

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

CMA No. 955 of 2007

J U D G M E N T :

This appeal is filed against the order dated 25.04.2007 in OAA.No.297 of 2002 by the Railway Claims Tribunal, Secunderabad.

The case arises out of the death of one N.Suryachandra Rao. As per the applicants, the death occurred when the deceased N.Suryachandra Rao fell down from a train and died. The applicants came to know from the newspaper reports that the deceased died and after ascertaining that the deceased had died, the applicants filed the current application before the Tribunal. The respondent-Railways denied the entire case. The matter went to trial and AW.1 was examined. She is the wife of the deceased. On her behalf, Exs.A.1 to A.5 were marked. The respondent-Railways also examined one witness and on their behalf, Exs.R1 and R2 were marked. Documents obtained from the Railway Police on summons were marked as Exs.C.1 to C.1/9.

Ultimately, the Tribunal dismissed the case holding that the deceased was not a passenger on any train and his death was not an untoward incident. The Tribunal also held that the family members certificate issued is not correct and that there are discrepancies with regard to addresses. Similarly, the lower Court also noticed that there are discrepancies in the C1 series of exhibits, which were summoned and marked.

The learned counsel for the appellants argued and cited case law including the judgments of a single Judge of this Court in CMA.Nos.507 and 785 of 2008 and the decisions reported in **Ram Vilas and another v. Karmjeet Singh and others**¹, **Mithun Kumar v. Union of India**² and the Division Bench of the Kerala High Court in **Union of India v. Parameswaeen Pillai and another**³ to argue that there is a presumption that the deceased was a *bona fide* passenger and that the Railways did not rebut the said presumption. The learned counsel also relied upon the judgment reported in **Rathi Menon v. Union of India**⁴ and argued that the compensation should be paid as per the current rates notified by the Central Government.

The learned counsel for the respondent, on the other hand, argued that the order passed is a correct order and that there is no need to interfere with the same.

A perusal of the order reveals that issues that were not raised in the cross-examination of the witness were relied upon very heavily by the Tribunal. Ex.A.5 is a copy of the family members certificate, which is marked through the first witness-AW.1 on 04.08.2004. There is virtually no cross-examination on this document despite being aware of the document in the cross-examination finally that was done on 06.09.2005. Similarly, the documents summoned through

¹ 2006 ACJ 165

² 2017 ACJ 756

³ II (2013) ACC 371

⁴ 2001 ACJ 721

the GRP, which were relied upon by the Tribunal do not appear to figure in the evidence of the witnesses. It is not clear from the record, whether the parties in question had a chance to answer/argue about the alleged discrepancies, which are noticed by the Tribunal. If the Tribunal had any doubts about the contents of the family members certificate or the other documents, it should have brought the same to the notice of the counsels before deciding on the correctness or otherwise of the same.

This Court, therefore, finds considerable force in the submissions made by the learned counsel about the certificate issued by the Mandal Revenue Officer and has to agree with the submissions made that the Tribunal was not dispassionate about the matter and had in fact argued the case of the respondent-Railway administration.

This Court is of the opinion that the Tribunal should not have embarked upon the enquiries about the alleged discrepancies in the addresses etc., and reached its own conclusions without drawing the attention of the parties to the same. Only if the alleged discrepancies are brought to the notice of the parties and if they failed to give an explanation, the Tribunal could have come to the conclusion that it did. While the power of a Court to analyse the evidence is not in doubt; judicial discipline requires that if an issue that does not figure in the submissions of the parties; appears to be

important; it should be brought to the notice of the parties concerned.

Therefore, this Court is of the opinion that the appeal is to be allowed and the matter should be remanded to the lower Court to enable the parties to explain the so-called discrepancies in the addresses in Ex.A.5 and in the documents summoned from the GRP. Only for this limited purpose the matter is remanded. Parties are at liberty to introduce of oral evidence if they so desire on these two aspects. The Railway Claims Tribunal is directed to dispose of the matter after giving adequate opportunity to both the parties on Ex.A.5 and the documents marked as Ex.C.1 series, which are summoned from the GRP. This exercise should be completed within a period of 60 days from the date of receipt of a copy of this order. The lower Court is directed to dispose the matter without in any way being influenced by what is stated in the order of this remand. No costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 24.01.2018
KLP