THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No. 788 of 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 11.07.2017, in O.A II (U) No.256 of 2008, on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short, the Tribunal).

2. The appellants in the C.M.A. are the applicants, and respondent in the C.M.A. is the respondent, 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 applicant No.1 is the wife and applicant No.2 is the son of Ismail (hereinafter referred to as 'the deceased'). On 12.08.2007, the deceased boarded the train No.433 Yeshwanthpur – Guntur passenger in general compartment to go to Vijayawada from Markapur. Due to heavy rush and sudden jerks, he slipped and fell down from the running train and died on the spot at KM No.144 of Markapur railway station. The applicants filed the above OA seeking compensation.

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, came to the conclusion that it is a clear case of self inflicted injury by the deceased and accordingly, dismissed the OA.

6. Learned counsel for the appellants/applicants submits that the deceased was a *bona fide* passenger travelling in the train with a valid ticket; that he died in an untoward incident; that the finding of the Tribunal is erroneous and prays to set aside the impugned order.

7. On the other hand, learned Standing Counsel for the respondent/Railway submits that Tribunal rightly dismissed the OA and there are no grounds to interfere with the impugned order.

8. There are contradictory versions in the affidavit of the railway guard, filed on behalf of the respondent. On one hand, he states that he saw one male person tried to enter the moving train, suddenly slipped and fell down, got injured and died. On the other hand, in his cross examination, stated that the deceased boarded the train after the train has started. So his version with regard to the fall is contradictory and it cannot be said that the deceased sustained self inflicted injury. The reliance placed by the Tribunal in **Jopseph PT V. Uniion of India**[1] is not applicable to the facts of the present case. More so, the deceased was a bona fide passenger travelled with a valid ticket bearing No.14057563 for Rs.28/- issued on the intervening night of 12/13.08.2007 for train No.433 Yeshwanthpur – Guntur Passenger train. In view of the same, the appeal is liable to be allowed.

9. Accordingly, the Civil Miscellaneous Appeal is allowed, setting aside the order, dated 13.08.2008, in O.A. II(U).No.256 of 2008, on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, awarding compensation of Rs.8,00,000/-.

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[1] 2014 ACJ 59

The applicant No.1 is entitled to Rs.6,00,000/- and applicant No.2 is entitled to Rs.2,00,000/-. There shall be no order as to costs. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 27.11.2019.
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HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD