

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE
PRESENT**

THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL NO: 1066 OF 2011

Appeal Under Section 23 of the Railway Claims Tribunal Act against the order dated 08.07.2011 passed in OAA No. 20 of 2003 on the file of the Railway Claims Tribunal Bench at Secunderabad.

Between:

T.Venugopal,, S/o. T.Narasimha Chary, Presently Working as STD booth operator
R/o. 47-199, Deepaknagar, Mandamarri, Kalyanakhani, District Adilabad.

...APPELLANT/APPLICANT

AND

The Union of India,, Rep.b y its General Manager, South Central Railway, Rail
Nilayam, at Secunderabad.

...RESPONDENT/RESPONDENT

Counsel for the Appellant: SRI S. CHANDRASEKHAR

Counsel for the Respondent: SRI GADI PRAVEEN KUMAR

The Court delivered the following: JUDGMENT

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL No.1066 OF 2011

JUDGMENT:

1. This Civil Miscellaneous Appeal is filed by the applicant under Section 23 of the Railway Claims Tribunal Act, 1978 (for short 'Act') aggrieved by the judgment dated 08.07.2011 in OAA No.20 of 2003 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (hereinafter referred to as 'Tribunal'), wherein the claim petition filed by the applicant claiming compensation of Rs.4,00,000/- with interest for injuries sustained by him, was dismissed.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the Tribunal.

3. The applicant filed the present claim petition seeking compensation of Rs.4,00,000/- along with interest, for injuries sustained by him in an untoward train incident. On, 09.12.2002, the applicant was returning to Mandamarri after a visit to Sirpurkagaznagar in Ramagiri passenger train with ticket bearing No.05024. When the train reached Mandamarri, the applicant was standing in front of the bathroom and some persons came to

get down at Mandamarri and the door of the compartment hit him, due to which he fell down from the train and came under the wheels and lost his two legs. Initially, civil police Mandammarrri enquired the matter, but then he was asked to register the case with Government Railway Police (for short 'GRP'), Bellampally. He further stated that somebody took him to Government Hospital, Mancheiral, and from there he was referred to MGM Hospital, Warangal. In the said circumstances, the present application is filed seeking compensation for the injuries sustained by him.

4. The respondent railways filed written statement stating that though, the incident was alleged to have occurred on 09.12.2002, the applicant produced the diary of RPS, Bellampally dated 16.02.2002, which reveals that the incident was reported by the brother of the applicant on 16.02.2002. Hence, as the same is inadmissible, the respondent prayed to dismiss the claim petition. Further, the respondent filed additional written statement, wherein it is stated that the guard of the train stated that on 09.12.2002, the train left Sirpur town at 15:40 hours, Bellampally at 16:51 hours and arrived at Mandamarri at about 16:59 hours and there was no report of any untoward incident, no ACP and no information from any passenger regarding any fall from the train.

5. Initially, the claim petition filed by the applicant was dismissed *vide* judgment dated 20.12.2005 by the Tribunal. However, this Court has set aside the said order of the Tribunal and remanded the case back for fresh consideration after giving opportunity to both sides to adduce further evidence and mark the additional evidence i.e., the certificate of Sub-Inspector of Police, Mandamarri, which was received by this Court.

6. Subsequent to remand, based on the pleadings of the parties, the Tribunal framed the following issues for consideration:

- “1. Whether the applicant was a *bona fide* passenger of the train in question?
2. Whether the applicant had sustained injuries due to an untoward incident as defined under Section 123(c) of the Act?
3. Relief and costs?”

7. The applicant, in order to substantiate his claim got examined himself as A.W.1 and also examined A.Ws.2 to 4 and got marked Exs.A-1 to A-8. On behalf of the respondent, R.W.1 was examined and Ex.R-1 was got marked.

8. The Tribunal, after considering both oral and documentary evidence placed on record, has dismissed the claim petition of the

applicant. Aggrieved by the said judgment, the applicant had preferred the present Civil Miscellaneous Appeal.

9. Initially, the present Civil Miscellaneous Appeal was dismissed by this Court *vide* judgment dated 06.09.2016. Subsequently, review application *vide* I.A.No.1 to 2016 (Rev.C.M.A.M.P.No.1792 of 2016) was filed and the same was allowed by this Court by order dated 23.06.2022 and the Civil Miscellaneous Appeal was reopened for fresh hearing.

10. Heard, the learned counsel for the applicant and the learned standing counsel for the respondent and perused the entire record.

11. The main contention of the learned counsel for the appellant/applicant is that though the applicant has clearly established his case, the Tribunal without considering the evidence placed on record has dismissed the claim petition. Hence, prayed to allow the appeal by setting aside impugned judgment and grant compensation to the applicant for the injuries sustained by him in the untoward incident.

12. *Per contra*, the learned standing counsel for the respondent railways contended that the Tribunal after considering the

evidence placed on record rightly dismissed the claim petition and interference of this Court is unwarranted. Hence, prayed to dismiss the present appeal.

13. Now the point for consideration is as follows:

“Whether the applicant is entitled for compensation as claimed for?”

Point:-

14. This Court perused the documents and evidence placed on record by both the sides. The applicant got examined himself as A.W.1 and reiterated the contents of the claim petition. Though, he was cross-examined nothing contrary was elicited. In support of his case, he got marked Exs.A-1 to A-8. Exs.A-1 to A-4 are copy of GD extract, original ticket, memo of police and original discharge card respectively, which were marked through A.W.1. He also got marked Ex.A-8, which is the original case sheet from M.G.M.Hospital, Warangal.

15. The applicant got examined, the Sub-Inspector of Mandamarri Police Station as A.W.2, who deposed about the incident based on records. He got marked Exs.A-5-certificate issued by the Sub-Inspector of Police, Mandamarri Police Station,

Ex.A-6-statement of one M. Rambabu and Ex.A-7-letter addressed by the applicant to Sub-Inspector of Police, Mandamarri Police Station requesting to conduct enquiry. In the cross-examination, A.W.2 deposed that as on the date of incident, he was not working in Mandamarri Police Station. He also deposed that the Ex.A-5 was issued by the then Station House Officer, Mandamarri Police Station.

16. The applicant got examined one Rambabu as A.W.3, who is an auto driver and he deposed that he was acquainted with the applicant even prior to the incident. On the date of incident, one unknown person came and informed him that there was a train incident and one person was injured and requested A.W.3 to help him to shift the injured to hospital. When, A.W.3 went to the spot, he identified the said injured person as the applicant. Then, he took the applicant to Mandamarri Police Station and later, shifted the applicant to Government Hospital, Mancherial on referral. Subsequently, the applicant was referred to M.G.M. Hospital, Warangal, for better treatment. In the cross-examination, he deposed that he did not lodge police complaint with regard to incident. He stated that the police recorded his statement and

that he informed the family members of the applicant about the incident.

17. The brother of the applicant was examined as A.W.4. He deposed that he came to know about the incident from A.W.3 and he along with other family members went to Government Hospital, Mancherial. The applicant was shifted from the said hospital to Government Hospital, Karimnagar and finally, to M.G.M.Hospital, Warangal, for better treatment. He stated that he never informed the doctors at M.G.M. Hospital that the applicant was hit by the train while crossing the railway track. He also deposed that on 16.12.2002, he reported about the incident to Government Railway Police, Bellampally, who informed him that they received information from the Mandamarri Police Station and entered the same in General Diary on 16.12.2002. In his cross-examination, he categorically denied the suggestions put to him by the respondent.

18. The respondent, in support of its case got examined R.W.1, who is guard of the Ramagiri passenger train. He deposed that he was not aware of any case of fall from his train and that there was heavy rush in the train on the said date. He got marked Ex.R-1, which is rough copy of journal.

19. The applicant, in order to prove the case set up by him has to prove that he is *bona fide* passenger on the train and that he sustained injuries in an untoward incident. Then, the onus shifts on to the respondent to disprove the case set up by the applicant. The applicant got marked the original journey ticket bearing No.05024 as Ex.A-2, which is obtained to travel from Sirpurkagaznagar to Mandamarri. Admittedly, the alleged incident occurred at Mandamarri Railway Station. This shows that the applicant was holding valid ticket to travel on the said train. Further, the respondent has not adduced any contrary evidence disputing the journey ticket under Ex.A-2. Hence, this Court finds no reason to disbelieve the journey ticket under Ex.A-2.

20. In order to prove the occurrence of the untoward incident, the applicant got examined A.Ws.2 to 4 and marked Exs.A-1 to A-8. Ex.A-1-copy of GD extract, Ex.A-3 memo of police referring the applicant to Hospital, Ex.A-5 certificate issued by Mandamarri Police, Ex.A-6 statement of A.W.3 and Ex.A-7 letter addressed by the applicant to Sub-Inspector, Mandamarri Police Station. All these documents coupled with evidence of A.Ws.2 to 4 clearly

demonstrate that the A.W.3 received information from one unknown person that a person was found with injuries in the Mandamarri Railway Station and he along with that person went to the railway station to shift the injured to the hospital. Upon reaching, A.W.3 identified the injured as the applicant, who is his acquaintance. Immediately, he took the applicant to Mandamarri Police Station to inform about the untoward incident. Then, the Police Mandamarri issued Ex.A3 referring the applicant to Government Hospital, Mancheiral, and they informed about the incident to GRP, Bellampally, who is having jurisdiction, for further action. Later on, A.W.3 shifted the applicant to hospital and informed to A.W.4 and other family members. In this regard, statement of A.W.3 was recorded under Ex.A-6. Subsequently, A.W.4 on 16.12.2002 informed about the incident to the GRP, Bellampally and the same was entered into General Diary, which is evident from Ex.A-1 copy of G.D. extract. Furthermore, to substantiate the said facts, the applicant got marked Ex.A-5 certificate issued by Sub-Inspector of Police, Mandamarri Police Station. All these documentary and oral evidence substantiates the case set up by the applicant with regard to occurrence of the untoward incident.

21. Furthermore, the applicant got marked Ex.A-4 discharge card and Ex.A-8 original case sheet from M.G.M. Hospital, Warangal. The said documents clearly establish that the applicant sustained traumatic above knee amputation of both limbs i.e., left leg high thigh and right leg mid thigh.

22. It is pertinent to state that in view of the above, it is clear that the applicant has successfully established the occurrence of the untoward incident and also injuries sustained by him in the said incident. He also established that he is a *bona fide* passenger on the train as on the date of untoward incident. Now, the onus shifts on to the respondent to disprove the case set up by the applicant.

23. Learned standing counsel for the respondent contended that the applicant sustained injuries while crossing the railway track and not by accidentally falling from the train and the same is evident from the original case sheet from M.G.M.Hospital, Warangal, under Ex.A-8, wherein there is endorsement by the hospital authorities that the applicant sustained injuries while crossing the railway track. Except, such contention no other corroborative evidence is placed by the respondent on record to

prove such contention. Mere endorsement of hospital authorities does not prove that the applicant sustained injuries while crossing the railway track.

24. It is pertinent to state that the respondent has not produced the Divisional Railway Manager Report, which is very crucial to prove or disprove the occurrence of an untoward incident. Furthermore, the respondent only got examined R.W.1, who is guard and his evidence does not contain anything about the applicant sustaining injuries at the time of crossing the railway track. He simply deposed that there was no untoward incident on the said date. In the absence of the DRM report, the evidence of R.W.1, who is guard, is also not very reliable. There is also no evidence with regard to action taken by the GRP, Bellampally, with regard to the incident after the report made by A.W.4 and also action taken by them after receiving information by the Mandamarri Police. The respondent did not make any effort to produce any evidence with regard to action taken by the GRP, Bellampally. If the untoward incident did not occur the same would have been revealed in the investigation, if any, done by GRP, Bellampally.

25. Under these circumstances, it is clear that the applicant has proved his case beyond reasonable doubt and the respondent failed to rebut the same. The Tribunal without considering all these aspects has wrongly dismissed the claim petition of the applicant. Therefore, this Court is of the considered opinion that the applicant is entitled for compensation for injuries sustained by him in an untoward incident while traveling in Ramagiri passenger train.

26. Coming to the quantum of compensation, the applicant sustained amputation of both legs below knee and as per Part II of Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, he is entitled to claim compensation of Rs.8,00,000/- from the respondent.

27. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the judgment dated 08.07.2011 in OAA No.20 of 2003 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. The applicant is granted compensation of Rs.8,00,000/- for injuries sustained by him in untoward incident while traveling in train. The respondent railways is directed to deposit the compensation amount before the Tribunal within a period of two months from the date of receipt of a copy of

this judgment. On such deposit, the applicant is entitled to withdraw the same without furnishing any security. There shall be no order as to costs. Miscellaneous applications, if any pending, shall stand closed.

//TRUE COPY//

SD/-B.S. CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Railway Claims Tribunal Bench at Secunderabad.(with records)
2. One CC to Sri S. Chandrasekhar, Advocate [OPUC]
3. One CC to Sri Gadi Praveen Kumar, Advocate [OPUC]
4. Two CD Copies

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HIGH COURT

DATED:29/12/2023

JUDGMENT

CMA.No.1066 of 2011



**ALLOWING THE C.M.A.
WITHOUT COSTS.**

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