

APHC010055072021



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

WEDNESDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 19 OF 2021

Between:

- 1.Y .GOWRI, W/O LATE Y.APPALANAIDU AGED ABOUT 25 YEARS,
OCC. COOLIE, R/O . KERATAM VILLAGE (RAJULU KERATAM)
BONDAPALLI MANDAL VIZIANAGARAM DIST
- 2.Y.YAMINI@ YASASWINI, D/O LATE Y.APPALANAIDU AGED ABOUT
05 YEARS, OCC. MINORS, R/O . KERATAM VILLAGE (RAJULU
KERATAM) BONDAPALLI MANDAL VIZIANAGARAM DIST
- 3.Y. MUKESH, S/O LATE Y.APPALANAIDU AGED ABOUT 02 YEARS,
OCC. MINOR, R/O . KERATAM VILLAGE (RAJULU KERATAM)
BONDAPALLI MANDAL VIZIANAGARAM DIST
- 4.Y. PYDITHALLI, S/O LATE Y.PENTAYYA AGED ABOUT 56 YEARS,
OCC. COOLIE, R/O . KERATAM VILLAGE (RAJULU KERATAM)
BONDAPALLI MANDAL VIZIANAGARAM DIST
- 5.Y.NARAYANAMMA @ NARAYANA, W/O LATE Y.APPALANAIDU
AGED ABOUT 51 YEARS, OCC. COOLIE, R/O . KERATAM VILLAGE (RAJULU KERATAM) BONDAPALLI MANDAL VIZIANAGARAM DIST

...APPELLANT(S)

AND

- 1.UNION OF INDIA, REP. BY ITS GENERAL MANAGER, SOUTH
CENTRAL RAILWAY, SECUNDERABAD

...RESPONDENT

Counsel for the Appellant(S):

1.GEETHA MADHURI N S

Counsel for the Respondent:

1.A RAVINDRA BABU (CENTRAL GOVT COUNSEL)

The Court made the following:

THE HONOURABLE SMT JUSTICE V.SUJATHA
CIVIL MISCELLANEOUS APPEAL NO: 19 OF 2021

JUDGMENT:

Aggrieved by the dismissal order passed by The Railway Claims Tribunal, Amaravati Bench, at Guntur (in short 'the learned Tribunal') in O.A II (U) No.257 of 2016, dated 16.03.2020 the Applicants have preferred the present Appeal.

2. The brief facts of the Claim Application of the Applicants before the Tribunal are that on 05.08.2016, one Mr. Y. Appala Naidu, hereinafter referred to 'the deceased' accompanied by his elder brother went to Guntur Railway Station and purchased II Class Train ticket to Vizianagaram and boarded general compartment of Train No.17016 Secunderabad – Bhubaneswar Visakha Express and left in the presence of his elder brother, who later returned from the Railway Station. While the train was running in between Moturu and Mandavalli Railway Stations, at KM 56/2-3, due to heavy rush in the compartment, speed and jerk and jolt of train for a distance of 50 ft., sustained severe head injuries, other multiple dragged injuries and died on the spot in the early hours of 06.08.2016. Therefore, a claim petition made by the Claimants seeking compensation from the Respondent.

3. The Respondent/ Railways has contested the Claim Application by filing Written Statement, wherein it is admitted that the body of the deceased was noticed by a trackman of Respondent at 5.25 hrs on 06.08.2016 and the body was lying at away from the tracks i.e 5 meters away and that the train did

not have any jerk and jolt, as alleged, and had a smooth running in the section. Further, the Respondent contested the claim on the grounds that the deceased was not a bonafide passenger and requested to dismiss the Claim Application.

4. Basing on the above pleadings, the following issues have been settled for trial by the tribunal:

- 1) *Whether the deceased was a bonafide passenger of the train in question and died as a result of an untoward incident?*
- 2) *Whether the applicant(s) is/ are dependent(s) of the deceased?*
- 3) *Whether the applicant is/ are entitled to compensation as claimed?*
- 4) *To what relief?*

5. In support of claim of Applicants, Applicant No.1 brother of the deceased himself examined as AW-1 and in support of his case, he examined AW-2 and got marked Ex.A1 to Ex.A10. On behalf of the Respondent, none was examined and marked DRM Report as Ex.R1.

6. Upon hearing both counsel, upon considering the oral and documentary evidence placed on record, the Tribunal held that the deceased was neither a bonafide passenger of the train nor suffered an untoward incident and his death was not due to an 'untoward incident' as defined under Section 123(c)(2) of the Railways Act, 1989 and dismissed the claim of the Applicants. Assailing the same, the present C.M.A came to be filed.

7. Heard learned counsel for the Appellants and learned Central Government Counsel for the Respondent.

8. During hearing learned counsel for the Appellants would contend that the learned Tribunal erroneously held that the deceased was not a bonafide passenger. The learned tribunal without appreciating the applicability of the provisions of the Railway Act, simply dismissed the claim of the Appellants. Therefore the C.M.A is liable to be allowed.

9. Learned Central Government Counsel for the Respondent would contend that the deceased was not possessing valid railway journey ticket at the time of untoward incident. Therefore he cannot be termed as a bonafide passenger. The claim is not fall under Section 123(c) or Section 124-A of the Railways Act. Therefore there is no fault or lapse on the part of the railways in the alleged mishap; the Respondent is not liable to pay any compensation to the Appellant herein. The learned Tribunal rightly dismissed the claim made by the Appellant after considering the submissions of Respondent. Hence the C.M.A is liable to be dismissed.

10. Perused the record.

11. During hearing learned counsel for the Appellants would contend that this matter is squarely covered by an order of 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.

¹ Civil Appeal No.3799 of 2023

While analyzing the said issue, this Court has considered the judgment of Madhya Pradesh High Court in Raj Kumari v. Union of India and the judgments 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 judgment 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.”

12. 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.

13. In the instant case, the burden of proof shifts on the Respondent/ Railways, as the Appellant proved that he sustained injuries in the untoward incident by placing relevant documents cited supra. None was examined on behalf of the Respondents to rebut the evidence of the Applicants. Therefore, it is to be presumed that the deceased died in the untoward incident while travelling in a train.

14. In the light of judgment of “***Union of India v. Radha Yadav***²”, 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.”

15. 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,—

(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—

² (2019) 3 SCC 410

(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.

16. 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 (supra), it can be observed that the Respondent is failed to establish as to whether the injured/ deceased is not a bona fide passenger. Claimant have discharged their burden by filing an affidavit with relevant facts, hence the burden shifts on the Railways. The amount of compensation payable in respect of death or injuries as per the schedules in Gazette of India, Ministry of Railways dated 22.12.2016.

17. Coming to the interest part is concerned, learned counsel for the Respondent relied on Common Order passed in I.A.No.1 of 2022 and I.A.No.2 of 2023 in C.M.A.No.1074 of 2018, wherein this Court at Para 8 was held as follows:

“ However, in a subsequent Judgment referred above, the Hon'ble Apex Court while considering the payment of interest and payment of enhanced compensation, was pleased to observe that:

In case of death in an accident which occurred before amendment, the basic figure would be Rs. 4,00,000/-. If after applying reasonable rate of interest, the final figure were to be less than Rs. 8,00,000/-, which was brought in by way of amendment, the claim would be entitled to Rs. 8,00,000/-. If however, the amount of original compensation with rate of interest were to exceed the sum of Rs. 8,00,000/-, the compensation would be in terms of figure in excess of Rs. 8,00,000/-. The idea is to afford the benefit of the amendment to the extent possible”.

18. In view of the aforesaid order, the claim is restricted to Rs. 8,00,000/- only. The amount of compensation payable in respect of death of the deceased to the Applicants is as per the schedule in Gazette of India, Ministry of Railways dated 22.12.2016.

19. Following the decisions cited supra, this Court is inclined to allow the Civil Miscellaneous Appeal. The impugned judgment dated 16.03.2020 passed in OA/II/U/No.257 of 2016 by the learned Tribunal, is hereby set aside. The Appellants are entitled to claim compensation of Rs. 8,00,000/- (Rupees Eight Lakhs only) from the Respondent. The Applicants are entitled to claim compensation in equal shares.

20. With the above direction, the Civil Miscellaneous Appeal is allowed. It is made clear that the respondent, Union of India, is directed to pay the compensation as stated supra, 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.

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

JUSTICE V.SUJATHA

Date: 08.04.2026

KS/ KK