

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

Civil Miscellaneous Appeal No.43 of 2022

JUDGMENT:-

The Civil Miscellaneous Appeal is preferred by the appellants/claimants against the Judgment dated 16.08.2021 passed in OA II(U) No.233 of 2013, on the file of the Railway Claims Tribunal, Amravati Bench, Guntur.

2. Brief facts of the case are that an application has been filed by the appellants/claimants, vide OA II(U) No.233 of 2013, on the file of the Railway Claims Tribunal, Amravati Bench (for short "the Tribunal"), under Section 16 of Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railway Act, 1989 claiming compensation of Rs.8,00,000/- with interest for the death of K.Taviti Naidu @ Tavudu (herein after referred to as "the deceased") in an alleged untoward accident that occurred on 24.06.2013.

3. The claim of the appellants is that the deceased was a resident of Srikakulam and was an agriculturist. The deceased with a view to go to Tilaru to the house of his friend to collect Paddy Seeds, accompanied by his wife Smt. K. Vijayalaxmi went to Srikakulam Road Railway Station in the afternoon hours of 24.06.2013, purchased a passenger journey ticket from Srikakulam Road to Tilaru and boarded Train No. 58526 Visakhapatnam - Palasa passenger in a general compartment and left in the presence of his wife. While travelling as there was heavy rush of passengers in the

compartment suddenly, the deceased slipped and fell down accidentally from the running train at KM No.747/2-4 in between Srikakulam and Urlam Railway Stations due to speed, jolt and sudden jerks of the said train and in the result, he sustained severe head injury, multiple fracture injuries and died on the spot in the afternoon hours of 24.06.2013.

4. The respondents filed Written Statement, disputing the claim and denying all the allegations and averments made in the claim application and their liability to pay compensation. Further submits that the claim does not fall within the ambit of Section 123(c) or Section 124-A of Railways Act, 1989. The applicants are put to strict proof that the deceased died due to accidental fall from the train. Respondent submits that the deceased was not a bonafide passenger of the train and the injuries sustained by the deceased are self-inflicted injuries as such the respondent is not liable to pay any compensation.

5. Based on pleadings raised; the issues were framed vide order dated 21.02.2014, which reads as under:

1. Whether the Applicant(s) is/are dependent(s) of the deceased?
- 2) Whether the deceased was a bona fide passenger of train in question and died as a result of an untoward incident?
- 3) Whether the Applicant(s) is/are entitled to the compensation as claimed and to what relief ?

6. Considering the facts and circumstances, attending circumstances and preponderance of evidence on record, the Tribunal has dismissed the

application. Challenging the same, the present Civil Miscellaneous Appeal is filed

7. Heard Smt.N.S.Geetha Madhuri, learned counsel, representing for the appellants and Sri Hemanth Kumar, learned Central Government Counsel for the respondent.

8. On hearing, learned counsel for the appellants submits that the judgment of Tribunal is contrary to law and contrary to facts of the case and therefore the same is liable to be set aside. She further submits that the Tribunal has shown narrow minded approach, while adjudicating the case. She further submits that the Tribunal erroneously appreciated the applicability of the provisions of Section 124-A of the Railway Act, to the present case. Further the tribunal grossly erred in appreciating the evidence on record and discarded the prima facie documents filed by the applicant/appellant. She further submits that in absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.

9. *Per contra*, learned counsel for the respondent while denying the contentions made by the appellant, contended that the statement given by the wife of the deceased in her affidavit is absolutely false and the narrative of the applicants stands repudiated regarding the time of travel, that an untoward incident occurred while the deceased was travelling by train No.58526 Visakhapatnam – Palasa Passenger also stands repudiated..

Therefore, there is no corroborative evidence to prove the claim of the appellants and hence prayed to dismiss the appeal.

10. Learned counsel for the appellants also relied upon a decision of Hon'ble Supreme Court reported in **Kamukayi and others versus Union of India and others**¹ and also in a case of **UOI versus Rina Devi**², wherein the Hon'ble Apex Court held that the initial burden that the deceased shifting onus on the Railway Administration to disprove the said fact.

11. Learned counsel for the appellants while relying on the above citations submits that in absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.

14. On perusing the entire material available on record, this Court observed that, the appellants/claimants in their claim stated that the deceased was travelling from Srikakulam Road to Tilaru and boarded Train No. 58526 Visakhapatnam - Palasa passenger in a general compartment and left in the presence of his wife. While travelling as there was heavy rush of passengers in the compartment suddenly, the deceased slipped and fell down accidentally from the running train at KM No.747/2-4 in between Srikakulam and Urlam Railway Stations and died on spot.

¹ Civil Appeal No.3799 of 2023

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

15. As far as the bonafide of the deceased as a passenger is concerned, this is a case where the relevant journey ticket has not been found. In such cases, the Hon'ble Supreme Court report in **Rina Devi's** case (supra) it was held that the mere presence of a dead body on the Railway premises will not be conclusive to hold that the injured or deceased was a bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket which such injured or deceased will not negative the claim that he was bonafide 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.

16. It is pertinent to mention here that as per Section 123(c)(2) of the Railways Act, 1989, the accident falling of any passenger from a train carrying passers, reads as under:

Section 123 in The Railways Act, 1989

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

(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 sub-section (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.]

17. On one hand, the contention of the learned counsel for the appellants is that the deceased was a bonafide passenger with a valid journey ticket. On the other hand, the contention of the learned counsel for the respondent is that no railway ticket was found on the body of the deceased. It is indeed a matter of concern that the Government Railway Police who are supposed to investigate all such deaths are too happy to close cases of body found near the track as one due to fall from a train. In this case they have not applied their mind as to how anyone who has allegedly fallen from a running train could be found in the state that the deceased was found. The deceased in the present case is not shown to be a bonafide passenger and his death is not on account of an untoward incident. Due to the said reasons, the Tribunal dismissed the claim petition.

18. In the light of Judgment of **UOI v. Radha Yadav**³ wherein the Hon'ble Supreme Court held that "*because death is proved due to outcome of*

³ (2019) 3 SCC 410

untoward incident of the deceased being a bona fide passenger, the adequate amount of compensation may be awarded."

19. In view of the foregoing discussion and upon perusing the material available on record, it is observed that the respondent is failed to establish that whether the deceased is a bonafide 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.

20. Accordingly, the Civil Miscellaneous Appeal is allowed. The impugned Judgment dated 16.08.2021 passed in OA II(U) No.233 of 2013, on the file of the Railway Claims Tribunal, Amravati Bench, Guntur, is hereby set aside. The appellants were entitled for compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) as prescribed under Part III of Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, (prior to amendment since the accident occurred on 08.08.2008). Further the applicants are entitled for interest @ 9% per annum on the compensation amount, from the date of application till the date of order, as per the decision of Apex Court in **Rina Devi's** case (supra). The respondent, Union of India, is directed to deposit the compensation amount within a period of two (02) months from the date of receipt of a copy of this order. .

On such deposit, the appellants are entitled to equal shares in the compensation amount without furnishing any security. There shall be no order as to costs.

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

Date: 21.12.2023
RSD

Dr. K. MANMADHA RAO, J

THE HON'BLE DR. JUSTICE K. MANMADHA RAO**Civil Miscellaneous Appeal No.43 of 2022****Date: 21.12.2023***RSD*