

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

CMA No. 964 of 2007

J U D G M E N T :

This appeal is filed by the Union of India against the order dated 07.08.2007 in OAA.No.22 of 2002 passed by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

The claim application is filed by one Damarla Narsimha Rao along with his wife Smt.Damarla Ramana, the parents of the deceased. They state that their son Damarla Venkat Rao died in a train accident while boarding the Simhadri Express in the railway station at Mangalagiri. It is their case that he slipped and fell down under the wheels of the train as the steps of the bogie were wet. While undergoing treatment for the injuries sustained in the accident, the applicants' son died. The railways have entered appearance and filed their written statement denying the entire accident. They also state that the deceased has attempted to commit suicide and as such it is not an accident.

On the basis of the pleadings, four issues were framed. For the applicants, two witness-AWs.1 and 2 were examined and EXs.A.1 to A.8 were marked. For the respondent, two witnesses-RWs.1 and 2 were examined but no documentary evidence has been filed.

The Railway Claims Tribunal, after going through the evidence, pleadings and oral submissions, passed an order awarding compensation of Rs.4,00,000/- to the applicants. It is this order that is now challenged in the appeal.

This Court heard Sri Adhi Venkateswara Rao, learned counsel for the appellant and Sri T.L.Krishna Prasad, learned counsel for the respondents.

The first and foremost question that is argued by the counsel was about the manner in which the accident occurred. There is no dispute in this case that the accident occurred in the Mangalagiri Railway station. A xerox copy of the ticket was marked since original was seized by the railways. The family members' certificate was also on record. The railways have however denied the entire case. They have stated that the ticket that is now marked is a planted ticket; they argued that the deceased was not a *bona fide* passenger and that he attempted to commit suicide.

As per the settled law on the subject, the burden is on the railways to prove that the deceased was a ticketless passenger. The presumption as per the settled law on the subject is that every passenger is a *bona fide* passenger. The Railways did not adduce any evidence to discharge this burden. Therefore, the lower Court rightly came to the conclusion that the deceased was a *bona fide* passenger.

The next contention strongly argued by the learned counsel for the Railways is that the deceased attempted to

commit suicide and that the death is not a result of the accident.

It is apparent that the deceased was undergoing treatment at Government general hospital and later he undertook treatment in a private hospital. If it was the contention of the Railways that the cause of the death is not related to the accident, there should have been pleading and cross-examination on this aspect. Railways could have also summoned the medical records to prove that the death was not in any way related to the accident. The applicants have filed the medical records etc., which are not even touched upon in the cross-examination. Therefore, the appellants cannot now be permitted to say that the death was not related to the accident.

Learned counsel for the respondents also rightly pointed out that the statement recorded by the police, which is reproduced in the order, clearly shows that the deceased while attempting to board the train slipped and fell down as there was water on the steps. The learned counsel stressed upon this statement and urged that it is the most contemporaneous statement and deserves to be accepted.

In addition, he also pointed out that an eye witness to the accident was examined as AW.2. He deposed that he noticed the deceased was waiting on the platform and that later when the train stopped suddenly he noticed one person falling between the train and the platform.

It is the contention of the learned counsel that these two facts read together would prove that the deceased did not attempt to commit suicide and when he was attempting to board the train, the accident in fact occurred. The last suggestion made to AW.1 is that the deceased was “negligent” while trying to catch a running train, which runs contrary to the theory of suicide.

This Court also agrees with the submissions made based on the oral evidence that is introduced. Since the theory of suicide is disproved and there is no documentary evidence to contradict the contemporaneous recording of the statement by the police, this Court also concurs with the findings of the lower Court that the deceased was a *bona fide* passenger, who slipped and fell down. The witnesses, who were examined by the Railways, did not file any documentary proof. Mere oral statements cannot be relied upon. RW.1 does not talk of suicide but RW.2, in para 3 of his affidavit in lieu of chief-examination say, a young man tried to commit suicide. This statement is based on records as per the verification para of this affidavit. However, the said records are not filed. Therefore, this Court also agrees with the lower Court on this issue.

This Court agrees with the findings of the lower Court that the applicants are entitled to the prayers made in the application and the order of the lower Court is sustained.

For all the reasons, 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: 09.02.2018
KLP

