

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.No.1606 OF 2008

ORDER:

This appeal is preferred against order dated 28.08.2008 passed in OAA No.310 of 2002 by the Railway Claims Tribunal, Secunderabad Bench.

2. Respondent herein, who is the mother of the deceased submitted application to the Railway Claims Tribunal claiming compensation of Rs.4,00,000/- for the death of Saleem Arasan, a boy aged 14 years, working as Cooli, R/o Dharmapuri District, Tamil Nadu contending that on 26.04.2001, the deceased, accompanied by his maternal uncle K.Raja, went to Gooty Railway Station, purchased two passenger train journey tickets from Gooty to Rajampet and boarded Train No.207 Guntakal-Tirupathi passenger in a general compartment and that when the train halted at Mantapampalle R.S., the deceased got down from the train for fetching water and while he was again boarding the train, slipped and fell down when the train was leaving Mantapampalli R.S at about 18.15 hours, due to jerks and sudden movement of the train, the deceased sustained severe multiple injuries and died on the spot.

3. Railways resisted the claim application of the respondent and stated that as per the Station Superintendent, Mantapampalle, Train No.207 passenger arrived Mantapampalli at 18.12 hours left at 18.14 hours and when the train was in motion, a boy aged 14 years trying to enter the compartment, slipped, got run over and killed and that it is not a case of accidental fall from train in an untoward incident, but it is self inflicted injury arising

out of his own criminal act, for which the railway is not liable to pay any compensation.

4. Before the tribunal, basing on the contentions, respondent examined A.Ws.1 and 2 and marked Exs.A1 to A.6. R.W.1 was examined and Ex.R.1-letter of Guard was marked on behalf of the appellant.

5. On a over all consideration of oral and documentary evidence, Tribunal negated objection of railways and awarded compensation of Rs.4,00,000/-, aggrieved by which, present appeal is preferred.

6. Learned standing counsel for the Railways submitted that the deceased was traveling without ticket and he made an attempt to board running train, which is not permissible.

7. On the other hand, counsel for the applicant submits that two tickets were purchased by the deceased and his maternal uncle and both boarded the train and that when the train reached Mantapampalli R.S., the deceased got down from the train to fetch water and while he was again entering the compartment, he slipped and fell down from the train due to sudden jerks and movement of the train and the appellant is liable to pay compensation.

8. The tribunal rightly observed that as per Ex.A.1- ticket recovered from the deceased and Ex.A.3-inquest report, the deceased was bona fide passenger and as per Ex.A.4 – police certificate it is a case of accidental death and that there is no evidence from the railways that the death of the deceased was due to any of the exceptions stated under Section 124-A of the

Railways Act, 1989 and that the deceased was bona fide passenger and that the deceased was died in an untoward incident. The Apex Court in **Union of India v Rina Devi**¹ observed that the death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and the same cannot be denied on the plea of contributory negligence of the victim. As per the decision of the Apex Court if a person falls while trying to get into a moving train or trying to get down from a moving train resulting in death whether possess ticket or not is entitled for compensation. So, in view of principle laid down in the above referred decision, the objection of railways is not tenable. Therefore, the order passed by the tribunal is well considered and needs no interference of this Court. Learned counsel for the appellant submitted that entire claim amount has been deposited and that the applicant withdrawn 50% of the deposited amount. The applicant is at liberty to withdraw the entire deposited amount.

9. In view of the above, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, shall stand closed.

T.AMARNATH GOUD,J

Dated 08.11.2019
kvrn

¹2018(3) ACJ 1441