

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL MISCELLANEOUS APPEAL No.153 OF 2021

JUDGMENT :

Aggrieved by the judgment in O.A.II(u)No.21 of 2018 on the file of Railway Claims Tribunal, Secunderabad Bench dated 16.12.2019 by which the application filed by the applicants herein for compensation on account of death of one R.Narsimhulu, was dismissed by the Tribunal, the applicants have filed this appeal on the following grounds:

The judgment of the Tribunal is contrary to law and facts of the case. The Tribunal has shown narrow minded approach while adjudicating the case. The Tribunal failed to appreciate the applicability of provisions under Section 124-A of Railways Act and grossly erred in holding that the deceased was not a bonafide passenger. The applicants have claimed that the finding of the Tribunal that the death of the deceased was not due to untoward incident is unjustifiable and untenable. The Tribunal ought to have considered that the Act under which the claim is filed is

beneficial piece of legislation, thereby it could have adopted liberal approach and granted compensation and they have also claimed that the Tribunal failed to appreciate the evidence and material available on record, thereby sought for setting aside the judgment and sought for compensation as per provisions of Railway Claims Act.

2. As could be seen from the judgment and other record, it appears that the appellants herein filed an application before the Railway Claims Tribunal under Section 18 and Rule 18 of Railway Claims Tribunal Act and RCT (Procedure) Rules and sought for compensation on account of death of one R.Narsimhulu hereinafter will be referred to as deceased in a train accident. According to their claim, the deceased was resident of Buranpur of Mahabubnagar District. He was a coolie. His wife Smt. R.Padmamma who is no more and he had no children. On 30.04.2015 he boarded one MMTS train and travelled from Lingampet to Falaknuma. The applicants have claimed that he has purchased second class ordinary MMTS ticket and boarded the train after 02:30 p.m. He has informed the same to his parents over his mobile phone. He reached the

station accompanied by his friend who is examined as AW2 and who left the station after the departure of the train.

3. The appellants herein have claimed before the Tribunal that when the train was in transit and as there was heavy rush in the train, the deceased slipped and fell down from the running train at K.M.170/40-42 in between Hit-Tech City-Borabanda Railway stations due to speed, jolts and sudden jerks of the train and died on the spot in the afternoon. Having filed the said application, the applicants have sought for compensation of Rs.8,00,000/-. The said application was opposed by the respondent/Railways on the ground that there is no eye witness to the alleged incident. There was no ACP. A report from the Divisional Railway Manager was filed along with number of enclosures to show that the deceased was not having any ticket and there was no evidence to believe that the deceased fell from the above referred train.

4. The Tribunal framed appropriate issues and during enquiry the mother of the deceased has been examined as AW1. One B.Subhash who is the alleged eye witness of deceased entering MMTS has been examined as AW2. The

applicants have marked Ex.A1 to A8. The respondent has examined one M.Odelu, Chief Booking Clerk as RW1 and marked Ex.R1 to R3.

5. The Tribunal having heard both parties and having appreciated the evidence, came to the conclusion that there is no material to believe that the deceased was bonafide passenger and he died due to untoward incident, dismissed the application.

6. Heard learned counsel for the applicants and learned standing counsel for the respondent.

7. Now the point for consideration in the present appeal is :

Whether the Tribunal committed an error in dismissing the application and whether there is material to believe that the deceased died in an untoward incident and he was a bonafide passenger, thereby the applicants are entitled to compensation?

8. **POINT**

According to the evidence both oral and documentary available on record, the death of the deceased

in the alleged untoward incident said to have occurred after 02:30 P.M., on 30.04.2015. According to the evidence of both witness examined by the applicants, it was specifically stated that the deceased went to Lingampalli Railway station on 30.04.2015 said to have purchased a ticket and boarded MMTS to go to Falaknuma. It is also claimed by the applicants as well as by AW2 that the deceased died by accidentally slipped from the train in between Hi-Tech City-Borabanda. The record available before the Court including post mortem report clearly demonstrates that on 30.01.2015 Chief Booking Clerk at Fatehnagar received information that a dead body was lying on down line between Borabanda-Hi-Tech City railway stations on 30.04.2015 at 11:45 am.

9. According to the evidence available on record, the deceased was seen in the morning hours i.e., at 09:30 am on 25.04.2015 by his younger brother. As per the inquest report and post mortem report that was conducted on 02.05.2015, by the time the dead body was noticed, the stomach portion was open, foul smell emanating from it, with insects found and face was not identifiable. Even as

per the inquest report, head of the deceased was crushed. There was laceration at abdomen cavity. The post mortem report indicates that the death of the deceased was 3 to 5 days prior to post-mortem that was conducted on 02.05.2015.

10. The very contention of the appellants that the deceased fell from a running train in bright day light that too in between Hi-Tech City-Borabanda escaped the attention of other passengers is highly unbelievable. Had it been there, it could have drawn the attention of the co-passengers who would have raise hue and cries, but in this case until the dead body which was found in decomposed state with foul smell, nobody has identified the death of the deceased. It is true the applicants have examined AW2 to show that he accompanied the deceased to Lingampet Railway station and left the station only after the deceased entered the train. The evidence of AW2 is very clear that he and deceased belong to same village and he has got close acquaintance with the family of the appellants. Therefore, there is every chance of his speaking false, may be with a view to help the mother and other relatives of the deceased

to get some compensation. The record including the inquest report and post mortem report clearly indicates that the death of the deceased was much prior to 30.04.2015 on which date the dead body was found in the bushes in decomposed state. Therefore, the evidence of AW2 and contention of the applicants that the deceased boarded one MMTS train and slipped from the running train, cannot be accepted to be true.

11. Therefore, the Tribunal rightly dismissed the claim and there is no material to reverse the said finding or to award compensation to the applicants. Therefore, the appeal is liable to be dismissed.

12. **In the result**, the appeal is dismissed. No costs.

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

JUSTICE SAMBASIVA RAO NAIDU

Date: 25.01.2023

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