

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

CIVIL MISCELLANEOUS APPEAL No.793 OF 2006

JUDGMENT

This petition is filed against the order dated 18.04.2006 passed in O.A.A.No.268 of 2000 by the Railway Claims Tribunal, Secunderabad.

The case of the applicant/appellant is that she is the mother of the deceased. She averred that while her son was travelling in train No.335 from Nagpur to Kazipet passenger, he accidentally fell down and died on the spot. Hence, she filed the O.A.A. claiming compensation for the said death.

Respondent-Railways strenuously denied the case and stated that the entire case is a false case set up to claim compensation. Their specific defence is that ticket No.12937 was recovered from shirt which is away from the body. It is their specific case that the said ticket was issued in the railway station long after the train left the station and therefore, they conclude that the said ticket was planted on the body. Based on these pleadings, the parties went to trial.

During trial, the applicant examined herself as A.W.1 and marked Exs.A1 to A.6. The railways examined Chief Booking Officer as R.W.1 and marked Exs.R1 and R2.

Based on the pleadings, the Tribunal held that the deceased was not a *bona fide* passenger; the case was not proved and dismissed the entire case. Against the same, the present appeal is filed.

Heard Sri Pottigari Sridhar Reddy, learned counsel for the appellant and Sri C.Balajee, learned counsel for the respondent.

The facts that are not in dispute are that the body of the deceased was recovered from railway area, an inquest was conducted, a FIR was registered and the body was recovered in multiple pieces. It was also noticed that there were no clothes on the body. Therefore, the Tribunal held that this was not a case of natural death. The most crucial point urged by the railways is that the ticket which was recovered from the shirt pocket bearing No.12937 was not issued before the train in which the deceased allegedly travelled. The railways specific contention is that the ticket was issued after the said passenger train left the railway station. Since this is a matter which is eminently within the knowledge of the railways and this is a matter which is relied upon by the railways, the burden is upon the railways to prove that the particular ticket was issued after the train left Kazipet station.

To prove their contention, the railways examined one Sri P.V.Parthasarathi as R.W.1. He was the Chief Booking Clerk in August, 2000. He states in the affidavit filed in lieu of his chief-examination that on 05.08.2000, he was the Chief Booking Clerk of Sirpurkagnagar railway station. It is a specific case that ticket No.12937 was issued during the shift of 8 to 16 hours. He was cross-examined by the learned counsel for the appellant. Exs.R1 and R2 were marked. Ex.R1 is the copy of DTC dated 05.08.2000. The witness admits that the date 05.08.2000 is not noted in Ex.R1 document. He also admits that the name of the station Sirpurkagagnagar is not noted on the first sheet of the document. In addition to the same, he deposed as follows: ticket No.12937 was issued during the shift 00.00 hours to 08.00 hours. Again he says ticket numbers commencing from 12930 to 13083 were

issued between 8.00 hours and 16.00 hours. Therefore, there is no clarity as to when exactly the ticket was issued. The witness also admits that the concerned booking clerk who worked at the relevant date can only say about the issuance of tickets in a particular shift. At the end of the cross-examination, further questions were asked and he states that he is deposing that the ticket was issued between 8.00 hours and 16.00 hours only on the basis of the DTC register. The Court also further questioned the witness and he states that there are three shifts per day commencing from 0.00 to 8.00 hours, 8.00 to 16.00 hours and 16.00 to 0.00 hours. The witness also filed a memo and in the said memo, he reiterates what he stated in his affidavit.

Learned counsel for the appellant strenuously argued that the witness who was examined did not have any personal knowledge about the issuance of the tickets. He also argued that there is no clarity from the evidence and that what is pleaded is not adequately proved. He relies upon the judgment of this Court dated 25.08.2011 in C.M.A.No.1246 of 2009, wherein it is held that the non-examination of the ticket clerk, who actually issued the ticket is a ground to draw an adverse inference against the railways. He also relies on ***Union of India v. K.Parvatahamma and others*¹**, wherein it was noticed that the register was not maintained correctly and that the date was also not mentioned therein. Relying on these two judgments, learned counsel argued that the railways have not proved the case.

On the other hand, learned counsel for the respondent submitted that in Ex.R1 column Nos.1 to 26 pertains to the first

¹ 2006 ACJ 892

shift and column Nos.28 to 30 pertains to the second shift. He draws the attention of the Court to column No.2 which is indicated in the tabular statement. Therefore, as per him the documents are correctly maintained as per the prevalent rules in the railways and that the railways do not have any reason to produce a document that is fabricated.

After hearing both the learned counsel and examining the documents in question along with the oral evidence this Court comes to a conclusion that the railways did not discharge the burden of proving the fact which is eminently within their knowledge only. They did not choose to file the original of the document and the xerox copy i.e., marked as Ex.R1 does not contain the station name or the shifts to prove when the ticket was issued. In the oral evidence of R.W.1 also, there is no clear statement of the procedure that was adopted. This Court, therefore, holds that the railways did not discharge the burden that was cast upon them.

It is also further argued that the ticket must have been planted with an ulterior motive. In similar circumstances, a single Judge of this Court in a judgment pronounced in C.M.A.No.849 of 2005 dated 18.06.2010 noticed that when the inquest was conducted, there were no relatives of the deceased person and that the inquest was conducted in the presence of the police and the railway officials. Therefore, the learned Single Judge came to the conclusion that there was no chance for anybody to purchase and plant a ticket with a view to make a claim. In this case also, it is noticed that one railway official, by name, Amith Roy, Deputy Superintendent, was present when the inquest was conducted.

Therefore, if any activity like the planting of a ticket or an attempt to plant a ticket took place, the railway official would have reacted and reported the same. The fact that there is no such evidence belies the theory of a planted ticket.

Considering the facts and circumstances of the case, the Court concurs with the findings of the Single Judge in C.M.A.No.849 of 2005 where also the scope for planting a ticket was very minimal. In the light of the above discussion, this Court is of the opinion that the railways failed to discharge their burden that is cast upon them. In a series of judgments of this Court and other Courts, it was held that every passenger is a *bona fide* passenger and the burden lies on the railways to rebut the presumption. In this case, the recovery of ticket and the cash and other clothes lead to a conclusion that the deceased died due to the accident that occurred. Hence, this Court also holds that the deceased is a *bona fide* passenger and that the accident occurred as mentioned in the claim and as deposed by A.W.1. Thus the findings of the Tribunal are not correct. The deceased is entitled to compensation.

Learned counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court in ***Rathi Menon v. Union of India***² wherein it is held that the compensation payable should be as per the prevalent schedule as prescribed under the rules at the time the order is pronounced. As per the publication made in the Gazette of India by the Ministry of Railways with effect from 22.12.2016, the compensation payable is Rs.8,00,000/- for death. This was wrongly opposed by the learned counsel for the

² 2001 ACJ 721

respondent but in view of the judgment of the Hon'ble Supreme Court, this Court awards Rs.8,00,000/- as compensation for the death of the deceased with interest at 6% per annum from the date of the application till the date of realization.

In the result, the impugned order dated 18.04.2006 in O.A.A.No.268 of 2000 on the file of the Railway Claims Tribunal, Secunderabad is set aside and the appeal is allowed granting compensation of Rs.8,00,000/- with interest at 6% per annum from the date of application till the date of realization. The respondent shall deposit the compensation of Rs.8,00,000/- with interest to the credit of said O.A.A. in the Tribunal within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is entitled to withdraw the same. However, the appellant shall pay the court-fee on the amount of compensation awarded in excess of her claim. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 28.02.2018
ssp

D.V.S.S.SOMAYAJULU, J