

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.No.729 OF 2007

JUDGMENT:

This appeal is preferred against order dated 10.05.2001 passed in OAA No.85 of 1998 by the Railway Claims Tribunal, Secunderabad Bench.

2. Appellants herein, who are the wife and daughters of the deceased T.Muralidhar Rao submitted application to Railway Claims Tribunal claiming compensation of Rs.4,00,000/- that on 20.04.1998 the deceased eldest son-in-law dropped him at Secunderabad Railway Station and purchased ticket for the deceased from Secunderabad to Warangal and gave it to him and that the deceased boarded the train No. 1019 Konark Express in II Class General compartment, while traveling the deceased slipped and fell down accidentally from the train between Cherlapally and Ghatkesar Railway Stations at Bridge No.291 and died on the spot with multiple injuries.

3. Railways resisted the claim application of the appellants.

4. Before the tribunal, basing on the contentions, applicant No.1, who is wife of the deceased examined as AW.1, son-in-law of the deceased examined as AW.2 and T.Veereshalingam, who met the deceased at platform and boarded the train along with the deceased was examined as AW.3 and that marked Exs.A1 to A.5 on behalf of the applicants. RW.1, driver of the Konark Express and RW.2, who is SS/Ghatkesar were examined and marked Ex.R.1-true copy of message given by Dy.SS/Ghatkesar on the information given by the Driver on behalf of the railways.

5. On a over all consideration of oral and documentary evidence, the Tribunal negatived the version of the applicants and dismissed the claim application that there was no basis that the deceased died on account of fall from the train and that the accident has taken place in the day time and when the deceased fallen down from the compartment, it must have seen by several people and co-passengers could have raise hue and cry and made efforts to stop the train and that AW.2, who accompanied the deceased, went to toilet at Ghatkesar and when he returned back he did not find the deceased in the coach and that the death of the deceased was not an accidental fall and does not come under the purview of untoward incident and that the death of the deceased was suicidal death.

6. Learned counsel for the applicant submitted that it is a case of fall from train and not straight hit by the train running at 90 KM speed and that as per the oral and documentary evidence, the deceased is a bonafide passenger and fall from the train and that in similar circumstances the Delhi High Court in **Ram Payari v Union of India**¹ granted compensation and hence, prayed to grant just compensation.

7. Learned standing counsel for the Railways submitted that the deceased did not travel in the Konark express and in the enquiry one male trespasser while crossing bridge No.291 knocked down and that a message to the said effect was given by Station Superintendent, Ghatkesar, on the report given by the driver of the train, to GRP and that taking advantage of the death of the deceased, the applicants created story and that the driver of the train was an eye witness to the accident and hence, the deceased

¹ 2014 ACJ 2314

was not a bonafide passenger and that the deceased unlawfully trespassed the railway track and hence, prayed to dismiss the appeal.

8. Having regard to the facts and circumstances of the case, Ex.A.1 – inquest report and Ex.A.5- postmortem report the injuries are lacerations and abrasions. Therefore, it can be presumed that the deceased fall from the train, but not straight hit by the train running at 90 kms per hour speed. The version of learned counsel for the railways cannot be accepted. Obviously, when the train hits the human body, it will be cut into pieces and blood clots in the skull. Giving weight age to the evidence of AWs2 and 3, who were also eye witnesses that the deceased boarding the train and also traveling in the train along with them, the required formalities regarding reporting accident and further the evidence of the driver that within three minutes again they have started the train is hard to believe. Hence, this Court is inclined to pass orders in favour of the claimants holding that it is a case of accidental, but not suicidal death. The Apex Court in **Union of India v Rina Devi**² observed that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and the same cannot be denied on the plea of contributory negligence of the victim. Mere absence of ticket with such injured or deceased will not negate the claim that he was a bonafide passenger. As per the decision of the Apex Court if a person falls while trying to get into a moving train or trying to get down from a moving train resulting in death whether possess ticket or not is entitled for compensation. So, in view of principle

²2018(3) ACJ 1441

laid down in the above referred decision, the objection of railways is not tenable. Therefore, the appeal is liable to be allowed.

9. In view of the above, the appeal is allowed setting aside the order dated 10.05.2001 passed in OAA No.85 of 1998 by the Railway Claims Tribunal, Secunderabad Bench. Consequently, O.A.A.No.85 of 1998 stands allowed. The applicants are awarded a compensation of Rs.8,00,000/- as per schedule. There shall be no order as to costs.

Miscellaneous Petitions, if any, shall stand closed.

Dated 13.11.2019
kvrn

T.AMARNATH GOUD,J

