

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL MISCELLANEOUS APPEAL No.352 OF 2018

ORDER:

Being aggrieved by the judgment of the Vice Chairman, Railway Claims Tribunal, Secunderabad which herein after will be referred as Tribunal, in O.A.II(U).No.94 of 2011 dated 28.02.2018 where under the application filed by the appellant herein for compensation on account of death of one B.Chinna Rajanna (herein after will be referred as deceased) died in an untoward incident was dismissed, the applicants therein have preferred the present appeal and they sought for setting aside the judgment of the Tribunal and for award of compensation.

2. In the grounds of appeal filed before the Court the appellants have pleaded that the Tribunal has shown a narrow minded approach while adjudicating the application and erroneously appreciated the applicability of the provisions of Section 124-A of the Railway Act. The Tribunal committed an error in holding that the death of

the deceased does not fall under the definition of “Untoward Incident”. The Tribunal failed to appreciate the evidence on record and discarded the *prima facie* documents filed by the appellants. Therefore, they sought for setting aside the judgment of the Tribunal and prayed for award of Rs.8,00,000/- with costs and interest.

3. As per the judgment impugned in the present appeal, it appears that the appellant herein filed O.A.II(U).No.94 of 2011. The appellants are wife and son of the deceased and on 24.11.2011 the deceased and the appellants herein went to Devarakadra Railway Station in order to go to Guntur to attend a contract coolie work. They have purchased a group journey ticket bearing No.0553438 to board Secunderabad-Guntur passenger. The appellants herein have already boarded the compartment, but the deceased while entering into the compartment accidentally slipped and fell down from the running train in between the platform and the train resulting in amputation of both legs by the wheels of said train. Even though he was shifted to Government Hospital, Mahaboobnagar, he

succumbed to the injuries while undergoing treatment at about 11:20 P.M. on the same day. The appellants having filed necessary record including journey ticket sought for compensation of Rs.8,00,000/-. The respondent/railway disputed the claim. Written statement was filed on 12.09.2011 with an allegation that the appellants have not produced the original journey ticket. No ticket was found on the deceased. The enquiry caused after the incident by the Divisional Railway Manager revealed that the deceased was under the influence of liquor i.e., he was in drunken condition while catching the moving train and died at the hospital. Therefore according to the respondent, it was not an accidental fall, but it was due to the influence of the liquor. The deceased made an attempt to catch the train while he was in drunken condition. On the basis of the above pleadings, the Tribunal framed 3 issues as under:

1. Whether the applicant(s) is/are dependent(s) of the deceased?
2. Whether the deceased was a bonafide passenger of the train in question and died as a result of an untoward incident?
3. Whether the applicant(s) are entitled to the compensation as claimed and to what relief?

4. During enquiry the wife of the deceased was examined as Pw1. The appellants have marked Exs.A1 to A7. The respondent has examined two witnesses i.e., Rws 1 and 2 and marked Ex.R1 to R5. The Tribunal believed the case of the respondent and dismissed the application filed by the applicants with a finding that the deceased died due to his attempt to catch a running train while he was under the influence of liquor.

5. Learned counsel for the appellants has submitted that there is no evidence before the Tribunal to come to a conclusion that the deceased was under drunken condition, but the Tribunal simply believing the report of Divisional Railway Manager, dismissed the application filed by the applicants. The appellants have produced the journey ticket and the witnesses whom the Divisional Railway Manager examined at the time of alleged enquiry were not produced before the Tribunal. Therefore, there is no oral or documentary evidence to come to a conclusion

about the alleged drunkenness of the deceased, thereby the counsel sought for setting aside the order of the Tribunal.

6. Whereas the learned standing counsel for the respondent has submitted that the report marked as Ex.R3 and evidence of witnesses examined during the enquiry of Divisional Railway Manager, clearly shows that the deceased was under the influence of liquor. Therefore, the fall and death of the deceased is not in an untoward incident as claimed by the appellants. Therefore, the appellants are not entitled to any compensation, thereby prayed for dismissal of the appeal.

7. I have heard both parties.

8. Now the point for consideration is:

- 1. Whether the Tribunal came to wrong conclusion on the basis of Divisional Railway Manager's report without there being any oral evidence about the alleged drunkenness of the deceased ?*
- 2. Whether the appellants are entitled to compensation as prayed for?*

9. **POINTS:**

There is no dispute about the relationship between the deceased and the appellants herein. There is no dispute about the death of the deceased due to an accident in which he fell in between the platform and running train resulting amputation of both legs, consequently his death in the hospital on the same day.

10. In order to substantiate their claim, the appellants herein examined AW1 who is the wife of the deceased. According to the evidence place before the Court, she is an eye witness to the accident. The appellants have marked a copy of journey ticket as Ex.A1. Ex.A2 is the attested copy of FIR, Ex.A3 is copy of inquest report. The above said incident took place on 24.11.2010. As per Ex.A2 the copy of FIR, the said case was registered on the basis of death intimation from Government Hospital, Mahaboobnagar about the death of the deceased. The FIR was registered at 08:00 m on 25.11.2010. Ex.A3 is the photocopy of inquest held on the dead body of the deceased at 09:00 A.M. on 25.11.2010. The said inquest was conducted in the

presence of eye witnesses to the accident, relatives of the deceased, Medical Officer, Government Hospital, Mahaboobnagar and Station Master, Devarakadra Railway Station by name Anjaiah. The said Anjaiah has been examined as Rw2 before the Tribunal. As per Ex.A3 the earliest version about the accident and death of the deceased. In Column No.9 of Ex.A3, it was categorically mentioned that while the deceased was getting into the train, accidentally fell down in between the platform and train. Subsequently, he was admitted in a hospital, but succumbed to injuries. In Column No.15 the mediators who attested the inquest opined that the death was due to accidental fall and there is no mention in the inquest that the deceased was under the influence of alcohol.

11. The respondent did not dispute the ticket which is marked as Ex.A1. In fact, as per the averments made in inquest, it is very clear that the deceased and his family members boarded the train after purchasing group ticket. The Tribunal while dismissing the application filed by the appellants relied on the Divisional Railway Manager's

report and also found that the said Anjaiah being an eye witness said to have made a statement before the Divisional Railway Manager as if the deceased was under the influence of alcohol. As per the record, written statement was filed on 12.09.2011 i.e., nearly 10 months after the accident.

12. The Tribunal relied on the statement of RW1 made during the course of enquiry in the application. According to the evidence of RW1, the deceased was not in a position to speak. He got information from the Station Master about the fall of the passenger, then he stopped the train and he rendered first aid. Therefore, the evidence of RW1 is very clear that he happened to see the deceased who was struggling with injuries soon after the accident. It is on record that he deceased who fell in between the platform and train, lost his two legs. By the time RW1 saw the deceased he lost his legs and struggling with injuries. He may not be able to speak properly. It is not the case of Rw1 that he found the deceased under the influence of liquor. Even if it is the evidence of Rw1, he is not a qualified

person and his oral evidence about the alleged drunkenness of the deceased is not supported by any medical evidence. The respondent is not able to produce any proof that the deceased was under drunkenness and could not catch the train due to the influence of liquor.

13. In fact, the wife of the deceased deposed before the Court that her husband was not having the habit of consuming alcohol. It may be true that any act committed in state of intoxication do not cover the definition of untoward incident, but unless there is sufficient proof about the alleged intoxication, it cannot be said that the deceased was under the drunkenness and could not catch the train due to the influence of liquor.

14. The evidence of Rws 1 and 2 being interested witness cannot be accepted without any supportive or corroborative evidence. Even as per further evidence of Rw1 he has no the personal knowledge about the alleged drunkenness of the deceased and it was told by some other person. The alleged some other person from whom he received

information was neither examined before the Tribunal nor was a witness as per the Divisional Railway Manager report. The Tribunal came to the conclusion that the deceased was having a valid ticket. But on the premise that he was under the influence of alcohol, dismissed the application filed by the applicants. Absolutely there is no evidence to come such conclusion. Therefore, the order of the Tribunal is liable to be set aside and the appellants are entitled to compensation.

15. In the result, the appeal is allowed. The judgment of the Tribunal is set aside. The respondent is directed to pay compensation of Rs.8,00,000/- with costs and interest @ 9% per annum from the date of accident till the entire amount is paid.

16. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 31.10.2022
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