

HIGH COURT FOR THE STATE OF TELANGANA

**TUESDAY, THE THIRTIETH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL NO: 104 OF 2012

Between:

1. MAHANKALI VENKATESWARA SARMA AND ANR, S/o.late Sriramamurthy Purohit R/o.8-3-228/85/A, Rahmathnagar, Yousufguda, Hyderabad.
2. Smt.Padmasri, W/o.Mahankali Venkateswara Sarma Household R/o.8-3-228/85/A, Rahmathnagar, Yousufguda, Hyderabad.

...APPELLANTS/APPLICANTS

AND

THE SOUTH CENTRAL RAILWAY, rep by General Manager, South Central Railway O/o.Secunderabad.

...RESPONDENT/RESPONDENT

Appeal Under Section 23 of the Railway Claims Tribunal Act, 1987 aggrieved by the Order dt.31.05.2011 on the file of the Railway Claims Tribunal, Secunderabad passed in O.A.A. No.189 of 2007.

Counsel for the Appellant(s):SRI. B PARAMESEWARA RAO

Counsel for the Respondent: ANANTHULA RAVINDER (SC FOR CENTRAL GOVERNMENT)

Counsel for the Respondents:

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL No.104 of 2012

J U D G M E N T:

This Civil Miscellaneous Application is filed by the applicants under Section 23 of the Railway Claims Tribunal Act, 1978 (for brevity hereinafter referred to as the 'Act') aggrieved by the order dated 31.05.2011 in OAA.No.189 of 2007 passed by the learned Railway Claims Tribunal Secunderabad Bench, at Secunderabad, wherein the claim petition filed by the applicants claiming compensation of Rs.4,00,000/- for the death of Sri M.Jagadish, in an untoward incident was dismissed.

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

03. The brief facts of the case are that the applicants filed claim application under section 16 of the provisions of the Railway Claim Tribunal Act, 1987 read with Sections 124 A and 125 of Indian Railways Act, 1989, seeking compensation of Rs.4,00,000/- (Rupees Four Lakh

Only) from respondent/South Central Railways for the death of the deceased Sri. M.Jagadish, who died in the alleged untoward incident. The case of the applicants is that on 02.03.2007, the deceased went to Pamulapadu village of Krishna District, Andhra Pradesh to meet his uncle Mr. Purnanand and his family members and from there he went to Vijayawada in the evening to his uncle Subramanyeshwara Roa's residence situated at Kabela Centre, Vijayawada.

04. It is further stated that Mr. Purnanand, uncle of the deceased came to Vijayawada on the afternoon of next day i.e. 03.03.2007, in order to send-off the deceased from Vijayawada to Secunderabad on the intervening night Of 03.03.2007 by Gawthami Express. While so, the deceased with an intent to go to his home town purchased a journey ticket from Vijayawada to Secunderabad and boarded Gowthami Express at Vijayawada Railway Station, but due to heavy rush and jerks he accidentally fell down from the running train between Bhongir-Pagidipalli Railway station limits. In the said accident, the body of the deceased got

separated and sprinkled over the track into two pieces, as almost 27 trains have passed over the track, dragging the body and died on the spot. On 05.03.2007, the applicant received phone call from Railway Police, Bhongir informing about the untoward incident and on reaching the police station, the applicants herein identified the body of the deceased as their younger son. Police recorded their statements and consequently based on report given by railway administration, a case was registered vide FIR No.79 of 2007 and after post mortem examination, the dead body of deceased was handed over to the family members. The applicants being parents of the deceased, who was a 9th class school student, have lost their beloved son and hence filed the claim petition.

05. The respondent South-Central Railways filed its written statement disputing and denying the claim of the applicant. In the written statement, the respondent averred that the contention of the applicants about falling down of deceased from the alleged train on 03.03.2007 is a concocted story. The respondent also averred that the

applicants have to prove that the deceased was a bonafide passenger as required under Section 2(29) of the Railways Act, 1989, which was not established by the applicants. Furthermore, the claim of the applicants that the deceased purchased the journey ticket and the same might have been lost in the accident is a blatant lie. The learned standing counsel appearing for railways vehemently disputed the parental relationship of applicants with the deceased. With these averments, the respondent contends that the claim of the applicant do not fall within the ambit of Section 123 (C) or Section 124-A of the Railways Act, 1989 and hence, the claim petition is liable to be dismissed.

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

1. Whether the applicants are dependents of the deceased?
2. Whether the deceased was a bona fide passenger of train in question ?
3. Whether the deceased died as a result of an untoward incident of accidental fall down from the said train as alleged?
4. To what relief?

07. Before the Tribunal the applicant No.1 was examined as AW1 and Mr.K.Purnanand was examined as AW2 and got marked Ex.A1 to A5. On behalf of the respondent RW-1 and RW-2 were examined and Ex.R1 to R-3 was marked.

08. The learned Tribunal, after considering the entire evidence available on record and by following the provisions under the Railways Act, found that the applicants have failed to establish their relationship with the deceased so as to draw an inference that the applicants herein are the parents of the deceased, thus held that applicants are not entitled for compensation.

09. Aggrieved by the same, the present appeal is preferred by the applicants seeking compensation for the death of their son, under Section 124-A of the Railways Act, 1989.

10. Heard learned counsel for the Appellants-applicants as well as learned counsel appearing for

respondent-South Central Railways and perused the entire record.

11. The main contention of the learned counsel for the applicants is that they have proved their case by examining AW1 and AW2 and relying on documents under Exs.A1 to A5, but the learned Tribunal without considering the same has erroneously dismissed the claim application on the sole ground that the applicants failed to establish that the deceased is son of the applicants herein. Hence, prayed to allow the appeal by setting aside the dismissal order passed by the Tribunal and award compensation.

12. Per contra, the learned Standing Counsel for the respondent stated that it is not a case of accidental fall from train, rather, it is a case of self inflicted injury and the learned tribunal has rightly observed that the applicants did not file any documentary proof to establish their relationship as dependants of the deceased. Thus, in absence of any positive evidence to establish the relationship of applicants as parents of the deceased, the learned tribunal has rightly dismissed the claim

application and the reasoned order passed by learned tribunal does not require any interference by this court and prayed to dismiss the appeal at threshold.

13. In view of the rival contention, this court has perused the evidence adduced on both side. The applicant No.1, who is the father of the deceased, was examined as AW-1 and he reiterated the averments made in the claim application. He has categorically stated that on 03.03.2007, the deceased while returning to his home town boarded Gowthami Express at Vijayawada railway station, but due to heavy rush and jerks he accidentally fell down from the running train between Bhongir-Pagidipalli Railway station limits and died on the spot. He further stated that he came to know about the untoward incident through phone call by Railway police, Bhongir on 05.03.2007, that an unknown male body is found between Bhongir-Pagidipalli and it is suspected that the deceased is the son of the applicants, who accidentally fell down from the train and informed him about the demise of his son.

14. A perusal of Exs.A1 FIR and A2-inquest report discloses that an unknown dead body of a male person aged about 20 years was laying on up line track between Bhongir-Pagidipalli Railway station and the information was received by Sri. M. Malakondaiah, Assistant Station Master, Bhongiri from the locopoilet of train bearing No.2759 and based on the said information First Information Report has been lodged by the Assistant Station Master. Further, while inquest was conducted he was present at the accident spot along with Sri. Puli Venkateshwarulu, Head Constable, Railway Police Bhongiri. It is pertinent to note that under column IX (9) of the inquest report it is categorically stated that the deceased accidentally fell down from the train and the flesh of the deceased body sprinkled over the track into several tiny pieces.

15. On careful examination of Ex.A-3 Post Mortem certificate of the deceased discloses that the post mortem was conducted on 05.03.2007 and doctor opinioned that the deceased died approximately 36:48 hours prior to

conducting of Postmortem i.e., on early hours of 04.03.2007 and the cause of death is due to 'multiple injuries to the vital organs and traumatic amputation of spinal cord.'

16. Further, Ex.R3 Railway Divisional Railway Manager report also states that an untoward incident happened on the said date and it has been mentioned that no journey ticket was found with the deceased. Furthermore, there is no iota of evidence adduced by Divisional Railway Manager report that the said accident was a self inflicted injury and not an untoward incident.

17. On perusal of Ex.R1, entries made in Railway Control Message Book, clearly shows that a unknown male dead body was found laying on up-line between Bhongiri-Pagidipalli railway station and the information was passed by Loco pilot to Assistant Station Master to attend the same at about 06:30 hours.

18. Thus, on perusal of records it clearly establishes that the deceased was travelling in the train on

the alleged date of accident and accidentally fell down from the train and died on the spot.

19. The learned Tribunal failed to appreciate the statements of R.W-2, who was working as Railway Mail/Express Guard, who has categorically stated in his cross examination that the said train was having two general coaches on front side and one on rear end and generally the said express train will have rush and he has not noticed any accidental falls and even if such incident occurs, he will get information only if such information is passed on by ACP. Further, learned tribunal erred in appreciating the statements of R.W-1, RPF constable in his cross examination, admits that there is a possibility the journey ticket might have been lost in the accident. It is significant to note that the documents in Ex. A-1 First Information Report and Ex. A-2 Inquest report appended with complaint copy of DY/SS of Bhongiri Railway station are crucial first hand information which is reported immediately after the incident had happened and in that document and the statements of railway staff, who

attended the deceased constitute a crucial statement in deciding the case and there statements cannot be negated. Even assuming for a moment that the journey ticket was not found from the possession of the deceased and the untoward incident occurred due to falling down from the train was established, the burden of proof must be shifted on railway to prove that the deceased passenger was not a bonafied passenger. As there is every possibility that the journey tickets would have been lost while the deceased fell down from the running train or while taking the deceased to the hospital or otherwise. As observed above, mere absence of ticket with such injured or deceased will not negate the claim on the ground that he was a *bona fide* passenger.

20. In this context it is relevant to refer decision of madras High court in **Mareshwari v. Union of India**¹, wherein the High Court held as follows:

"The DRM report also reveals that the deceased had travelled in the train, sitting on the footboard, without possessing a valid ticket, fell down from the running train. However, the inquest report states that the deceased was not holding a valid journey ticket, but his

¹ 2022 ACJ 1376

travelling in the train was admitted and the untoward incident occurred due to falling down from the train was also established.

This Court is of an opinion that once an untoward incident is established and the death occurred due to falling down from the running train and if the journey ticket was not retrieved, the burden of proof must be shifted on the Railways that the deceased passenger was not a bona fide passenger. However, there is every possibility that the journey ticket would have been lost while the deceased fell down from the running train or while taking the deceased to the hospital or for post mortem or somewhere else."

Once the untoward incident is established and the death occurred due to falling down from the running train, then the non-availability of journey ticket cannot alone be a ground to reject the claim petition. In such circumstances, the onus lies on the Railways to establish that the deceased was not a bona fide passenger."

21. Further, a perusal of the impugned order discloses that the learned Tribunal did not whisper about the documentary evidence relied upon by the applicants in the impugned order, more particularly when the documentary evidence in the form of Exs.A1, A2, A3, clearly establishes that the deceased died in an untoward incident while he was travelling in the alleged train and when it is proved by circumstantial evidence that the deceased was travelling in the said train on the alleged date of accident, absence or loss of ticket will not disentitle the applicant from claiming compensation.

22. In this context it is relevant to refer the observations made by the Honourable Supreme Court in **Kamrunnissa v. Union of India**,² wherein it was held as follows:

"We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

23. Keeping in view all facts and circumstantial evidence available on the file and the observations made by the Apex Court in **Kamrunnissa** (supra), this Court is of the considered view that mere absence of ticket with the deceased will not negate the claim that he was a *bona fide* passenger, however, initial burden will be on the applicants, which was duly discharged by them by adducing the evidence of AW-1 and Aw-2 and Exs.A-1 to A-4. Thus, the contention of the learned counsel for the

² AIR 2017 SC 1436

respondent that no untoward incident has occurred and the deceased was not a bonafide passenger cannot sustain.

24. Now considering the question as to whether the applicants are the dependents of deceased or not, the learned Tribunal has erroneously come to the conclusion that mere production of death certificate would not suffice to establish that the applicants are dependents of the deceased. It is evident from the perusal of Ex. A-4, original Death Certificate issued by the competent authority, which cannot be disbelieved and even in Ex.A-1 and A-2 the name of applicant No.1 has been clearly mentioned as father of the deceased. Therefore, the applicants has discharged there initial burden by proving that they are dependents of the deceased and in absence of any rebuttal evidence from respondents to prove that the applicants herein are not the parents of the deceased, this court is of the opinion that the applicants are parents and are dependents of the deceased.

25. Furthermore, it is settled principle of law that if two interpretations are possible, the interpretation that is

beneficial to the applicants has to be preferred, as the Railway Claims Tribunal Act is enacted to protect the interests of the passengers. Similar view was taken by the Honourable Supreme Court in **Union of India vs. Prabhakaran Vijaya Kumar**³.

26. Therefore, in view of the principle laid down in the above said authorities, this Court is of the considered opinion that the Railway Claims Tribunal without considering all these aspects came to the wrong conclusion by dismissing the claim application of the applicants and hence, the said findings of the Tribunal are hereby set aside holding that the applicants are entitled for compensation as the deceased died in an 'Untoward Incident'.

27. Coming to the quantum of compensation, in case of death in an accident which occurred before amendment i.e., on 27.07.2015, the prevailing basic figure in respect of death case was Rs.4.00 lakhs, which has been subsequently enhanced to Rs.8.00 lakhs as per the

³ (2008) 9 SCC 527

Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016. Therefore, the applicants are entitled for the compensation of Rs.8,00,000/-.

28. In the result, the Civil Miscellaneous Appeal is allowed and the order dated 31.05.2011 in OAA No.189 of 2007 passed by the learned Railway Claims Tribunal Secunderabad Bench, at Secunderabad is set aside and thereby compensation of Rs.8,00,000/- is awarded to the applicants. The respondent Railways is directed to deposit the compensation before the Tribunal within a period of two months from the date of receipt of a copy of this judgment. On such deposit, all the applicants are entitled to equal shares without furnishing any security. There shall be no order as to costs.

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

Sd/- K.SRINIVASA RAO
JOINT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Railway Claims Tribunal, Secunderabad.
2. One CC to SRI. B PARAMESWARA RAO Advocate [OPUC]
3. One CC to SRI. ANANTHULA RAVINDER (SC FOR CENTRAL GOVERNMENT) Advocate [OPUC]
4. Two CD Copies

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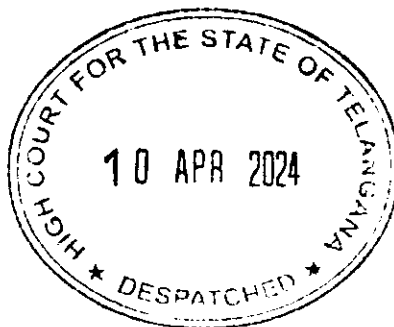


HIGH COURT

DATED:30/01/2024

ORDER

CMA.No.104 of 2012



ALLOWING THE APPEAL

⑥

23/3/24

L.R.