

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No. 64 of 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act'), is directed against the order, dated 29.09.2016, in O.A. II (U) No.30 of 2009, 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 the 1st applicant is the wife and the 2nd applicant is the daughter of one Srinivasulu (hereinafter referred to as 'the deceased'). The deceased was a Teacher and he was said to be on his return after a visit to Shivalayam, a temple town. P.W.2 claimed that he saw the deceased purchasing a ticket and he saw him off at Kavali Station. The deceased was said to have traveled by Train No.224 and fallen from train since the body was found by the tracks at KM No.179/12-14 posts between Padugupadu and Kodavaluru Stations. The 1st applicant claimed that she was searching for her husband when he had not returned home after he left home on 04.03.2006. Therafter, she received information from GRP that her husband was lying dead near the railway tracks and

she rushed to the site in an auto rickshaw where the body was handed over to her by Government Railway Police, Bitragunta. Hence, the applicants filed the above OA seeking compensation.

4. The respondent/Railways denied 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, awarded compensation of Rs.4,00,000/- with interest @ 9% per annum from the date of application to the date of payment.

6. Heard Sri T.S.Venkata Ramana, learned standing counsel appearing for the appellant/Railways and Smt N.S.Geetha Madhuri, learned counsel appearing for the respondents/claimants. Perused the material record.

7. Sri T.S.Venkata Ramana, learned Standing Counsel appearing for the appellant/Railways contended that the deceased fell from the train which is a negligent act on the part of the deceased and the Railways are exonerated from the liability of payment of compensation and that the dead body of the deceased was found on the track and there is no evidence to show that the deceased died due to fall from the train and that there is no eyewitness nor anybody informed the guard of the train that the dead body of the deceased was noticed by the keyman at KM No.179/12-14 and that there is no evidence to show that the deceased died due to fall from the train and that

the deceased is not a *bona fide* passenger and the respondents/applicants have not filed the journey ticket and the inquest report also does not mention about the journey ticket particulars and that there was a delay of 739 days in filing the application for compensation and that the respondents are not entitled for any compensation from the appellant/Railways and prayed to allow the appeal by setting aside the impugned order.

8. On the other hand, Smt. N.S.Geetha Madhuri, learned counsel appearing for the respondents/applicants contended that the deceased was a *bona fide* passenger traveling in the passenger train No.224 with a valid ticket; that he died in an untoward incident; that therefore, the Tribunal rightly granted compensation and hence, there are no grounds to interfere with the impugned order.

9. It is clear from the record that on report from Station Superintendent, the Police registered a case at 9.30 hours on 05.03.2006. For whatever reasons, the delay of 739 days in filing the application was condoned and the application was taken on record, the Tribunal ought to have gone into the crucial aspect whether the deceased died due to fall from the train and his dead body was found on the track at KM No.179/12-14 and there is no evidence to show that he died due to fall from the train. This aspect of the case has been clearly over looked by the Tribunal and awarded compensation. When the initial burden stands on the applicants has not been discharged, the

question of shifting the burden to the Railways to show that the deceased was not a *bona fide* passenger does not arise. In the facts and circumstances of this case, in the absence of evidence before the Tribunal, though the Tribunal has considered the claim of the applicants and awarded compensation of Rs.4,00,000/-, this Court finds that the said evidence is not sufficient to prove that the deceased was a *bona fide* passenger with a valid ticket and the deceased has fallen from the train accidentally and the applicants are dependents of the deceased, and hence, liability cannot be fastened on the Railways for the death of the deceased. Therefore, the findings of the Tribunal are not based upon proper appreciation of evidence on record.

10. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the impugned order, dated 29.09.2016, in O.A. II (U) No.30 of 2009, on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad and consequently claim application filed by the applicants is dismissed. There shall be no order as to costs. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 10th January, 2020

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