

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.Nos.1367 OF 2011 & 591 OF 2012

COMMON JUDGMENT:

Since the facts of the case, the issues involved and the parties in both the appeals are one and the same, both the appeals are being disposed of by way of this common judgment.

2. C.M.A.No.1367 of 2011, under Section 23 of the Railways Claims Tribunal Act, 1987 is directed against the order, dated 30.09.2011, in O.A.A.No.52 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 (for short, 'the Act') with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Manji Raghuram in an untoward incident of railway accident that took place on 02.12.2004 was allowed with interest at the rate of 6% per annum on the compensation amount from the date of order till the date of payment. Challenging the very same order, Railways filed C.M.A.No.591 of 2012.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal.

4. Heard the learned counsel for both sides and perused the record.

5. Learned Standing Counsel for the respondents/Railways would contend that the applicants did not prove the death of the deceased Manji Raghuram in an untoward incident of railway accident and further, there is no record to establish that the deceased Manji Raghuram is a *bona fide* passenger travelling by a train from Visakhapatnam to Araku on 02.12.2004.

6. On the other hand, learned counsel for the applicants would contend that the Tribunal had analysed the entire evidence on record and rightly concluded that the deceased Manji Raghuram was a *bona fide* passenger and died in an untoward incident of railway accident; that the Tribunal is justified in granting compensation of Rs.4,00,000/-, but the Tribunal ought to have granted interest at the rate of 9% per annum from the date of filing the application till the date of realisation and ultimately, prayed to dismiss the appeal filed by the respondents/Railways and allow the appeal filed by the applicants.

7. In view of the submissions made by both sides, the following points come up for determination:

- “1. Whether the deceased Manji Raghuram was a bona fide passenger travelling from Visakhapatnam to Araku on 02.12.2004 by a train – Visakhapatnam – Kirandul Passenger?**
- 2. Whether the deceased Manji Raghuram died in an untoward incident of railway accident caused when he was travelling from Visakhapatnam to Araku on 02.12.2004 by Visakhapatnam – Kirandul Passenger? and**
- 3. Whether the rate of interest awarded by the Tribunal on the compensation amount is liable to be modified?”**

8. **POINT No.1:-**

To substantiate the claim for compensation, the wife of the deceased Manji Raghuram deposed as A.W.1 and got marked Exs.A-1 to A-6. Ex.A-1 is the attested copy of F.I.R. Ex.A-2 is the true copy of Inquest Report. Ex.A-3 is the true copy of Post Mortem Examination Report. Ex.A-4 is the original journey ticket. Ex.A-5 is the attested copy of final report. Ex.A-6 is the original legal heir certificate. On behalf of the respondents/Railways, R.Ws.1 and 2 were examined and Ex.R-1 – DRM's report was got marked.

9. Admittedly, the original ticket was found in the possession of the deceased Manji Raghuram, who travelled on the date of subject accident i.e., on 02.12.2004. Having elaborately dealt with the same, the Tribunal held that the deceased Manji Raghuram was a *bona fide* passenger in the subject train. There are no grounds to interfere with the same.

10. **POINT No.2:-**

Admittedly, there are no eye witnesses to the occurrence of the accident. The Tribunal placed its emphasis on the investigation conducted by the police that the deceased Manji Raghuram would have died due to a fall from the train. The respondents/Railways did not file any document to disprove that the subject accident and death were not due to a fall from the train. The evidence of R.W.1 is to the effect of his being on patrolling duty on 03.12.2004 and finding a male dead body at K.M.97/3. As per the evidence of R.W.2, on 02.12.2004, the train Visakhapatnam – Kirandul Passenger arrived at Similiguda at

14.56 hours, left a minute later, and it was an 18 minutes run to Araku from there. He stated that the body was found at 1.10 hours of 03.12.2004, there were 12 trains, passenger and goods, which passed on either direction, but the body was not noticed till it was reported by the driver of goods train No.BD 1/20 at 1.10 hours of 03.12.2004. So, the evidence of R.W.2 is of no use. The enactment to grant compensation is to benefit the accident victims or their dependants. It is a social welfare and beneficial legislation. When a valid ticket was found in the possession of a dead body, besides having a report by the police concerned holding that the subject death occurred due to fall from a train, the Tribunal rightly concluded that the deceased Manji Raghuram was having a valid ticket and the subject accident occurred due to a fall from the train. For the death of a person, the compensation payable is Rs.4,00,000/- and the Tribunal rightly granted the said amount.

11. **POINT No.3:-**

As regards the contention of the learned counsel for the applicants that the Tribunal had not granted interest at the rate of 9% per annum from the date of order till the date of realization, it is appropriate to refer to a decision in the Hon'ble Supreme Court through its judgment, dated 14.05.2009, in Civil Appeal No.3658 of 2009 (Arising out of SLP (C) No.26654 of 2008) in **TAHAZHATHE PURAYIL SARABI AND OTHERS VS. UNION OF INDIA AND ANOTHER¹**. It was held that the amount awarded as compensation by the Railway Claims Tribunal shall carry interest at 6% per annum from the date of presentation of the claim

¹ 2009 ACJ 2444

petition till the date of award and at 9% per annum from the date of award till the date of realization.

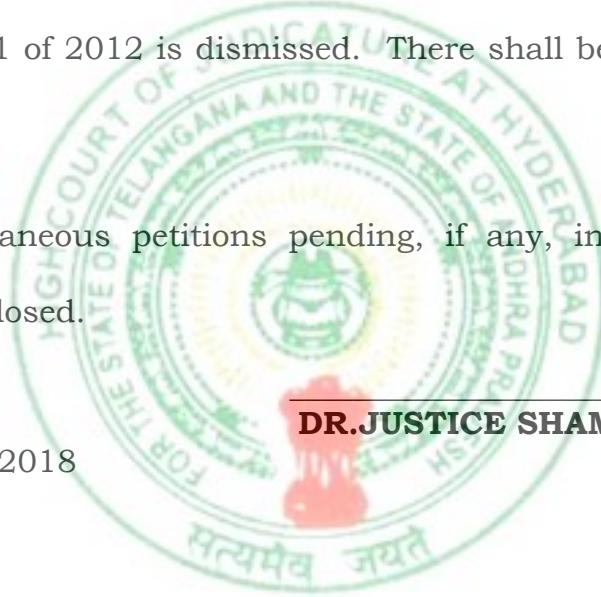
12. Following the same, the amount awarded as compensation by the Tribunal in favour of the applicants shall carry interest at the rate of 6% per annum from the date of presentation of the claim petition till the date of award and thereafter, at the rate of 9% per annum from the date of award till the date of realization on the balance amount.

13. Accordingly, C.M.A.No.1367 of 2011 is partly allowed and C.M.A.No.591 of 2012 is dismissed. There shall be no order as to costs.

14. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 26.09.2018
AMD



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