased Ch.Prabhakar Rao purchased ticket at Bissam Cuttack Railway Station to go to Parvathipuram Town; that railway track crossing is an offence and in such an event, no compensation is payable to the dependants of the deceased and ultimately, prayed to set aside the impugned order and allow the appeal.

4. The applicants have filed the claim application before the Tribunal under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989, claiming compensation of Rs.4,00,000/- for the death of the deceased Ch.Prabhakar Rao in an untoward incident of accidental fall from the train. It is stated that the deceased Ch.Prabhakar Rao was a resident of Parvathipuram Town and he was a Carpenter. He used to go to various places in and around Parvathipuram Town. As usual, in the early morning on 31.08.2004, the deceased Ch.Prabhakar Rao informed his wife that he was going to Bissam Cuttack by passenger train to attend to a

carpentry work and would return in the night. After completion of his work, he came to Bissam Cuttack Railway Station in the evening hours, purchased a passenger train journey ticket bearing No.19280 from Bissam Cuttack to Parvathipuram Town Railway Station and boarded train No.247 Rayagada – Vijayawada Pushkara Special in general compartment and while travelling, when the train halted at Parvathipuram Town Railway Station and while he was alighting, accidentally slipped and fell down from the train between the platform and the train due to sudden jerk and movement of the train when it was leaving the platform and as a result, he sustained severe crush injuries and died on the spot.

5. To substantiate their case, the applicants have examined A.Ws.1 and 2 and got marked Exs.A-1 to A-5. 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 Examination Report, Ex.A-4 is the Death Certificate of the deceased Ch.Prabhakar Rao and Ex.A-5 is the Family Members Certificate. On behalf of the Railways, R.Ws.1 and 2 were examined and Exs.R-1 to R-3 were got marked. The Tribunal has examined one B.Manikyala Rao as C.W.1 and the original ticket produced by him was marked as Ex.C-1.

6. While dealing with the subject matter, the Tribunal framed the following issues and answered the same in favour of the applicants:

“1) Whether the applicants are dependents of the deceased?

***2) Whether the deceased was a bonafide passenger of train
No.247 Rayagada – Vijayawada Pushkara Special,***

traveling from Bissam Cuttack to Parvathipuram on 31.8.2004?

3) Whether the deceased died as a result of an untoward incident of accidental fall from the said train?

4) To what relief?"

7. The main contention of the appellant/Railways is that the ticket bearing No.19280 was planted during inquest. There is evidence of C.W.1 – Head Constable, who conducted inquest over the dead body of the deceased Ch.Prabhakar Rao. He fairly and categorically stated that the ticket bearing No.19280 marked as Ex.C-1 was recovered from the pocket of the deceased Ch.Prabhakar Rao during the course of inquest over the dead body of the deceased Ch.Prabhakar Rao and he mentioned the same in para No.7 of the Inquest Report. As per the record produced, ticket No.19280 was sold at Bissam Cuttack to go to Parvathipuram Town on 31.08.2004 in train No.247 passenger. Though it is contended on behalf of the Railways that the ticket was pressed into service in order to seek compensation, it is not supported by any direct oral evidence. There is evidence of C.W.1 with regard to Ex.C-1 ticket, which supports the case of the applicants.

8. It is also contended that the subject accident occurred while the deceased Ch.Prabhakar Rao was crossing the railway track when train No.247 was passing near LC gate at Km No.387/7-8 near Parvathipuram Railway Station. As per the evidence of A.W.2, who is stated to be an eye witness, the train was crowded. His specific evidence is that when the deceased Ch.Prabhakar Rao was alighting from train No.247 Rayagada to Vijayawada Pushkara Special Passenger, accidentally, slipped and fell down in between

the train and the platform due to sudden jerk and movement of the train and it resulted in severe crush injuries of the deceased Ch.Prabhakar Rao on the spot. Had the deceased Ch.Prabhakar Rao was crossing the railway track and met with an accident and succumbed to the injuries, the driver of the train could have witnessed the accident. The Railways could have examined the driver of the train, but absolutely, there is no such evidence. While dealing with Exs.R-1 and R-2, it is held that these documents relate to Parvathipuram Railway Station and not Parvathipuram Town Station. So, the contention that the place of accident is Parvathipuram Town Station has no relevance. Having examined the entire evidence on record, the Tribunal was pleased to place reliance on the evidence of A.W.2, C.W.1 and Ex.C-1 and held that the deceased Ch.Prabhakar Rao was a *bona fide* passenger and died as a result of an untoward incident of accidental fall from train No.247. In view of the evidence of A.W.1, who is the wife of the deceased Ch.Prabhakar Rao, the Tribunal recorded a finding that the applicants, who are the wife and children of the deceased Ch.Prabhakar Rao, were the dependants on the deceased Ch.Prabhakar Rao. There is no infirmity in the findings recorded by the Tribunal. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed. The appellant is directed to deposit the remaining 50% of the compensation amount within one month from the date of this order. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 28.09.2018
AMD



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