

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.703 of 2006

JUDGMENT:

This appeal is filed against the Judgment and Decree of the trial Court in O.S.No.17 of 1998 dated 29.10.2004.

2. The wife and children of the deceased Dhanavath Bala who died in train accident on 20.06.1996, filed suit for damages and claiming Rs.5,00,000/- with interest at the rate of 18% per annum against South Central Railways. They mainly contended that on 20.06.1996, the deceased was in search of his missing buffalos, while crossing the railway track between 112 kms and 113 kms where unman level crossing was there, the train which was coming from Guntur dashed him and he died on the spot. The railway authorities registered a case in Cr.No.43 of 1996 and the body was disposed off after conducting postmortem. As the accident occurred on the railway track, where there was no man to guard the level crossing and there was no display of danger signal to alert the pedestrian to take safety steps while crossing track, the accident was occurred due to negligence of the railways. The deceased was working in APSWHC at Venkatadripalem Village and earning Rs.100/- per day, apart

from that he was having Acs.3 – 00 gts of land and earning Rs.15,000/- per month on agriculture and thus totally earning more than Rs.51,000/- per month and they became destitute due to his sudden demise. Therefore, requested for grant of Rs.5,56,000/- but they restricted their claim to Rs.5,00,000/-.

3. In a Written Statement filed by the defendants they stated that the mandatory provisions of Section 79 and 80 of C.P.C were not complied. They also stated that unmanned level crossings have no gates like manned level crossings, as such it is for the user to cross track safely after taking precautions and observing road sign boards, visible boards, etc., provided by the Railway Administration, as such they are not responsible for the accident and not liable for compensation.

4. The plaintiffs examined P.Ws.1 to 4 and got marked Exs.A1 to A7. The defendants examined D.Ws.1 and 2 and marked Exs.B1 to B4.

5. The trial Court after considering the entire evidence on record and citations filed before this Court and also arguments of both sides dismissed the suit on the ground that the plaintiffs

failed to prove the negligence of the defendants for the death of deceased. Aggrieved by the said Judgment, the present appeal is preferred. The plaintiffs mainly contended that the trial Court ought to have drawn adverse inference against the defendants as defendants failed to discharge their burden that there is no negligence on their part. They also stated that the deceased Bala died in the accident only due to negligence of the defendants, but the trial Court erred in appreciating the facts properly. As the deceased was downtrodden and illiterate, the trial Court instead of taking lenient view dismissed the suit. Therefore, requested this Court to set aside the Judgment and Decree of the trial Court in O.S.No.17 of 1998 dated 29.10.2004.

6. The point for consideration is whether the trial Court dismissed the suit on proper appreciation of the facts and evidence and if so, whether the Judgment of the trial Court is liable to be set aside or not.

7. Admittedly, there is no dispute regarding the fact that the deceased Bala died in accident, as per evidence of D.W.1 who is the Station Superintendent, Railway Station, Miryalaguda, on

27.06.1996 at about 8:40 a.m one Keyman Pitchaiah reported that while observing the lights, he found a male dead body lying on the track between 112/16 and 113/0. Basing on the said report, his predecessor K. Bhava Narayana intimated the same to the sub-Inspector, GRP, Nalgonda and also registered a case in Cr.No.1/96 under Section 174 of Cr.P.C. He also stated that there is no unmanned railway gate, where the dead body was found as per the railway map and the dead body found at 300 meters away from manned-chained level crossing Gate No.70, which is at KM 112/8-9 and at about 500 meters from unmanned level crossing No.69 which is at KM112/10-11. He also stated that the deceased was a trespasser on the railway track and while crossing the track 112/16 - 113/1, he was dashed by unknown train. As such they are not liable to pay compensation. He further stated that railways also giving wide publicity with regard to the crossing of track by the people and other vehicles by using electronic and print media. He filed Ex.B1 to B4 in support of his contention.

8. D.W.2 is the person who informed about the dead body on the railway track to Station Superintendent of Railways. He gave

his report under Ex.B1. He stated that dead body was not there on the track near LC 69 and 70.

9. The learned counsel for the plaintiffs before the trial Court relied upon a decision in the case of ***Motukuri Bheemavva and others Vs. APSEB Vidyut Soudha Bhavan, Somajiguda, Hyderabad***,¹ in which it was held that the burden of proof in a case of this nature rests on the defendant to prove that there was no negligence on its part but not on the plaintiff to prove negligence. It was also stated that the body of the deceased was identified only through his clothes as his face could not be identified. The accident occurred at about 4:00 a.m when he went in search of his buffalos, it was occurred in June, 1996 i.e, summer as such it cannot be said that he could not see the railway track while crossing the same. He should have been vigilant while crossing the track, but he failed to take necessary precautions. The trial Court observed that he could not hear the noise of engine and he has not observed both sides of the railway track while crossing the same to ensure whether train was coming from the nearest point or not. It was also stated that deceased performed his daughter's marriage three months

¹ (1997 (6) ALD 217)

prior to his death and the clothes worn by the deceased at the time of death were the marriage clothes.

10. P.W.3 in his cross-examination stated that railway crossing is at a distance of 50 yards from the last point of the station towards Hyderabad. P.W.4 in his cross-examination stated that he conducted inquest at KM 112/16/115/0 between Miryalaguda and Thipparthi and there is no level crossing at that place. D.W.1 in his cross-examination stated that there are two unmanned level crossings in between KM 112-113 and there is mention of level crossing as unmanned in Ex.P4 in respect of gate 70. D.W.2 in his cross-examination stated that first level of crossing is located at a distance of 10 posts from the station and second crossing is at a distance of 10 posts from the station.

11. The argument of the respondents herein is that the deceased was a trespasser on the railway track and failed to take necessary precautions while crossing the railway track, moreover there is no unmanned level gate at the place of accident, as such there was no negligence on the part of Railway Administration. Merely because dead body was found on the

railway track, it cannot be presumed that the accident occurred only due to the negligence of the railway authorities. The trial Court rightly appreciated the facts and dismissed the suit. The learned Counsel for the appellants argued that the appellants are the wife and children of the deceased, as such requested the Court to take the lenient view, the deceased Bala died due to the negligence of Railways was not established and thus the question of liability of the railway authorities does not arise. Therefore, appeal is devoid of merits and is liable to be dismissed.

In the result, the appeal is dismissed confirming the Judgment and Decree of the trial Court in O.S.No.17 of 1998 dated 29.10.2004. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 11.01.2023

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