

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.1166 OF 2011

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 21.09.2011, in O.A.A.No.134 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellants/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 Sripati Das in an untoward incident of railway accident that took place on 19.01.2007 was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellants/applicants would contend that there is evidence of A.W.1 to show that the deceased Sripati Das is a bachelor and the applicants are his parents; that the Tribunal erroneously recorded that the boys of age '27' would generally get married and ultimately, held that the applicants were not the dependants of the deceased Sripati Das; that the Tribunal rightly determined the other issues with regard to the deceased Sripati Das travelling as a *bona fide* passenger, accidentally falling from the train and succumbing to the injuries; that the Tribunal

ought to have granted compensation as claimed for and ultimately, prayed to allow the appeal.

4. On the other hand, the learned Standing Counsel for the respondent/Railways would contend that the Tribunal had dealt with all the issues and rightly dismissed the claim and there is no evidence that the deceased Sripati Das was an earning member and the applicants were dependants on him and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the points that arise for determination are:

“1. Whether the finding recorded by the Tribunal that the applicants were not the dependants on the deceased Sripati Das is liable to be set aside? and

2. To what relief?”

6. **POINT Nos.1 & 2:-**

Applicant No.1 deposed as A.W.1 and categorically stated that the deceased Sripati Das was 27 years old and he was unmarried. To establish that the deceased Sripati Das was unmarried, no certificate is required to be filed before the Tribunal. The self testimony of A.W.1 is sufficient. Had the deceased Sripati Das married, his wife would have filed a claim petition. There is no such claim application. Furthermore, as per the evidence on record, applicant Nos.1 and 2 are the parents of the deceased Sripati Das. Further, no legal heir certificate is required when there is oral evidence of A.W.1 to substantiate that the applicants are the parents of the deceased Sripati Das. Their sole testimony is sufficient when there is no contra evidence on record. Under

these circumstances, it can be safely concluded that the applicants are the parents and dependants of the deceased Sripati Das.

7. The Tribunal rightly dealt with other issues i.e., the deceased Sripati Das was a *bona fide* passenger and while travelling in a train from Secunderabad to Cuttack in Superfast Express, fallen accidentally from the said train and succumbed to the injuries in the untoward incident of railway accident. Under these circumstances, the Tribunal ought to have determined the compensation payable to the applicants. Therefore, the impugned order, dated 21.09.2011, passed in O.A.A.No.134 of 2007 by the Tribunal insofar as not granting compensation is set aside.

8. Accordingly, the appeal is allowed and the matter is remanded to the Tribunal. The Tribunal is directed to assess and award the compensation payable to the appellants/applicants and dispose of the matter in accordance with law, as expeditiously as possible, within a period of two (2) months from the date of receipt of a copy of this judgment. The Tribunal shall also determine the rate of interest applicable i.e., *pendente lite* and future interest, payable to the appellants/applicants. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 26.09.2018
AMD

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