

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.939 OF 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the Order, dated 31.08.2015, in O.A.A.No.509 of 2008, 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 applicant, and the 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 on 10.08.2008, the applicant purchased journey ticket bearing No.26394 at Timmapur Railway Station to go to Budvel and while travelling in a train, due to sudden jerk, he accidentally slipped and fell down from the running train between Budvel and Falaknuma. In the said accident, the applicant suffered serious crush injuries on both legs and during the course of treatment, his both legs were amputated. The applicants filed the above OAA 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 the

applicant could not establish that he sustained injuries due to an untoward incident within the meaning of Section 123(c) read with Section 124-A of the Railways Act, 1989 (for short, the Act) and accordingly, dismissed the OAA.

6. The learned counsel appearing for the applicant contended that the applicant was a *bona fide* passenger travelling in the passenger train with a valid ticket; that he died in an untoward incident; that therefore, he prayed to allow the appeal.

7. The learned Standing Counsel appearing for the Railways contended that the Tribunal has passed a well reasoned order and therefore prayed to dismiss the appeal.

8. For the purpose of claiming compensation under Section 124-A of the Act, two requirements have to be satisfied, firstly, there must be untoward incident whereunder a person died or sustained injuries. Untoward incident includes a person falling from the running train accidentally. Secondly, a person who died or sustained injuries must be a *bona fide* passenger travelling in the train with a valid ticket. If these requirements are proved, then the applicant is entitled for compensation. If the Railways want to resist the claim, it is has to prove that no untoward incident had happened or injured was not a *bona fide* passenger travelling in a train carrying passengers or its case falls under anyone of the exceptions as provided under proviso to Section 124-A of the Act.

9. Coming to the second aspect whether the applicant was a *bona fide* passenger travelling in the passenger train with a valid ticket or not, the initial burden is on the applicant to show that he was a *bona fide* passenger travelling in a passenger train. As the genuineness pertaining to the issuance of the railway ticket by the Railways is not disputed by the respondent, it can be said that the applicant is a *bona fide* passenger travelling in the passenger train with a valid ticket.

10. As far as untoward incident is concerned, R.W.1, who was on duty as Loco Pilot of train No.SU02, deposed that after passing Falaknuma, he noticed the injured person lying by the side of the track at Km. No.14/13 between Falaknuma and Budvel Railway Stations and he stopped the train and informed the guard over walkie-talkie and thereafter, the applicant was shifted to hospital. From the evidence on record, this Court is of the opinion that the deceased had fallen from the running train. Therefore, the findings of the Tribunal are not based upon proper appreciation of evidence on record and the order of the Tribunal is liable to be set aside.

11. Accordingly, the Civil Miscellaneous Appeal is allowed; the order dated 31.08.2015 in O.A.A.No.509 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside; and compensation of Rs.4,00,000/- is awarded to the appellant with interest @ 7.5% per annum from the date of claim petition till the date of this judgment. The respondent/Railways shall pay the compensation awarded within three (3) months from

the date of this judgment, failing which, interest at the rate of 9% per annum shall be paid on the compensation amount from the date of this judgment till the date of realisation. Miscellaneous petitions pending in this appeal, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 05.12.2019
TJMR

