

HON'BLE RI JUSTICE D.V.S.S.SOMAYAJULU

CMA.No. 879 of 2006

J U D G M E N T:

This appeal is filed by the Railways against the judgment and order dated 05.06.2006 in OAA.No.176 of 1999 passed by the Railway Claims Tribunal, Secunderabad.

The case in the lower Court was filed by one Y.Kistaiah, who pleaded that he met with an accident on 13.01.999 at Bhongir Railway Station while traveling on Train No.7021. Due to the accident, his leg was amputated. He, therefore, filed this case, which was adjudicated. The respondent in the lower Court (present appellant) denied the entire case. For the applicant; he was examined as CW.1 and Exs.A.1 to A.3 were marked. For the Railways, RWs.1 and 2 were examined and they marked Exs.R.1 to R.3.

After considering the evidence, the Tribunal passed the order dated 05.06.2006 granting compensation to the applicant, which is now assailed in this appeal.

This Court has heard Sri P.Bhaskar, learned counsel for the appellant and Sri Pottigari Sridhar Reddy, learned counsel for the respondent.

The learned counsel for the appellant-Railways argued that the applicant was not a passenger on a train at all and was a trespasser, who attempted to commit suicide. As per

the counsel; the failed suicide attempt is converted into an accident for claiming compensation. The respondent, on the other hand, argued that the Railways did not rebut the presumption that the applicant was not a passenger; that the failure to examine the driver of the train is fatal to the case of the Railways. He urged that as the impugned order is correct in all respects and that; the appeal should be dismissed.

This Court on an examination of the oral and documentary evidence, find that the incident occurred within the precincts of the Bhongir Railway Station. The claimant states that he purchased a railway train ticket that was however lost in the accident. Ex.A.1 certificate issued by the GRP Sub-Inspector shows that the injured fell down from the running train No.7021. The police constable, who took the injured applicant to the hospital, was examined twice on 18.10.2005 and on 13.12.2005. He clearly deposed that the contents of Ex.A.1 are correct. The Railways examined RW.1 (Deputy Station Superintendent) and RW.2 (guard). Neither of them actually saw the accident occur. The guard gave a message about a person lying on the track which was acted upon by RW.1. Therefore, from the available evidence, it is clear that there are no eye witnesses to the accident. The Railways allege that the applicant was a passer by, who attempted suicide. As they have alleged it; they have to prove the same. The Railways have failed to do so and as remarked by the Tribunal, they did not examine the driver of the train.

This was held against the Railways and correctly so in this Court's opinion. An adverse inference has to be drawn in this case. Even on the issue of the loss of a ticket etc., the presumption as per settled law is that every person is a *bona fide* passenger and it is for the Railways to rebut the same. The Railways have failed to discharge this burden in this case. The judgment of this Court in CMA.No.785 of 2008 dated 22.12.2011 (Union of India v. P.Manjula) is a complete answer to the case set up by the Railways.

On a review of the facts, pleadings, evidence and the law, this Court concludes that there are no merits in the appeal. The order of the Tribunal dated 05.06.2006 is confirmed in all respects.

In the result, the appeal is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date: 06.04.2018

KLP