

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No. 885 of 2009

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act'), is directed against the order, dated 30.04.2009, in O.A.A.No.292 of 2004, on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, the Tribunal).

2. The appellant in the C.M.A. is the respondent, and the respondent in the C.M.A. is the applicant, before the Tribunal. For better appreciation of facts, the parties hereinafter are referred to, as they are arrayed before the Tribunal.

3. The brief facts are that Chekka Srinivas Rao (hereinafter referred to as 'the deceased') was a student of ITI, Vishakapatnam and lived in Nagulapalli Village near Anakapalle and had a valid season ticket No.68539 for commuting. On 23.09.1992, he left for Visakhapatnam by Konark Express (2020 express), and at about 5.15, the parents were informed of their son's accident. They went to the Government Hospital, Anakapalle, but he died on the same day during the course of treatment.

4. Railways filed written statement denying the averments made in the application and prayed to dismiss the same.

5. The Tribunal, on consideration of both oral and documentary evidence available on record, awarded compensation of Rs.4,00,000/- directing the Railways to deposit the amount

within a period of two months days from the date of the order, failing which it shall carry interest @ 9% per annum till the date of realization.

6. Learned Standing Counsel appearing for the railways-appellant contended that the father of the deceased lodged a compliant vide Exs.A.2, A.3 and A4 stating that their son was murdered by one Thota Yesuratnam and others and the same was registered vide Crime No.228/1992 on the file of the Anakapally Police Station. But, the mother of the deceased filed the above OAA with a delay of 2190 days claiming that the deceased died in an untoward incident. Therefore, it can be said that the deceased was murdered, but not died due to untoward incident; that granting of compensation by the Tribunal is not proper and hence, he prays to set aside the impugned order.

7. On the other hand, learned counsel appearing for the respondent/applicant contended that the deceased was a *bona fide* passenger traveling in the passenger train with a valid season ticket; that he died in an untoward incident; that therefore, the Tribunal rightly granted compensation and hence, there are no grounds to interfere with the impugned order.

8. It is clear from the record that the father of the deceased, after the incident, lodged a compliant vide Exs.A.2, A.3 and A4, which was registered as Crime No.228/1992 on the file of the Anakapally Police Station, stating that their son was murdered by one Thota Yesuratnam and others. Curiously, the mother of the deceased filed the claim application on 23.09.1999 with a delay of

2190 days without giving cogent reasons seeking compensation, seeking compensation. For whatever reasons, the delay was condoned and the application was taken on record, the Tribunal ought to have gone into the crucial aspect whether the deceased died in an untoward incident or he was pushed by the inimical persons from the train. This aspect of the case has been clearly over looked by the Tribunal and awarded compensation. When the initial burden stands on the applicant has not been discharged, the question of shifting the burden to the Railways to show that the deceased was not a *bona fide* passenger does not arise. In the facts and circumstances of this case, this Court is of the considered opinion that the deceased died due to the act of his enemies (pushing him from the train), which amounts to murder, but not due to untoward incident and hence, liability cannot be fastened on the railways for the death of the deceased. Therefore, the findings of the Tribunal are not based upon proper appreciation of evidence record.

9. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the impugned order, dated 30.04.2009 in O.A.A.No.292 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad and consequently claim application filed by the applicant is dismissed. There shall be no order as to costs. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 11.11.2019
TJMR