

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

**TUESDAY ,THE TWENTY SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE DR. JUSTICE K. MANMADHA RAO



CMA NO: 184 OF 2019

Appeal Under Section 23 of Railway Tribunal Act, against the order dated 05.02.2019 passed in O.A II (U) No. 535 of 2009, on the file of the Railway Claim Tribunal Amaravathi Bench, Guntur

Between:

1. G. Vijaya, W/o Late Venkatesh, aged about 50 years, Occ. house wife
2. S.Sirisha, W/o S Vijay Kumar, Aged about 35 years
3. G. Sindju Durga @ Sindhu, D/o Late Venkatesh, Aged about 29 years, Occ: Coolie

All are R/o. 3.8.2/11, Sardar Patel Road, Nizamabad District. Present Address is 2.5.22, Kota Galli, Nizamabad District.

...Applicants

AND

1. Union of India, Rep. by its General Manager, South Central Railway, Secunderabad
2. G. Senadhi Pathy (Sepoy), A, Coy, 501, Asc Bn C/o. 56 APO, Punjab

...Respondent

Counsel for the Appellants : SRI INAMPUDI NAGESWARA RAO

**Counsel for the Respondents: SRI VENNA HEMANTH KUMAR
(CENTRAL GOVERNMENT COUNSEL)**

The Court made the following:

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

C.M.A.No.184 OF 2019

JUDGMENT:

The Appellants herein are the applicants before 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 05.02.2019 passed by the learned Tribunal in O.A-II(U).No.535 of 2009.

2. The appellants herein are the legal representatives of deceased G. Venkatesh, 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 03.01.2009, at about 17.00 hrs the deceased at Nizamabad Railway Station, having purchased a journey ticket for him and one plat form ticket for Venkatesh. On arrival of train No.562, the deceased boarded said train and while travelling, the deceased accidentally slipped and fell down at Km.No.546/7-8 between Akannapeta and Mirzapalli Railway Stations, and he was shifted to Gandhi Hospital, Secunderabad, where he died due to head injury and both legs fractured. The learned tribunal after hearing on both sides, holding that the deceased is not proved to be a bonafide passenger and he was also not a victim of accidental falling from the train, which is

highly doubtful and that 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 Mr.Inampudi Nageswara Rao, learned counsel for the appellants and Mr. V.Hemanth Kumar, learned Central Government Counsel for the respondent.

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 the deceased was not in possession of any railway journey ticket. 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. The DRM report confirms that the deceased was not a bonafide passenger and he did not die in an untoward incident. Therefore there is no fault or lapse on the part of the railways in the alleged mishap, the respondents are not liable to pay any compensation to the appellants herein. The learned tribunal rightly

dismissed the claim made by the appellants after considering the submissions of respondents. Hence the C.M.A is liable to be dismissed.

6. Perused the record.

7. During hearing learned counsel for the appellants 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 Ku.nari 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

¹ Civil Appeal No.3799 of 2023

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 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."

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

³ (2019) 3 SCC 410

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,—

(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. With regard to interest part is concerned, learned counsel for the appellant relied on a decision of Hon'ble Supreme Court in "**Tahazhathe Purayil Sarabi and Others v. Union of India and Another**"⁴ wherein the Hon'ble Supreme Court held as follows:

"22. In the instant case, the claim for compensation accrued on 13.11.98, when Kunhi Moosa, the husband of the

⁴ 2009 ACJ 2444

appellant No.1, died on account of being thrown out of the moving train. The claim before the Railway Claims Tribunal, Ernakulam (O.A.No.68 of 1999), was filed immediately thereafter in 1999. There was no delay on the part of the claimants- appellants in making the claim, which was ultimately granted for the maximum amount of Rs. 4,00,000/- on 26.03.2007. Even if the appellants may not be entitled to claim interest from the date of the accident, we are of the view that the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery, since the appellant cannot be faulted for the delay of approximately 8 years in the making of the award by the Railway Claims Tribunal. Had the Tribunal not delayed the matter for so long, the appellants would have been entitled to the beneficial interest of the amount awarded from a much earlier date and we see no reason why they should be deprived of such benefit. As we have indicated earlier, payment of interest is basically compensation for being denied the use of the money during the period which the same could have been made available to the claimants.

23. In our view, both the Claims Tribunal, as also the High Court, were wrong in not granting any interest whatsoever to the appellants, except by way of a default clause, which is contrary to the established principles relating to payment of interest on money claims.

24. We, therefore, allow the appeal and modify the order of the High Court dated 24.5.2007 affirming the order of the trial court and direct that the awarded sum will carry interest at the rate of 6 per cent simple interest per annum from the date of the application till the date of the award and, thereafter, at the rate of 9 per cent per annum till the date of actual payment of the same".

14. Following the decisions cited supra, this Court is inclined to allow the Civil Miscellaneous Appeal. The impugned judgment dated 05.02.2019 passed in OA/II/U/535 of 2009 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 and direct that the awarded sum will carry interest at the rate of 6% p.a from the date of filing claim till the date of the award/ order and, thereafter, at the rate of 9% p.a till the date of actual payment of the same. The petitioners are permitted to withdraw the said compensation amount in equal shares.

15. 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 along with interest 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.

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

SD/- V DIWAKAR
DEPUTY REGISTRAR

//TRUE COPY//

 SECTION OFFICER

To,

1. The Railway Claim Tribunal Amaravathi Bench, Guntur (**records if any**)
2. The General Manager, South Central Railway, Secunderabad.
3. One CC to Sri Inampudi Nageswara Rao, Advocate [OPUC]
4. One CC to Sri Venna Hemanth Kumar, (Central Government Counsel) Advocate [OPUC]
5. The Section Officer, V.R. Section, High Court of A.P. at Amaravathi.
6. Three CD Copies

Psr
sree



HIGH COURT

DATED:26/12/2023

JUDGMENT + DECREE

CMA.No.184 of 2019

**ALLOWING THE C.M.A.
WITHOUT COSTS**



8 copies

Ag
28/10/24

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

**TUESDAY ,THE TWENTY SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE DR. JUSTICE K. MANMADHA RAO



CMA NO: 184 OF 2019

Between:

1. G. Vijaya, W/o Late Venkatesh, aged about 50 years, Occ. house wife
2. S.Sirisha, W/o S Vijay Kumar, Aged about 35 years
3. G. Sindju Durga @ Sindhu, D/o Late Venkatesh, Aged about 29 years, Occ: Coolie

All are R/o. 3.8.2/11, Sardar Patel Road, Nizamabad District. Present Address is 2.5.22, Kota Galli, Nizamabad District.

...Applicants

AND

1. Union of India, Rep. by its General Manager, South Central Railway, Secunderabad
2. G. Senadhi Pathy (Sepoy), A, Coy, 501, Asc Bn C/o. 56 APO, Punjab

...Respondent

Appeal Under Section 23 of Railway Tribunal Act, against the order dated 05.02.2019 passed in O.A II (U) No. 535 of 2009, on the file of the Railway Claim Tribunal Amaravathi Bench, Guntur

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the suit and upon hearing the arguments of Sri Inampudi Nageswara Rao Advocate for the appellants and of Sri Venna Hemanth Kumar SC for Endowments (Rayalaseema) for the Respondents

This Court doth order and decree as follows:

1. That the Civil Miscellaneous appeal be and is hereby Allowed

2. That the Union of India, is directed to pay the compensation along with interest as stated supra within a period of two (2) months from the date of receipt of a copy of this order.
3. That there shall be no order as to costs in this Civil Miscellaneous appeal.

**SD/- V DIWAKAR
DEPUTY REGISTRAR**

//TRUE COPY//


SECTION OFFICER

To,

1. The Railway Claim Tribunal Amaravathi Bench, Guntur.
2. The General Manager, South Central Railway, Secunderabad.
3. Three CD Copies

Psr
sree



HIGH COURT

DATED:26/12/2023

DECREE

CMA.No.184 of 2019

**ALLOWING THE C.M.A.
WITHOUT COSTS**



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registry