

APHC010184962019



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

[3333]

THURSDAY, THE TWELFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 216 OF 2019

Between:

1.BAGGAM SUSEELA, W/O LATE VASUDEVA RAO AGED ABOUT 64 YEARS R/O H.NO. 45-43A-26, AKKAYYAPALEM VISAKHAPATNAM.

2.BAGGAM VENKATA RAMANA, S/O LATE VASUDEVARAO AGED ABOUT 28 YEARS,

BOTH ARE R/O H.NO. 45-43A-26, AKKAYYAPALEM VISAKHAPATNAM

...APPELLANT(S)

AND

1.UNION OF INDIA, REP. BY ITS GENERAL MANAGER, EAST COAST RAILWAYS, BHUBANESWAR.

...RESPONDENT

Counsel for the Appellant(S):

1.P L RAO

Counsel for the Respondent:

1.PASALA PONNA RAO (SC FOR CENT GOVT.)

The Court made the following:

THE HONOURABLE SMT JUSTICE V.SUJATHA**CIVIL MISCELLANEOUS APPEAL NO: 216 of 2019****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.173 of 2010, dated 04.02.2019 the Applicants have preferred the present Appeal.

2. The facts in nutshell are that – On 04.12.2009 at about 7.00 hours the deceased - Vasudeva Rao with a view to visit Simhachalam temple, went to Visakhapatnam (VSKP) Railway Station and purchased a passenger train journey ticket costing Rs.2/- to travel by EMU Ex.VSKP to Simhachalam and boarded EMU passenger. While the said train was in operation and reached Simhachalam railway station, due to rush, jerks and jolts he accidentally fell down from the running train which caused amputation of his right leg below foot. He was shifted to KGH hospital, Visakhapatnam by 108 Ambulance and died while undergoing treatment. Therefore, the Claimants filed the claim petition seeking compensation from the Respondent.

3. Respondent/ Railways by filing written statement contended that there is no report of falling of a passenger from EMU train. It further stated that in DRM report, guard of train stated that no passenger fell down from said train on that day when he was on duty on 14.12.2009. This case is based on a false and concocted story for the purpose of claiming compensation. The applicants have

not mentioned how he was shifted to KGH hospital, Visakhapatnam by 108 Ambulance. It was submitted that GRP/VSKP registered FIR on 16.12.2009 based on report given by duty Doctor of KGH Hospital. During the inquest, GRP did not examine any eye witness but drew conclusion only on imaginary facts about the alleged fall.

4. Basing on the above pleadings, the following issues were framed by the Tribunal for enquiry/trial;-

- 1) *Whether the Applicant(s) is/are dependant (s) of the deceased?*
- 2) *Whether the deceased was a bona-fide passenger of the Train in question and died as a result of an untoward incident?*
- 3) *Whether the Applicants are entitled to the compensation as Claimed and to what relief?*

5. During enquiry/trial Claimant No.2– Beggam Venkat Ramana, who is son of deceased examined as A.W.1, Pudi Jagannadham, who brother-in-law of the deceased and present at the time of inquest over the dead body of deceased – Vasudeva Rao examined as A.W.2 and got marked Ex.A.1 – attested copy of First Information Report; Ex.A.2 - Attested copy of inquest report; Ex.A.3 - Attested copy of PME report; Ex.A.4 - Attested copy of final report; Ex.A.5 - Xerox copy of ration card; Ex.A.6 - Original death certificate; and Ex.A.7 - Xerox copy of Statement of deceased. On behalf of Respondent one Ch.Gnaneswara Rao examined as R.W.1, one K.Kamesh examined as R.W.2 and got marked

Ex.R.1 – copy of rough journal; Ex.R.2 – I.D card of R.W.1; Ex.R.3 – copy of statement of station Master; Ex.R.4 – I.D card of R.W.2.

6. Upon hearing both counsel, upon considering the oral and documentary evidence placed on record, the Tribunal held that the railway tribunal dismissed claim by holding that as the railway journey ticket was not found with the dead body at the time of inquest, so that, the incident was self inflicted injury as per Section 124-A of the Railways Act and hence, the claim of the claimants was dismissed. 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 Tribunal failed to appreciate the DRM report, wherein it is specifically admitted that the deceased was holding a ticket as well as he fall from train, which in fact corroborated with the evidence of RW-2. The Tribunal failed to note that whenever a passenger fall from the train and sustain injuries, the said persons would be shifted to the hospital immediately and the delay in communicating the said incient is by the Station Manager, East Coast Railway, Simhachalam and the same cannot be taken into consideration. The 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. The DRM Report speaks that the guard of train stated that no passenger fell down from the said train on that day when he was on duty on 14.12.2009. 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. 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

¹ Civil Appeal No.3799 of 2023

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 marking Ex.A1 to Ex.A4, coupled with DRM's report, it clearly shows that the deceased was fell down from the train, sustained injuries and died while undergoing treatment. 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 04.02.2019 passed in OA/II/U/No.173 of 2010 by the learned Tribunal, is hereby set aside. The Appellants are entitled to claim compensation of Rs. 8,00,000/- (Rupees Four 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: 12.02.2026

KS/ KK