



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

[3333]

**TUESDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 207/2021

Between:

- 1.KILLO JAMUNA, W/O LATE K.THRINADHA RAO, AGED ABOUT 40 YEARS, OCC- HOUSEWIFE
- 2.KILLO SUHASINI, D/O LATE K.THRINADHA RAO, AGED 20 YEARS,
- 3.KILLO SANTHOSH KUMAR, S/O LATE K.THRINADHA RAO AGED 17 YEARS, MINOR
- 4.KILLO MAHA DEVI, D/O LATE K.THRINADHA RAO, AGED 14 YEARS, MINOR
- 5.KILLO GULABI, W/O LATE MONNU, AGED ABOUT 57 YEARS, HOUSEWIFE NOS. 3 AND 4 BEING MINORS, REP. BY THEIR MOTHER AND NATURAL GUARDIAN KILLO JAMUNA ALL ARE R/O 7-269, PEDALABUDU, BISHNUGUDA VILLAGE, ARAKU VALLEY MANDAL, VISAKHAPATNAM DISTRICT

...APPELLANT(S)

AND

- 1.THE UNION OF INDIA, rep. by the General Manager, East Coast Railway, Bhubaneswar.

...RESPONDENT

Appeal Under Section____against ordersMemorandum of Civil Misc. Appeal, having been aggrieved by the Judgment dt. 23-4-2021 passed in O.A.II (U) No. 180 of 2013 on the file of the Railway Claims Tribunal, Amaravathi Bench at Guntur

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to declare the petitioner No. 2 herein as major by discharging the 1st petitioner as guardian, in the interest of justice

Counsel for the Appellant(S):

1.P L RAO

Counsel for the Respondent:

1.M UMA DEVI (CENTRAL GOVT COUNSEL)

The Court made the following:

JUDGMENT:

Aggrieved by the dismissal order passed by The Railway Claims Tribunal, Amaravati Bench, at Guntur (in short 'the learned Tribunal') in O.AII/(U)/180/2013, dated 23.04.2021 the applicants have preferred the present Civil Miscellaneous Appeal.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the Tribunal.

3. The brief facts of the cases are as follows:

a) The deceased was working as a daily wage labourer. On 07.09.2012, in the morning, he left his residence to go to Srungavarapukota for masonry work. He went to Araku Railway Station and purchased a journey ticket bearing No.08354 from Araku to Srungavarapukota. While travelling in Train No.58502 Passenger, he accidentally slipped and fell down from the train at KM No.101/13-101/12 between Araku and Similiguda Railway Stations, sustained injuries and died on the spot.

b) As per Column No.7 of the claim application, the journey ticket was kept with the GRP, Vizianagaram. The 1st applicant examined herself as A.W.1 reiterating the above facts. She also marked Exs.A1 to A9, namely, attested copies of FIR, Inquest Report, Postmortem Report, Aadhaar Cards and Ration Card. One N. Annapurneswara Rao, ASI, GRP, Vizianagaram, was examined as A.W.2 and the original CD file brought by him was marked as Ex.A10.

4. The respondent-Railways filed a written statement denying the averments made in the claim application. It was contended that there was no cause of action for the applicants as the claim did not fall within the ambit of Sections 123(c) or 124-A of the Railways Act, 1989, and the applicants were put to strict proof of all the averments made in the claim application. It was further stated that, as per the FIR, the on-duty Guard of Train No.58502 issued a memo stating that one male person had fallen down between Araku and Similiguda Railway Stations and that no journey ticket was found with him. Therefore, the respondent denied that the deceased was a bona fide passenger and also put the applicants to strict proof regarding their dependency on the deceased. The respondent marked Ex.B1-Divisional Railway Manager's Report, wherein it was stated that the Guard thoroughly checked the body of the deceased and found no journey ticket and that the ticket subsequently filed was a planted one. On that basis, it was contended that the deceased was not a bona fide passenger.

5. Based on the pleadings, the Tribunal framed the following issues for determination:

- 1) Whether the Applicant(s) is/are dependent(s) of the deceased?*
- 2) Whether the deceased was a bonafide passenger of the 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. During enquiry, on behalf of the applicants, A.W.1 and A.W.2 were examined and Exs.A1 to A10 were marked. On behalf of the Respondent, no oral evidence was adduced; however, Ex.B1/DRM report was marked.

7. After hearing on both sides, the Tribunal held that the deceased was not proved to be a bona fide passenger and, consequently, dismissed the claim application. Aggrieved by the same, the present Civil Miscellaneous Appeal is filed.

8. Heard Mr.P.L.Rao, learned counsel for the appellants and Ms.Uma Devi, learned Central Government Counsel for the Respondent.

9. During the course of hearing, the learned counsel for the appellants contended that the Tribunal ought to have considered that the Railways Act is a beneficial piece of legislation and, therefore, it should receive a liberal and wider interpretation rather than a narrow and technical one, as held in the judgment reported in 2003 (4) SCC 524 in *Kunal Singh vs. Union of India*; that the Tribunal ought to have seen that the applicants discharged their burden of proof by adducing oral and documentary evidence and, therefore, the burden shifts upon the respondent to disprove the same, as held by the Hon'ble Apex Court in *Rina Devi vs. Union of India*; that the Tribunal failed to note that, as per the CD file marked as Ex.A10, a copy of the panchanama is appended and, as per the said panchanama, there is a clear mention that a kerchief containing a ticket and Rs.30/- was found in the pocket of the deceased and further that the said ticket bears the signature of the General Railway Booking

Clerk, thereby clearly establishing that the deceased was a bona fide passenger; and that the Tribunal further failed to note that, as per Ex.R1/DRM Report, there is a certificate issued by the Railways confirming issuance of the ticket, while on the other hand, reliance was placed on the Guard's statement that no ticket was found, thus reflecting contradictory versions on the part of the respondent-Railways.

10. The learned Central Government Counsel for the respondent contended that the deceased was not in possession of a valid railway journey ticket at the time of the alleged untoward incident and, therefore, cannot be treated as a bona fide passenger. It is further contended that the claim does not fall within the scope of Sections 123(c) or 124-A of the Railways Act, 1989. The learned counsel submitted that the Divisional Railway Manager's report establishes that the deceased was not a bona fide passenger and that his death did not occur due to an untoward incident as defined under the Act. Hence, there was no fault or negligence on the part of the Railways in the alleged incident, and the respondent is not liable to pay any compensation to the appellants. It is thus argued that the learned Tribunal, having duly considered the submissions of the respondent, rightly dismissed the claim petition, and therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

11. Perused the record.

12. On a perusal of the impugned order passed by the Tribunal, it can be observed that the 1st applicant, who is the wife of the deceased, examined

herself as A.W.1 and deposed with regard to the nature of the accident. She categorically stated that on 07.09.2012, in the morning, the deceased started from his residence to go to Srungavarapukota for masonry work. He went to Araku Railway Station and purchased a journey ticket bearing No.08354 from Araku to Srungavarapukota and, while travelling by Train No.58502 Passenger, accidentally slipped and fell down from the train at KM No.101/13-101/12 between Araku and Similiguda Railway Stations, sustained injuries and died on the spot. In support of her case, she marked Exs.A1 to A10. She also examined A.W.2, who is the Investigating Officer, and in his chief-examination affidavit stated that he had handed over the original printed journey ticket bearing No.08354 to the Station House Officer, GRP, Vizianagaram, and that he found the said ticket in the pocket of the deceased. He further stated that he informed the family members about the accident and thereafter recorded their statements. In spite of the said evidence, the Tribunal held that the crucial piece of evidence to establish the bona fides of the passenger is the journey ticket and that the Investigating Officer could not have been so callous in dealing with such a vital document. The Tribunal further observed that the testimony of A.W.2 would have carried greater credence had the original journey ticket been kept and preserved in the CD file, whereas he merely stated that the original ticket was not available in the CD file. However, on behalf of the respondent, Ex.R1-DRM Report was marked. In the concluding portion of the said report, it is stated as follows:

“During the inquest, one railway journey ticket vide No.08354 X Araku to Srungavarapukoa was found inside the hand karcheif of the deceased. But however, it is further stated that the guard of the train in his statement has clearly stated that he has checked the body thoroughly and there was no ticket with the deceased and on the other hand the DRM report also states that the ticket was planted later by some people with ulterior motives. Therefore, it can be seen that the deceased was not a bonafide passenger and more over the deceased might have fallen from the foot board due to his own negligence and as such there is no foul play or negligence on the part of the railway administration and they are not liable to pay any compensation to the deceased.”

13. The Tribunal, in the absence of any other evidence except the DRM Report, which in fact supports the case of the applicants, relied upon the statement of the Guard that no ticket was found, while ignoring the very same report which discloses that a railway journey ticket was found in the pocket of the deceased. It is also pertinent to note that the said DRM Report is accompanied by a certificate issued by the Railways themselves confirming issuance of the ticket. In such circumstances, this Court is of the opinion that the deceased has to be treated as a bona fide passenger and that his case squarely falls within the ambit of Sections 123(c) and 124-A of the Railways Act, 1989.

14. In support of the above contentions, learned counsel for the appellants relied upon the 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 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.”

15. 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.

¹Civil Appeal No.3799 of 2023

16. In the instant case, the burden of proof shifts on the Respondent/ Railways, as the appellants proved the death of the deceased while travelling in train by marking Exs.A1 to A10. None was examined on behalf of the Respondents to rebut the evidence of the applicants, except marking of Report of Divisional Railway Manager. Therefore, it is to be presumed that the deceased was dead during travel in train.

17. In the light of judgment of “**Union of India v. Radha Yadav²**”, 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.”

18. 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;

²(2019) 3 SCC 410

(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.

19. 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 deceased is not a bona fide passenger. Claimants 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.

20. 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”.

21. 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 or injuries to the Applicants is as per the schedule in Gazette of India, Ministry of Railways dated 22.12.2016.

22. Following the decisions cited supra, this Court is inclined to allow the Civil Miscellaneous Appeal. The impugned judgment dated 23.04.2021 passed in OA/II/U/No.180 of 2013 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 appellants are permitted to withdraw the said compensation amount in equal shares.

23. 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.

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

JUSTICE V.SUJATHA

Date: 28.04.2026
KGR