

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

**MONDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL NO: 906 OF 2016

Appeal Under Section 23 to Railway Claims Tribunal Act, aggrieved by the order dated 28-09-2016 passed in O.A.A.No.474 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench, Secunderabad.

Between:

1. K.Shivakumari, W/o.late K.Ravi, Occ: Housewife, C/o.B.Rangaiah, 8-3-220/1280/32/299, Jawaharnagar, Yousufguda, Hyderabad.
2. K.Ruthikka, D/o.late K.Ravi, Occ: Student, C/o.B.Rangaiah, 8-3-220/1280/32/299, Jawaharnagar, Yousufguda, Hyderabad.
3. K.Varshitha, D/o.late K.Ravi, Occ: Student, C/o.B.Rangaiah, 8-3-220/1280/32/299, Jawaharnagar, Yousufguda, Hyderabad.
(Applicants 2 and 3 being minors rep by their mother the Applicant No.1 herein)

...Appellants/Appellants

AND

Union of India, Represented by the General Manager, South Central Railway, Secunderabad.

...Respondent/Respondent

Counsel for the Appellant: Sri T.L. KRISHNA PRASAD

Counsel for the Respondent: Sri G. SAMPADA (SC FOR CENTRAL GOVT)

The Court delivered the following: JUDGMENT

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL No.906 OF 2016

JUDGMENT:

1. This Civil Miscellaneous Appeal is filed by the applicants under Section 23 of the Railway Claims Tribunal Act, 1978, aggrieved by the judgment dated 28.09.2016 in OAA No.474 of 2008 on the file of the Railway Claims Tribunal at Secunderabad (hereinafter referred to as 'Tribunal'), wherein the claim application filed by the applicants claiming compensation of Rs.4,00,000/- for the death of Sri K. Ravi (hereinafter referred to as 'deceased'), was dismissed.

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

3. The brief facts of the case of the applicants are that applicant No.1 is wife and applicant Nos.2 and 3 are children of the deceased. According to the applicants, the deceased was resident of Padmavathinagar, Kukatpalli and on 01.04.2008, the deceased informed his wife i.e., applicant No.1 that he was going to Secunderabad on urgent personal work to meet his friend one K. Naresh. After completion of their work, they both went to Secunderabad Railway Station on the same day in afternoon. The

deceased purchased a passenger train ticket for himself from Secunderabad to Borabanda and K. Naresh purchased ticket for himself and they both boarded the local train No.FL-10 passenger. The friend of the deceased Naresh got down at Begumpet Railway Station, gave send off to deceased and left the station on his personal work. The deceased continued his journey by the same train to Borabanda. While traveling as there was heavy rush of passengers inside the compartment, the deceased suddenly slipped and fell down accidentally from the said running train at KM.176/34 in between Fatehnagar and Sanathnagar Railway Station due to speed, jolt and sudden jerks of the said running train. Due to which, the deceased sustained multiple injuries and died on the spot in the evening of 01.03.2008. Hence, the applicants filed the present claim application seeking compensation from the respondent for the death of the deceased.

4. The respondent filed written statement denying the averments of the claim application and contended that there is no cause of action for the applicants as the claim does not fall within the ambit of Section 123 (c) or 124-A of the Railways Act, 1989. The respondent also denied the manner of the accidental fall of the deceased from the train and further contended that the

deceased was not a *bona fide* passenger traveling in train and that there was no untoward incident and the deceased died by committing suicide. Therefore, prayed to dismiss the claim application filed by the applicants.

5. Based on the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the deceased was a passenger as defined under the Railways Act?
2. Whether the claim arises out of an 'untoward incident' as averred in the application?
3. Whether the applicants are the dependents/legal heirs or legal representatives?
4. Whether the applicants are entitled to compensation and if so, what amount?

6. The applicants, in order to substantiate their claim, examined applicant No.1 as A.W.1 and also got examined A.W.2 and got marked Exs.A-1 to A-7. On behalf of the respondent, R.Ws.1 and 2 were examined and Exs.R-1 and R-2 were marked.

7. The Tribunal, after considering both oral and documentary evidence placed on record, has dismissed the claim application of the applicants. Aggrieved by the said judgment, the applicants have preferred the present Civil Miscellaneous Appeal.

8. Heard, the learned counsel for the appellants/applicants and the learned Standing counsel for the respondent and perused the entire record.

9. The main contention of the learned counsel for the applicants/appellants is that they have proved their case by adducing cogent and convincing evidence and also by relying upon the Exs.A-1 to A-7, but the Tribunal without considering the same erred in dismissing the claim application. Hence, prayed to allow the appeal by setting aside the impugned judgment.

10. *Per contra*, the learned Standing counsel for the respondent argued that after considering all the aspects the Tribunal has rightly dismissed the claim application and the interference of this Court is unwarranted and prayed to dismiss the present Civil Miscellaneous Appeal.

11. Now the point for consideration is as follows:

“Whether the applicants are entitled for compensation as claimed for?”

Point:-

12. This Court perused the documents and evidence placed on record by both the sides. Applicant No.1, who is the wife of the deceased got examined as A.W.1 and she reiterated the contents of

the claim application. In order to substantiate, the case set up by the applicants, they got examined Sri K. Naresh, who is friend of the deceased as A.W.2. He deposed that on the date of incident, the deceased went to Secunderabad to meet A.W.2 to discuss his proposal to establish his own scrap business. Subsequently, with a view to return, both of them purchased their individual tickets and boarded train No.L-10 passenger in General compartment. A.W.2 further deposed that he got down from the said train at Begumpet Railway Station and the deceased departed in the very same train. Later, A.W.2 came to know about the death of the deceased from some other friends. Though, A.Ws.1 and 2 were cross-examined, nothing worth was elicited to disbelieve their evidence.

13. The respondent railways got examined the Inspector, Railway Police Force, Hyderabad, as R.W.1, in support of their case. R.W.1 deposed that he was well acquainted with the facts of the case and that he submitted enquiry report dated 01.04.2009 to the Sr. Divisional Security Commissioner/RPF/Secunderabad together with enclosures. He further deposed that the enquiry revealed that Dy.SS/HYD issued a message to GRP/HYD and RPF/Hyderabad on 02.04.2008 at 04:40 hours informing that at

about 04:30 hours on the same day one Vijaya Bhaskar, driver of UP Engine No.27022 informed that a male dead body was lying beside the track of up line at KM 176/31-33 at Up home signal at Sanathnagar station. Thereupon, H.C.No.64/GRP/HYD and Constable No.504/RPF/HYD visited the spot and found dead body with head being severed with the torso. Accordingly, the body was identified as deceased and inquest was conducted. Finally, the investigation revealed that the deceased whose head was found separated from the body committed suicide by putting his head under the train. In the cross-examination, he denied the suggestions put to him.

14. The respondent also got examined R.W.2, who is loco pilot and he deposed that on 01.04.2008, there was no incident of run over or falling of any passenger from the train FL-10. He further deposed that there were no sudden jerks or jolts and the train ran smoothly from Falaknuma to Lingampalli under his control. Though, he was cross-examined nothing worth was elicited.

15. Apart from the oral evidence, the applicants relied upon Ex.A-1 copy of First Information Report, which shows that upon receipt of death message on 01.04.2008 at about 16:00 hours case was registered in FIR No.101 of 2008 by the Railway Police

Station, Hyderabad, under Section 174 of the Cr.P.C and investigation was taken up. Ex.A-2 is inquest report, which discloses that the deceased was lying in prone position between KM No.176/34 between Fathenagar and Sanathnagar, head towards east and legs towards west. Further, as per the injuries on the corpse, place of offence, it was learnt that the deceased put his head under an unknown train and committed suicide. Furthermore, no journey ticket was recovered from the body of the deceased, but a seasonal pass from Boaraband to Hitech City was recovered. Ex.A-3 is copy of postmortem examination report, which discloses that the cause of death is due to traumatic separation of head with multiple injuries. Ex.A-4 is death certificate of the deceased. Ex.A-5 is copy of ration card and Exs.A-6 and A-7 are school progress cards of the applicant Nos.2 and 3. These three documents show the relationship between the deceased and the applicants.

16. The respondents relied upon Ex.R-1, which is copy of driver's journal and Ex.R-2, which is DRM report. Ex.R-2-DRM report was concluded stating that the deceased committed suicide under unknown train by keeping head on the railway track at KM.No.176/34.

17. The applicants, in order to prove the case set up by them have to prove that the deceased sustained injuries in an untoward incident and died and that the deceased is a *bona fide* passenger traveling in the train. Then, the onus shifts on to the respondent to disprove the case set up by the applicants.

18. It is pertinent to state that though, the applicants got examined A.W.2, who is friend of the deceased, A.W.2 has not witnessed the alleged incident. Furthermore, the applicants have not examined any eyewitness to prove the occurrence of the alleged incident. The applicants relied upon Ex.A-1-FIR, which does not disclose anything with regard to the occurrence of untoward incident. On the other hand, inquest report under Ex.A-2 clearly shows that based on the positioning of the dead body, it was concluded that the deceased committed suicide as his head was separated from the body. Further, Ex.A-3 attested copy of postmortem examination report supports the contents of the inquest report showing that the deceased died due to traumatic separation of head. This clearly shows that the applicants have not adduced any cogent and convincing evidence to prove the occurrence of the untoward incident and death of the deceased in the said incident.

19. Furthermore, the applicants have not filed final result or charge sheet to show the occurrence of the untoward incident. However, a photocopy of the final result in FIR No.101 of 2008 was produced before this Court, which clearly shows that the death of the deceased was concluded as suicidal death. However, at this stage, this Court cannot look into the said document of final report as the same was not marked before the Tribunal as exhibit. Even otherwise, the evidence of R.W.1 clearly shows that based on the prone position of the dead body of the deceased, the investigation was concluded that the deceased put his head under the train and committed suicide and the same was confirmed in the Final Report dated 31.05.2008. This shows that there was no untoward incident and the deceased died by committing suicide.

20. The evidence of R.W.2, who is loco pilot, coupled with DRM report also clearly shows that there were no jerks and jolts and no untoward incident was noticed by R.W.2. Therefore, the evidence of R.Ws.1 and 2 and Exs.R-1 and R-2 clearly support the case set up by the respondent railways that there was no untoward incident and the deceased committed suicide. Hence, this Court is of the considered opinion that the applicants have failed to

prove occurrence of untoward incident and discharge their initial burden.

21. In the present case, the applicants have not produced the journey ticket to show that the deceased was traveling in the said train as alleged by them. Though, the applicants got examined A.W.2, who deposed that he along with the deceased boarded the train at Secunderabad by purchasing their individual tickets, the inquest report under Ex.A-2 clearly shows that only a train season pass from Borabanda to Hitech City was recovered along with a book of phone numbers. Except, the same no cash or articles or the journey ticket said to have purchased by the deceased along with A.W.2 were recovered from the dead body of the deceased. Hence, the Tribunal has rightly come to the conclusion that if the deceased had purchased another ticket there was no way that the said ticket could have been found missing. The applicants have failed to prove the occurrence of untoward incident and shift their initially burden on to the respondent.

22. Under these circumstances, this Court is of the considered opinion that the Tribunal has rightly arrived at the conclusion and dismissed the claim application. Thus, there are no grounds to

interfere with the findings of the Tribunal and the appeal is devoid of merits and liable to be dismissed.

23. In the result, the Civil Miscellaneous Appeal is dismissed confirming the judgment dated 28.09.2016 in OAA No.474 of 2008 on the file of the Railway Claims Tribunal at Secunderabad. There shall be no order as to costs. Miscellaneous applications, if any pending, shall stand closed.

//TRUE COPY//

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Railway Claims Tribunal, Secunderabad Bench, Secunderabad
2. One CC to Sri T.L. KRISHNA PRASAD, Advocate [OPUC]
3. One CC to Sri G. SAMPADA (SC FOR CENTRAL GOVT) Advocate [OPUC]
4. Two CD Copies

PSR



HIGH COURT

MGP,J

DATED:18/03/2024

JUDGMENT

CMA.No.906 of 2016



DISMISSING THE CMA WITHOUT COSTS

⑥ VLW
4/5/24