

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

C.M.A.No.293 OF 2019

JUDGMENT:

The Appellants herein are the applicants before both The Railway Claims Tribunal, Amaravati Bench, Amaravati (in short 'the learned tribunal') filed the present Civil Miscellaneous Appeal before this Court, aggrieved by the order dated 08.02.2019 passed by the learned Tribunal in O.A-II(u) 302 of 2013.

2. The appellants herein are the husband and minor sons of deceased Raparthi Adilakshmi, has made a claim before the learned tribunal seeking compensation of Rs. 8,00,000/- along with interest from the respondent/ Railways on account of death of deceased in an untoward incident that occurred on 20.02.2013, while travelling by a train called Kirandal – Visakhapatnam passenger. The learned tribunal after hearing on both sides, holding that the deceased is not proved to be a bonafide passenger and the appellants have failed to prove their case and dismissed the claim application. Assailing the same, the present C.M.A came to be filed.

3. Heard Ms. N.S.Geetha Madhuri, learned counsel for the appellant and Mr. K. Krishna Bhushan Chowdary, learned Central Government Counsel for the respondents.

4. During hearing learned counsel for the appellants would contend that the learned tribunal erroneously held that the deceased was not a bonafide passenger and that the deceased was not died due to an untoward incident. The learned tribunal without appreciated the applicability of the provisions of the Railway Act and simply dismissed the claim of the appellants. Therefore the C.M.A is liable to be allowed.

5. Learned counsel for the respondents would contend that as per inquest report also no journey ticket was found with the deceased. Therefore she cannot be termed as a bonafide passenger, which fact is also corroborated with the Divisional Railway manager report. Therefore, the learned tribunal rightly dismissed the claim made by the appellants. Hence the C.M.A is liable to be dismissed.

6. Perused the record.

7. During hearing learned counsel for the appellant submitted that this matter is squarely covered by this Court order dated 29.09.2023 passed in C.M.A.No. 17 of 2020, wherein this

court following the decision of the Hon'ble Apex Court in "**Kamukayi & Ors. V. Union of India and Ors**"¹, wherein it was held as follows:

"This court in the case of Rina Devi (Supra) has explained the burden of proof when body of a passenger is found on railway premises. While analysing the said issue, this Court has considered the judgement of Madhya Pradesh High Court in Raj Kumari v. Union of India and the judgements of Delhi High Court in Gurcharan Singh v. Union of India, Andhra Pradesh High Court in Jetty Naga Lakshmi Parvathi vs. Union of India and also considered the judgement of this Court in Kamrunnissa vs. Union of India⁶ and in para 29 concluded as thus-

"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 1992 SCC OnLine MP 96 2014 SCC OnLine Del 101 2011 SCC OnLine AP 828 (2019) 12 SCC 391 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."

8. The Hon'ble Apex Court also discussed the same verdict cited supra in "**Union of India v. Rina Devi**"² case also and passed Award. Therefore, learned counsel for the appellant would

¹ Civil Appeal No.3799 of 2023

² <http://Indiankanoon.org/doc/94898543/>

contend that the case law cited supra is squarely applicable to the facts of this case. Therefore the appellants are entitled the claim as prayed for.

9. In **Rina Devi's** case cited supra, the Hon'ble Supreme Court held that, on the burden of proof, which emphasized that any person found dead or injured on railway premises is presumed to be a bona fide passenger unless the railway administration proves otherwise. Therefore, the findings of the Tribunal are perverse.

10. In the light of judgment of "**Union of India v. Radha Yadav**³", wherein the Hon'ble Supreme Court held that

"because death is proved due to outcome of untoward incident of the deceased being a bona fide passenger, the adequate amount of compensation may be awarded."

11. During hearing learned counsel for the appellants drawn the attention of this Court with regard to Section 123 and also 25 (c) of the Railway Act, 1989, which deals "untoward incident", which reproduced hereunder:

Section 123 in The Railways Act, 1989

123. Definitions.—In this Chapter, unless the context otherwise requires,—

³ (2019) 3 SCC 410

(a) “accident” means an accident of the nature described in section 124;

(b) “dependant” means any of the following relatives of a deceased passenger, namely:—

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grandparent wholly dependant on the deceased passenger.

25 [(c) “untoward incident” means—

(1) (i) the commission of a terrorist act within the meaning of subsection (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.

12. In view of the foregoing discussion and upon perusing the material available on record and as per the law laid down by the Hon'ble Supreme court in **Kamukayi's** case, it is observed that the respondents are failed to establish that whether the deceased is a bona fide passenger or not, as the burden lies on the respondent authorities and hence the railway administration is liable to pay the adequate compensation. Therefore, considering the submissions made by learned counsel for the appellants, this Court is of the considered opinion that while setting aside the impugned judgment, inclined to allow the present appeal.

13. Accordingly, the Civil Miscellaneous Appeal is allowed. The impugned judgment dated 08.02.2019 passed in OA/II/u/302 of 2013 by the learned tribunal, is hereby set aside. The appellants are entitled to claim compensation of Rs. 8,00,000/- (Rupees Eight Lakhs only) along with interest at 7% p.a. from the date of filing the petition until its realization. The respondent, Union of India, is directed to pay the compensation amount within a period of two (2) months from the date of receipt of a copy of this order. There shall be no order as to costs.

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

DR.K. MANMADHA RAO, J

Date: 19.12.2023

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