

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.48 of 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 13.10.2011, in O.A.A.No.258 of 2005, 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 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 24.06.2005, Shaik Cahnd Bash @ Shaik Basha (hereinafter referred to as 'the deceased') boarded train No.3352, Allepy – Dhanbad Express, and due to the jerks of the train, he fell down on the tracks between Pendurthi and Kothavalasa stations and died. The mother of the deceased 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 deceased was not a *bona fide* passenger and not died on account of an accidental fall from train No.3352 Allepy – Dhanbad Express and accordingly, dismissed the OAA.

6. Learned counsel for the appellant/applicant 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 the Tribunal rightly dismissed the OAA on appreciation of oral and documentary evidence and hence, there are no grounds to interfere with the impugned order.

8. A perusal of para XV of the inquest panchanam reveals that Kodiperlu Venkataramana of Saripalli village, Pendurthi Mandal, while crossing the track, he saw a person fell from the train and died. The said statement is supported by the evidence of A.Ws.1 and 2. Further, with regard to the delay caused in conducting enquiry, it is stated that the accident took place on 24.06.2005 and the enquiry on behalf of DRM was conducted in March, 2008. The said delay is against to Rule 7 of Railway Passengers (Manner of Investigation of untoward incident) Rules 2003, which was reiterated in the instructions issued by Government of India, Ministry of Railways in Letter No.2015/Sec(Spl)/200/13, dated 30.12.2015. The said Rule categorically states that within sixty days, enquiry has to be completed and report needs to be filed. On the same lines, the Apex Court in **Kalandi Charan Sahoo V. General Manager, South-East Central Railway**¹, answered in favour of the applicants, the issue of delay in conducting enquiry and not following the rules. The other issue, which falls for

¹ 2018 ACJ 1460

consideration is *bona fide* passenger and the said issue is covered by the Judgment passed by this Court in CMA.No.960 of 2009, dated 20-10-2011. In view of the above, this Court finds that the order of the Tribunal is unjust and the same is liable to be set aside.

9. With regard to granting of compensation and interest, the learned counsel for the claimant, by referring to the judgment of the Apex Court in **Union of India V. Rina Devi**², submitted that granting of interest @ 7.5% per annum from the date of petition till the date of realization or Rs.8,00,000/-, whichever is higher, is just and reasonable.

10. In the facts and circumstances of the present case, this Court deems it appropriate to award interest @ 7.5% per annum from the date of filing claim petition before the Tribunal, as is being awarded in other cases.

11. Coming to the quantum of compensation, as per the law laid down in **Rina Devi**'s case (supra), the applicant is entitled to either the compensation amount fixed by the Railway Authorities as on the date of the incident together with interest from the date of filing the claim petition; **OR** the amount of Rs.8,00,000/- as per the revised scheme, whichever is beneficial to the applicant. Therefore, in accordance with the law laid down in **Rina Devi**, the respondent-Railways shall pay the compensation to the claimant, by adopting the computation of Rs.4,00,000/- plus interest at 7.5% per annum from the date of claim petition till the date of this judgment OR Rs.8,00,000/- whichever is beneficial, within three

² 2018 SCC Online SC 507

months from the date of this judgment. In default of payment within three months, the respondent-Railways shall pay interest at 9% per annum from the date of this judgment till the date of actual payment of compensation.

12. Accordingly, the Civil Miscellaneous Appeal is allowed, setting aside the order, dated 13.10.2011, in O.A.A.No.258 of 2005, on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. There shall be no order as to costs. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

Date: 04.12.2019
Shr

T.AMARNATH GOUD, J

