

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**WEDNESDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

HONOURABLE DR JUSTICE K MANMADHA RAO

CIVIL MISCELLANEOUS APPEAL NO: 44 OF 2020



Appeal Under Section 23 of Railway Tribunal Act, against the order dated 20.12.2019 in O.A. II (U) No.458/2012 on the file of the Court of the Railway Claims Tribunal Amaravathi Bench at Guntur.

Between:

K. Rajagopal Reddy, S/o Late K. Tatha Reddy, Aged about 32 years, Occ. Cloth Business, D.No. 7-69, Ganganamma Temple Street, Konkuduru Village, Bikkavole Mandal, East Godavari District.

...Appellant/Applicant

AND

Union of India, rep by The General Manager, South Central Railway, Secunderabad.

...Respondents

Counsel for the Appellant : M/s. GEETHA MADHURI N S

**Counsel for the Respondents: SRI. VENNA HEMANTH KUMAR STANDING
COUNSEL FOR CENTRAL GOVERNMENT**

The Court made the following:

HON'BLE DR. JUSTICE K. MANMADHA RAO

CIVIL MISCELLANEOUS APPEAL No.44 of 2020

JUDGMENT:

The present Appeal is preferred by the appellant aggrieved by the judgment dated 20.12.2019 passed in OA/II/u/458 of 2012 by the Railway Claims Tribunal, Amaravti Bench, Guntur (for short "the Tribunal").

2. The claim of appellant/applicant before the Tribunal is that the application has been filed by the appellant under Section 16 of the Railway Claims Tribunal Act, 1987 against the respondent Railway administration claiming compensation of Rs.8,00,000/- with interest from the date of accident and costs for the injuries suffered by the applicant in an alleged untoward incident. The claim of the appellant-cum-victim (herein referred as "the applicant") is that on 22.06.2012, the applicant purchased a 2nd class combined Train Journey ticket bearing No.88531628 from Anaparti to Guntur for himself and his accompanied friend, One Mr.No.Srinivas Reddy and both boarded Train No.17240 Simhadri Express in a 2nd class general compartment. While the train was about to halt at Guntur Railway station, the applicant came to the door of the

compartment to get down from train, but accidentally slipped and fell between platform and the train. His right leg was severely crushed and also sustained severe multiple other injuries all over the body. He was shifted to Government General Hospital, Guntur by 108 ambulance through the Railway Police and concerned Railway station staff. From there, he was shifted to Yashaswi Hospitals, Guntur and his Right leg was amputated above the knee and middle of the thigh.

3. The respondent filed its written statement and denied all the allegations made in the claim application. It is stated that no such incident has taken place at the Railway Station and no Railway or Government Police Force Officials or public has noticed the incident and reported. It is further stated that there was no jerk or jolt experienced in the train to cause any passenger to fall down from the train.

4. Basing on the above pleadings, the Tribunal framed the following issues:

- i) Whether the applicant was a bona fide passenger of the Train and sustained injuries as a result of an untoward incident?
- ii) Whether the applicant is entitled to claim the compensation as prayed for and to what relief?

5. During course of the trial, the appellant/applicant consists Oral deposition of Applicant as AW.1 and Sri M.Srinivasa Reddy as AW.2. Exhibits marked were Original Journey Ticket No.88531628 as A1, attested copy of Intimation of Accidents to GGH, Guntur as A2, attested copy of Intimation of Accident from Yashaswi Hospital as A3, Wound Certificate as A4, Discharge Summary Card as A5, attested copy of statement of injured as A6, two photographs as A7, copy of disability certificate as A8 and copy of Concession certificate for Orthopaedically handicapped persons as A9 on behalf of the applicant. DRM Report was marked as Ex.R1 on behalf of the respondent.

6. Basing on 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 came to be filed.

7. Heard Smt. N. S. Geetha Madhuri, learned counsel appearing for the appellant and Sri Venna Hemanth Kumar, learned Standing Counsel appearing for the respondent.

8. On hearing, learned counsel for the appellant 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. She submits that the tribunal grossly erred in holding that the injuries sustained by the applicant and also grossly held that the applicant was not a bona fide passenger, the Tribunal adopted a very narrow approach in this matter. She further submits that the tribunal erred in holding that the injuries occurred does not fall under the definition of "untoward Incident". 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 though the incident has taken place at Guntur Railway Station, and was purportedly attended to by the Guard, Railway Police and other Railway Staff, they are not aware of any such incident happened at Guntur Railway Station. No passenger also reported any such incident either to the Government Railway Police or Railway Station Officials. Therefore, there is no corroborative evidence to prove the claim of the appellant and hence prayed to dismiss the appeal.

10. On perusing the entire material available on record, this Court observed that, according to appellant, he was a bona fide passenger of train No.17240 Visakhapatnam-Guntur Simhadri Express on 22.06.2012 from Anaparti to Guntur and while the applicant was standing at the door to get down at Guntur, as the train was stopping at Guntur Railway Station, he fell down from the train between the train and the platform. Applicant's right leg was crushed and he also suffered multiple other injuries all over the body. Railway Station staff and Railway police

shifted him to Government Hospital at Guntur and admitted him as inpatient. However, since he was in serious condition, on the same day night, he was shifted to Yashaswi Hospital, Guntur, where his right leg middle of thigh was amputated. In his affidavit filed on 20.04.2015, the applicant has reiterated the averments in the application and deposed as AW.1 on the same day. Sri M.Srinivasa Reddy, alleged co-passenger of the deceased at the time of incident, filed Affidavit on 22.02.2016 and deposed as AW.2. He also recounted the incident on the above lines and further added that he got down from the train and rushed to his friend, who was injured. Guard, Railway station staff and Railway Police attended the place and enquired with him identity of his injured friend, particulars of their journey, ticket, accident, etc. and the applicant was shifted by 108 ambulance to Government General Hospital, Guntur by the Railway Police and admitted there.

11. As seen from the impugned judgment, it is observed that, it is noticed that the initial information of the incident was recorded in the 'Intimation of Accidents and Injuries to Police' purportedly issued at Government General

Hospital on 22.06.2012, wherein the incident described as "Train accident 3.20pm, 22/6/12" and the place of incident is recorded as Guntur Railway station and that the applicant was brought in by Mr.K.Srinivasa Reddy by 108 ambulance. Later on 26.06.2012, Yashaswi Hospital at Guntur issued an "Intimation of Accidents and Injuries to Police/Magistrate", wherein it was mentioned that the applicant was brought into the Hospital on 22.06.2022 at 09:15 pm by "His friend Paralapuri Srinivasa Reddy". The Wound Certificate issued on 16.10.2012 (Ex.A4) also recorded that the person accompanied the applicant was Mr.Paralapudi Srinivasa Reddy. - In his statement to Government Railway Police on 27.06.2012(Ex.A6), the applicant narrated the incident, wherein it was stated that some of his co-passengers saw the incident and pulled the chain and the train was stopped immediately and the applicant identified his co-passenger as "Nallamelli Srinivasa Reddy".

12. On a perusal of the records, it is observed that the Train No.17240 Visakhapatnam – Guntur Express arrived at platform No.6 at Guntur Railway Station at around 15.30

hours on 22.06.2012. However, as per Ex.A2, the incident has taken place at 15.20 hours. Further, as per GVK Emergency Management and Research Institute information, the location of the incident mentioned as platform No.5, and there are two railway tracks between platform Nos.5 and 6. However, the Head Constable of Railway Protection Force, who was on duty at the platform and who walked across the entire length of the platform on arrival of the train, has not noticed any such incident. Moreover, according to the guard of the train, no such incident had happened at Guntur and no untoward incident has also happened during his duty from Vijayawada to Guntur also.

13. As per the document submitted by GVK Emergency Management and Research Institute, the incident information received from one Amar at 15.33 hours on 22.06.2012. The ambulance was at Mirchi Yard and it was assigned on 15.36 hours and reached Guntur Railway Station at 15.45 hours. Strangely, the ambulance was at the Railway Station for about 40 minutes and took the applicant at 16.25 hours and reached the Hospital at 16.48 hours,

i.e., after 23 minutes. The Government General Hospital was located right across the road at the main entrance of Guntur Railway Station, even by stretcher at peak traffic hours, would not have taken more than 10 minutes.

14. 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.

15. On one hand, the contention of the learned counsel for the appellant is that the applicant was a bona fide 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 at the time of incident.

16. In a case of ***Union of India*** (*stated 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.

17. 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 injured/appellant 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 appellant, this Court is of the considered opinion that while setting aside the impugned judgment, inclined to allow the present appeal.

18. Accordingly, the Civil Miscellaneous Appeal is allowed. The impugned dated 20.12.2019 passed in OA/II/u/458 of 2012 by the Railway Claims Tribunal, Amaravti Bench, Guntur, is hereby set aside. The

appellants were awarded compensation of Rs.4,00,000/- (Rupees Four Lakhs only) as prescribed under Part III of Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, along with interest at 9% p.a. from the date of filing the claim application till its realization as per the decision of Apex Court in **Rina Devi's** case. The respondent, Union of India, is directed to deposit the compensation amount within a period of two (2) months from the date of receipt of a copy of this order. On such deposit, the appellant is entitled to claim the compensation amount without furnishing any security. There shall be no order as to costs.

19. As a sequel, all the pending miscellaneous applications shall stand closed.

Sd/- S.V.S.R. MURTHY
JOINT REGISTRAR

//TRUE COPY//

for *NB* SECTION OFFICER

To,

1. The Railway Claims Tribunal Amaravathi Bench (With records if any)
2. One CC to M/s. Geetha Madhuri N S Advocate [OPUC]
3. One CC to Sri. Venna Hemanth Kumar (CENTRAL GOVERNMENT COUNSEL) Advocate [OPUC]
4. The Section Officer, VR Section, High Court of Andhra Pradesh.
5. THREE CD Copies

PR
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SDH

HIGH COURT

DATED:20/12/2023

JUDGMENT

CMA.No.44 of 2020

7 Copies
28/2/24
DSL



ALLOWING THE CMA