

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

CIVIL MISCELLANEOUS APPEAL No.981 OF 2007

JUDGMENT:

This appeal is filed against the order dated 16.08.2007 in O.A.A.No.126 of 2002 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

The case of the appellant/applicant is that she sustained injuries in the untoward accident on 14.07.2001 at Kurgunta Railway Station. She further averred that when she was travelling from Rukmapur to Seram in Falaknama-Wadi passenger in general compartment and when the train was leaving the platform at Kurgunta Railway Station after a halt, she slipped and fell down accidentally from the running train and her left leg was amputated. She also averred that she lost her ticket along with her purse containing some cash. The railways denied the entire claim. Therefore, she filed the O.A.A. before the Claims Tribunal. The Railways denied their claim. On behalf of the applicant, A.W.1 was examined and Exs.A1 and A2 were marked. On behalf of the respondent, R.W.1 was examined and Exs.R1 and R2 were marked. The Tribunal held that the applicant is not a *bona fide* passenger. The Tribunal believed the evidence of R.W.1 which is to the effect that no passenger ticket was issued from Rukmapur to Seram by the train in question on the date of accident. Therefore, the Tribunal came to a conclusion that the version set up by the applicant is not correct and she did not purchase a ticket and therefore, she is not entitled to any compensation.

Heard Sri Pottigari Sridhar Reddy, learned counsel for the appellant and Sri M.L.Ali, learned counsel for the respondent.

The crux of the defence taken up by the railways is that the applicant did not purchase any ticket whatsoever and therefore, her entire version of travelling from Station Rukmapur to Seram is not correct and that she set up a false claim.

The entire matter, therefore, turns upon the evidence of the railways. As per the settled law, the presumption is that every passenger is a genuine and a *bona fide* passenger. It is for the railways to rebut the presumption. To discharge the burden, the railways examined R.W.1, who was working as Assistant Station Master. He filed his affidavit in lieu of chief-examination along with a document which contains the details of issue of tickets maintained in D.T.C. In his cross-examination, he admitted that he was not on duty at that station on that day. He admitted that the person, who issued the tickets, was not being examined. He also admitted that the document which he marked does not contain the name of the station. This Court has perused the document Ex.R1. It starts with Tandur station. The case of the applicant is that she bought a ticket from Rukmapur to Siram. Ex.R1 does not contain any details whatsoever to show the tickets that were issued at the Rukmapur station which is the station of origin for the injured. The witness who was examined also does not have personal knowledge of the details of the document he proposes to prove. The original register that was supposedly produced was not marked by the railways for the reasons best known to them. Merely, a xerox copy was marked. It does not contain the details of Rukmapur station. The witness admits that the name of the station should have been mentioned in the register and in that register tickets issued only on the first day of July are

shown whereas the dispute pertains to the journey undertaken by the applicant on 14.07.2001. Hence, this Court is of the opinion that the railways have not discharged their burden of proving that the applicant was not a *bona fide* passenger. The counsel for appellant relies upon the following judgments: ***P.Ramaswamy v. Union of India***¹ and ***Union of India (Uoi) v. K.Parvathamma and others***² to argue that the Railways failed to discharge their burden.

Consequently, this Court is of the opinion that the impugned order needs to be set aside. The claimant is entitled to compensation as prayed for.

At this stage, learned counsel for the appellant argued that basing on the judgment in ***Rathi menon v. Union of India***³ the claimant is entitled to compensation as per the rules prescribed in the latest schedule and prevailing on the date of the judgment.

Learned counsel for the Railways vehemently opposes the submission made and states that enhanced compensation cannot be given and it is beyond the prayer made in the application itself.

This Court is of the opinion that in view of the clear and categorical findings of the Supreme Court which are the law through out the country, this Court is bound to follow the law laid down by the Hon'ble Supreme Court in ***Rathi menon***'s case (supra 1). Therefore, this Court holds that the applicant is entitled to compensation for amputation of the leg below the knee, which is fixed at Rs.4,00,000/- as per item 20 of the latest schedule published in the Gazette of India. This Court also relies upon the

¹ 2002(6) ALT 400

² 2006 ACJ 892

³ 2001 SCC(Cri) 1311

judgment cited by the appellant in First Appeal No. 307 of 2017 of the Nagpur Bench of the High Court of Mumbai (Kavita and others v. Union of India) where a similar interpretation was given.

Learned counsel for the Railways also makes a submission that the matter should be remanded and his client should be given opportunity to correct the mistake in the deposition and to file the correct documents. This Court is of the view that as per the prevalent law and in the circumstances, the matter cannot be remanded to the lower Court. Therefore, the oral prayer of the Railways is rejected. In conclusion, this Court, holds that the claimant is entitled to compensation as prayed for and the same is quantified as Rs.4,00,000/-. Interest is also payable from the date of the application in the lower Court till actual payment.

In the result, the impugned order dated 16.08.2007 in O.A.A.No.126 of 2002 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is set aside and the appeal is allowed granting compensation of Rs.4,00,000/- with interest at 6% per annum from the date of application till the date of realization. The respondent shall deposit the above compensation 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.

D.V.S.S.SOMAYAJULU, J

Date : 20.02.2018
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