

HIGH COURT FOR THE STATE OF TELANGANA

C.M.A.No.170 OF 2010

Union of India
Rep. by its General Manager,
South Central Railways,
Secunderabad.

....Appellant

VERSUS

1. Razia Sulthana W/o late Abdul Bari,
Aged about 38 years, Occ: Housewife
2. Jahana Ara D/o late Abdul Bari,
Aged about 14 years, Occ: Student
3. Isharat Ara D/o late Abdul Bari,
Aged about 12 years, Occ: Student

All R/o 8-8-40, Near Big Maseed, Panja Centre,
Inchpet, Vijayawada – 520 009.

R.2 and 3 are being minors. Represented by their
Mother and natural guardian R.2

... Respondents

DATE OF JUDGMENT PRONOUNCED: 20.12.2019

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD**+ C.M.A.No.170 OF 2010**

% Dated 20.12.2019

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... Respondents

! Counsel for Petitioners : Standing counsel for Railways

^ Counsel for Respondent : Sri T.L.Krishna Prasad

< GIST:

> HEAD NOTE:

? CITATIONS:

¹ Manu/AP/0877/2003

² AIR 1984 SC 1737

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.No.170 OF 2010

JUDGMENT:

This appeal is preferred by the Railways against the order dated 13.11.2009 passed in OAA No.280 of 2007 by the Railway Claims Tribunal, Secunderabad Bench.

2. Respondents herein submitted application to the Railway Claims Tribunal claiming compensation of Rs.4,00,000/- for the death of Abdul Bari, on 07.06.2007 while boarding Pinakini Express Train No.2711 at Vijayawada Station holding a valid ticket No.35214623 fell down from the train due to sudden jerks and sustained grievous injuries and he was shifted to Government General Hospital through Railway Police and was admitted as an inpatient and thereafter, shifted to another hospital on 08.06.2007 and succumbed to the injuries on 10.06.2007.

3. Railways resisted the claim application of the claimants.

4. Basing on the contentions, the tribunal examining AW.1 and marking Exs.A1 to A.6 on behalf of the claimants and examining RWs.1 and 2 and marking Exs.R.1 and R.2 on behalf of the railways, granted compensation holding that the claimants are dependents of the deceased as per Ex.A.6-ration card, the deceased died in an untoward incident of accidental fall from the train and that the deceased was a bonafide passenger.

5. Heard both sides.

6. Learned standing counsel appearing for the Railways submitted that the tribunal has not properly appreciated the evidence available on record; that the claimants have not proved

their dependency, the Member (Judicial), as a sole member, cannot pass orders and that the accident occurred is self inflicted as the deceased had boarded the train while the same was shunting. Learned counsel also placed reliance on the judgment of the Full Bench of this Court in **Union of India (UOI) South Central Railways v Kurukundu Balakrishnaiah and others**¹ to the effect that if any injury suffered by passenger or death caused due to negligence or wrongful act of passenger not covered by the same, railway is not liable to pay compensation and he also relied on decision of the Apex Court in **Union of India and others v Sunil Kumar Ghosh**² that passenger falling down and receiving injury while train was being shunted, railway was not liable to pay compensation.

7. Learned counsel appearing for the claimants contended that the tribunal has rightly appreciated the evidence and material available on record and held that the claimants were dependent on the deceased, the deceased was having valid ticket and was a bonafide passenger. Learned counsel also contended that when the deceased is having valid ticket, while boarding the train or getting down from the train, if any untoward incident occurs, the same cannot be treated as self-inflicted injury and prayed to confirm the order passed by the tribunal and dismiss the appeal.

8. A perusal of the material available on record discloses that no objections were placed before the tribunal that the sole Member (Judicial) cannot pass orders, but in the appeal, the said objection was taken. In fact, the Member (Technical) has passed the orders, but not Member (Judicial). Railways having accepted and invited

¹ Manu/AP/0877/2003

² AIR 1984 SC 1737

the Presiding Officer to deal with the matters like this and pass orders, it is not left open for the railways to take such objection in the appeal. As per para 3 of the judgment of the tribunal, the claim application of the claimants has been taken up in terms of orders dated 19.11.2007 of the Chairman in exercise of powers conferred under Section 4(4) of the Railway Claims Tribunal Act, 1987. In the light of Ex.A.6, the tribunal rightly held that the claimants are dependants of the deceased. Therefore, the ground taken by the railways that the Member (Judicial) cannot pass orders appears to have been taken in a casual manner and without application of mind and without going into the order properly. The deceased purchased Ex.A.1- ticket bearing No.35214623 to go to Chennai from Vijayawada on Pinakini Express Train No.2711. Therefore, it cannot be said that the deceased is not a bonafide passenger and hence, the tribunal rightly held that the deceased is a bonafide passenger.

9. Learned standing counsel appearing for the railways submitted that RW.1 clearly stated in his evidence that since the train was moving back, the same is considered as shunting and in the process of shunting, the passengers are not supposed to board the train and the departure of the Pinakini express train timing is 06.10 hours and the incident happened at 05.55 hours and accordingly, the same needs to be treated as self inflicted injury. In this regard, RWs1. and 2 contradicted each other.

10. RW.1 being Assistant Station Master and RW.2 being Mail/Express Guard and was on duty on the said train had no information about the untoward incident. The evidence of RW1 shows that he came to know from the passengers that while the deceased was boarding the train at the time of shunting, the

deceased fell down. The said hearsay evidence cannot be accepted unless the same is supported by any other evidence. Moreover, RW.1 has not recorded any statement of the passengers, who are eye witnesses to the incident.

11. Admittedly, the accident had occurred in the Railway Station and railway police shifted the deceased to the Government General Hospital. In the DRM report, the content about the examining of the Guards is absent. In the absence of any evidence with regard to the untoward incident or self inflicted injury and failure on the part of the railways to deny the claim with cogent reasons, the impugned order cannot be sustained. Therefore, this Court feels that the incident occurred is an untoward incident and the judgments relied on by the learned standing counsel are not applicable to the present facts of the case in the absence of eye witness evidence that the deceased boarded the train at the time of shunting.

12. In view of lack of evidence before the tribunal, the railways cannot improve its case in appeal and hence, the order passed by the tribunal is well considered and needs no interference of this Court and accordingly, the appeal is liable to be dismissed.

13. In the result, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, shall stand closed.

T.AMARNATH GOUD,J

Dated 20.12.2019

Note: L.R.Copy to be marked.

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