

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY ,THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL MISCELLANEOUS APPEAL NO: 1137 OF 2008

Appeal Under Section 23 of the Railway Claims Tribunal Act, 1987 against the Judgment dated 05.06.2006 made in O.A.A.No.11 of 2001 on the file of the Court of the Railways Claims Tribunal, Secunderabad Bench at Secunderabad.

Between:

Kandru Mariamma, D/o.Late Joseph, Labour R/o.Denduluru Village,
Denduluru Mandal, W.G. District.

...APPELLANT/APPLICANT

AND

Union of India, rep., by its General Manager, General Manager, Union of
India, S.C. Railway, Secunderabad.

...RESPONDENT/RESPONDENT

Counsel for the Appellant: SRI CH. DURGA PRASAD

Counsel for the Respondent: SRI T. S. VENKATA RAMANA

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL MISCELLANEOUS APPEAL No.1137 of 2008

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the appellant / applicant assailing the orders dated 05.06.2006 in OAA No.11 of 2001 before the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

2. The appellant/applicant has filed the claim petition in OAA No.11 of 2001 under Section 16 of RCT Act, 1987 read with Section 124A of the Indian Railways Act claiming compensation of Rs.4,00,000/- alleging that in the untoward incident the deceased viz.Cheeli Prasad, S/o.late Joseph, who is her brother, died while travelling by Falaknuma Express from Secunderabad to Eluru on 09.04.2000 in sleeper class (S6) berth No.63 fell down and died. The appellant/applicant is the sole dependant of deceased Cheeli Prasad. Railway Claims Tribunal after due enquiry, dismissed the claim petition holding that she has utterly failed to establish that she is the dependant of the deceased under Section 123(b)(ii) of Railways Act.

3. Feeling aggrieved by the findings recorded by the Tribunal, this appeal is filed on the following grounds:

(a) The applicant/appellant is completely dependent upon the deceased and she was the sole legal heir of the deceased as his sister. Though the appellant/claimant has examined PW2 and also submitted the certificate issued by the Mandal Revenue Officer, the Tribunal failed to believe her evidence.

(b) The rejection of the claim by the Tribunal is against the evidence on record and prayed to set aside the order impugned and to grant Rs.4,00,000/- as compensation with interest at 24% per annum from the date of accident till the date of realization.

4. Heard the learned counsel for the appellant/applicant and learned Standing Counsel for the respondent/Union of India represented by its General Manager, South Central Railway, Secunderabad.

5. In the light of rival contentions and the material available on record, the following point stood for consideration.

Whether the appellant is dependent on the deceased as per Section 123(b)(ii) of Railway Act and is entitled to claim compensation in view of his death?

Point :

6. Learned counsel for the appellant would submit that though the appellant belongs to Schedule Caste, she along with her brother are converted Christians, they are residents of Denduluru Village of West Godavari District of State of Andhra Pradesh. In-fact the appellant brought up her deceased brother and educated him. The deceased became a Pastor of a Church at Ramnagar, Hyderabad and he is unmarried. Whereas, the husband of the applicant/applicant deserted her in the year 1992 and she is solely dependent on her deceased brother only, she has no other source of income. It is further argued by learned counsel for the appellant that the applicant has obtained divorce from her husband K.Francis in the presence of elders on 08.03.1994 and Ex.A5 is the divorce deed but unfortunately, the Tribunal held that it is an inadmissible document. However, recently the appellant has obtained legal heir certificate/family members certificate from Mandal Revenue Officer, Denduluru,

which discloses that the appellant/applicant is the only dependant of the deceased.

7. Be it stated that the Railway Claims Tribunal has framed in all three issues. Issue No.1 deals with whether the applicant is the sole dependant of the deceased Cheeli Prasad. It was answered in the negative against the applicant/appellant. Whereas, issue Nos.2 and 3 deal with whether the deceased Cheeli Prasad was a bonafide passenger and died as a result of untoward incident of accidental fall from the said train between Telaprolu and Nuzvid Railway Stations. Issue No.2 was answered in the positive in favour of the appellant holding that the deceased was a bonafide passenger. Whereas, issue No.3 was answered holding that the evidence on record is full of doubt and suspicion and it cannot be said that the accident was due to fall from train. On the other hand, the circumstances indicate that the deceased made an attempt to alight at the unscheduled halt when the train was slowed down. Accordingly, the claim petition was dismissed.

8. Considering the grounds of appeal, submissions of the learned counsel for appellant essentially the short point that arises for consideration in this appeal is that whether the appellant/applicant is sole dependant of deceased Cheeli Prasad.

9. Section 123(b)(ii) of Railways Act defines the dependants as parents, minor brother, unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son if dependant wholly or partly on the deceased passenger. Nowhere in the entire scheme it is mentioned that the divorced sister is also one of the dependant of the deceased passenger.

10. Learned counsel for the applicant/appellant relied on the principles laid by a learned Single Judge of this Court in **Union of India by its General Manager, SC Railway, Secunderabad Vs.N.Kantabai¹**. In the said decision, learned Single Judge of this Court, while dealing with Section 123(b) of Railways Act, held that the daughter married or unmarried is entitled to make claim irrespective of the fact whether she was

¹ 2003 (2) Andhra Weekly Reporter 275 (A.P.)

dependant on the deceased father at the time of accident or not. Here in the case on hand, the facts are quite distinct. It is the sister who has filed the claim petition claiming that she is the sole dependant on the deceased passenger. The sister who filed this appeal is not a widow but she claims that she has obtained divorce and accordingly, a divorcee sister is not defined as dependant in terms of Section 123(b) of the Railways Act and the principles laid in the above decision are not helpful to the appellant/applicant.

11. It is not the case of the applicant/appellant that she is a widow. Her specific case is that her husband has dissented her and her marriage was dissolved in the presence of caste elders on 08.03.1994, to that effect Ex.A5 document was executed. In that context the Tribunal has expressed a doubt as to the validity of Ex.A5 holding that since the parties are Christians, such dissolution of marriage in the presence of caste elders is not valid. However, without looking into the aspect of validity or otherwise of Ex.A5, since a divorcee is not a dependant of deceased passenger in terms of Section 123(b)(ii) of

Railways Act, I do not find any irregularity in appreciation of the material/ evidence available on record.

12. Therefore, even if it is believed that the appellant has obtained divorce from her husband under Ex.A5 on 08.03.1994 a divorced sister is not a dependant in terms of Section 123(b)(ii) of Railways Act and she is not entitled to claim compensation as sole dependant of the deceased passenger. Accordingly, the point is answered in the negative against the appellant. In that view of the matter and for the reasons stated above, I do not find any reason to interfere with the findings recorded by the Railway Claims Tribunal in the order impugned and it is sustained.

13. In the result, this Civil Miscellaneous Appeal is dismissed confirming the orders impugned dated 05.06.2006 in OAA No.11 of 2001 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad in its entirety. In the circumstances of the case, there shall be no order as to the costs. Consequently, miscellaneous applications, if any pending, shall stands closed.

Sd/-C.V. MALLIKARJUNA VARMA
JOINT REGISTRAR
SECTION OFFICER

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To,

1. The Railways Claims Tribunal, Secunderabad Bench at Secunderabad. (with records, if any)
 2. One CC to Sri Ch. Durga Prasad, Advocate [OPUC]
 3. One CC to Sri T. S. Venkata Ramana, Advocate [OPUC]
 4. Two CD Copies
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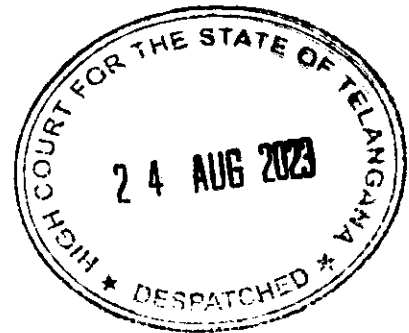


HIGH COURT

DATED:17/11/2022

JUDGMENT

CMA.No.1137 of 2008



**DISMISSING THE CMA
WITHOUT COSTS**

⑦ VLV
15/3/23