

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.1286 OF 2011

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 14.06.2011, in O.A.A.No.139 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 respondents in the C.M.A. are the applicants, 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 one Avula Shanker, resident of Gudipally Village, Ramagundam Mandal, Karimnagar District, was a ginger and garlic merchant. He used to sell the same to the petty shop owners at Ramakrishnapuram, Mandamarri, Mancherial and Ramagundam etc. As usual, in the last week of December, 2003, he left the house informing that he was going to Nagpur for purchase of ginger and garlic. Thereafter, he did not return, therefore, the applicants started searching for him and finally came to know that one male person died on 18.01.2004 in an untoward incident between Mancherial and Peddampet railway stations at KM.263/24-26. The applicants went to railway police station, Bellampally, and on verification of the photos, clothes and other articles seized, they identified him as Avula Shanker, the deceased herein. 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 deceased was a *bona fide* passenger, and that he accidentally fell down from the train and died and accordingly, allowed the OAA.

6. The learned Standing Counsel appearing for the Railways contended that due to lack of evidence on behalf of the railways, the Tribunal presumed that the deceased was a *bona fide* passenger and the accident took place because of the untoward incident of fall from the train. She further submitted that there are no details about the train upon which the deceased travelled and fallen from the train; that there are no eyewitnesses to the incident and that there are discrepancies in the statements of claimants to show that in the last week of December, 2003, the deceased left the house informing that he was going to Nagpur for purchase of ginger and garlic; that as per the railway records, an unknown dead body was found on 18.01.2004 and that on verification of the dead body, the applicants identified the same as that of the deceased herein; that there is no cogent evidence adduced before the Court, claiming compensation is unjust; that the deceased was not a *bona fide* passenger as he was not in possession of ticket; that granting of compensation by the Tribunal is not proper and hence, he prays to set aside the impugned order.

7. The learned counsel appearing for the applicants contended that the deceased was a ginger and garlic merchant and used to travel in the trains and in the said process, the deceased 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 difficult to believe the version of the applicants that when the deceased left the house in the last week of December, 2003, there was no information regarding his whereabouts till 18.01.2004 and they did not lodge any complaint till 18.01.2004. It is also difficult to believe that mere identifying the dead body as that of the deceased, cannot be presumed that he traveled in a train and fallen from the train and died in an untoward incident in the absence of cogent evidence adduced before the Court. In the circumstances, it can be said that the Tribunal, on assumptions and presumptions, came to the wrong conclusion that the deceased died in an untoward incident. This Court feels that the applicants made a false claim, taking advantage of the death of the deceased, basing on the unknown dead body. Therefore, the applicants are not entitled for any relief and the order of the Tribunal is liable to be set aside.

9. The learned counsel appearing for the railways submitted that this Court by order dated 16.11.2011, granted interim stay, subject to the condition of the appellant-railways depositing 50% of the award amount and the said amount has been deposited by the appellant and therefore, the appellant is entitled to recover the same. Hence, this Court is of the opinion that the appellant is entitled to recover the same.

10. In view of the above discussion, the Civil Miscellaneous Appeal is allowed, setting aside the order dated 14.06.2011 in

O.A.A.No.139 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Miscellaneous petitions pending in this appeal, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 20.12.2019
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