
(2010) 02 AP CK 0013

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 666 of 2002

Mummidi Durga and Others

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174

Railway Claims Tribunal Act, 1987 — Section 16

Railways Act, 1989 — Section 124, 124A, 125, 2(29)

Citation : (2010) 5 ALD 328

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : K.S.N. Murthy, for the Appellant; B.H.R. Chowdary, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This Civil Miscellaneous Appeal is directed against the order, dated 12-12-2001 passed in O.A.A. No. 178 of 1998 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, whereby and whereunder the application filed by the appellants herein claiming compensation of Rs. 4,00,000/- on account of death of M. Sathi Babu ended in dismissal.

2. The background facts of the case in a nutshell leads to file an application by the applicants in O.A.A. No. 178 of 1998 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad are; M. Sathi Babu, the husband of the first appellant and the father of the appellants No. 2 and 3, was working as a lorry driver. On 03-02-1998 he had been to Vizianagaram on duty. He received instructions from his employer to go over to Bobbili and bring load to Kakinada. P. Satya Narayana, who has been examined as AW-2, dropped him at Vijayanagaram Railway Station. He purchased a journey ticket from Vizianagaram to Bobbili and boarded the train No. 230 Visakhapatnam-Durg passenger. On nearing Bobbili railway station yard, he slipped from the train and

sustained severe injuries, for which he succumbed at the spot at about 20.20 hours.

3. Sri. A.V.S.N. Murthy, Head Constable 596 of AGRP, Vijayawada registered a case in Crime No. 8 of 1998 u/s 174 Cr.P.C., recording the death of Sathi Babu. He conducted inquest on the dead body of the deceased Sathi Babu, hereinafter referred to as deceased, between 9.30 a.m., and 12.00 noon on 04-02-1998 in the presence of mediators. During the inquest, he seized a ticket bearing No. 06995205 from the dead body of the deceased, got the dead body of the deceased photographed. The photographs of the dead body have been identified as that of the deceased by the appellant No. 1, who is no other than his wife. The appellants filed application before the Railway Claims Tribunal, Secunderabad Bench at Secunderabad u/s 16 of the Railway Claims Tribunal Act, 1989 r/w. 124A and 125 of Indian Railways Act, 1989 claiming compensation of Rs. 4,00,000/-.

4. The respondent filed written statement resisting the claim of the appellants/applicants. It is stated in the written statement that death of the deceased is not on account of untoward incident or accidental fall and that he was not a bonafide passenger. Therefore, the applicants were not entitled to claim any compensation. The Tribunal framed the following issues for trial:

1. Whether the applicants are dependents of the deceased Mummidi Sattibabu?
2. Whether the deceased was a bonafide passenger of train No. 230 Visakhapatnam-Durg passenger traveling from Vizianagaram to Bobbili on 03-02-1998?
3. Whether the deceased died as a result of an untoward incident of accidental fall from the train at Bobbili railway station?
4. To what relief?
5. On behalf of the appellants/applicants, they examined two witnesses as AW-1 and AW-2 and marked seven documents as Exs.A-1 to A-7. One A.V.S.N. Murthy, who held inquest over the dead body of the deceased, was examined as CW-1.
6. The Tribunal, on considering the material on record and on hearing the counsel appearing for the parties, held issue No. 1 in favour of the applicants while holding issue No. 2 and 3 against the applicants. Accordingly, dismissed the claim of the applicants by order dated 12-12-2001. The said order is assailed in this appeal.
7. Heard Sri K.S.N. Murthy, learned Counsel for the appellants and Sri B.H.R. Chowdary, learned Standing Counsel for the respondent.
8. Learned Counsel appearing for the appellants submits that there was no dispute that the deceased was traveling in Visakhapatnam-Durg passenger train and that he has fallen and died while the train was in motion. The learned Counsel contends that the evidence of AW-2 and the Investigating Officer who

has been examined as CW-1 clearly established that the death was due to accidental fall. A further submission has been made by the learned Counsel that the only ground on which the Tribunal rejected the claim was at the time of inquest, no money or luggage or the articles were found on the dead body and in the absence of money and other articles it was difficult to believe that the deceased had fallen from the train accidentally. The learned Counsel contents that the view taken by the Tribunal is untenable in the eye of law and accordingly the award impugned in this appeal is liable to be set aside and the claim of the appellants deserved to be allowed along with interest at 12%.

9. Sri B.H.R. Chowdary, the learned Counsel appearing for the respondent on the other hand submits that the deceased might have committed suicide by falling under a train and therefore, the Railways cannot be held liable to pay compensation. He further submits that the deceased was not a bona fide passenger inasmuch as ticket held by him cannot be connected to the train No. 230 Visakhapatnam-Durg passenger. He would contend that for any reason the claim of the appellants is to be allowed, they are not entitled to claim any interest on the award amount.

10. The issues that call for adjudication in the appeal are:

1. Whether the deceased was a bonafide passenger of the train?
2. Whether the claimants are entitled to interest on the award amount?

11. ISSUE No. 1: Sections 124 and 124-A of the Railways Act, 1989 (for short "the Act") provides for payment of compensation to passengers, in the event of their sustaining injuries, or their legal heirs, if they die, in an accident, or untoward incident. Under both the provisions, the liability arises, whether or not, there has been any wrongful act, or negligence, or default, on the part of the railway administration. The two ingredients that are necessary to attract the liability are, that the accident, or untoward incident, must have occurred to a passenger train, and that the victim was a passenger in the train. The word "passenger" is defined under Sub-section (29) of Section 2 of the Act, as to mean, "a person traveling with a valid pass or ticket".

12. In the instant case the deceased was traveling from Bobbili in train No. 230 Visakhapatnam-Durg passenger in general compartment. AW-2 is the witness to speak of the deceased boarding train No. 230 Visakhapatnam-Durg passenger. AW-2 has categorically stated that on 02-02-1998 he along with the deceased left Kakinada for Vizianagaram driving their respective lorries and that the owner of the lorries Nakka Veerabhadra Rao had telephoned to the deceased and instructed him to go over to Bobbili to bring another loaded lorry to Kakinada and therefore, he dropped him at Vizianagaram railway station. There is no reason to disbelieve the testimony of AW-2. The Investigating Officer who has been examined as CW-1 seized a ticket bearing No. 06995205 from the dead body of the deceased during the course of inquest.

13. There is no reason for the Investigating Officer to implicate/introduce a ticket, had he not seized from the dead body of the deceased. The evidence of AW-2 and CW-1 clearly established that the deceased boarded the train No. 230 Visakhapatnam-Durg passenger and he was a bona fide passenger when he slipped from the train and sustained injuries for which he succumbed.

14. The Tribunal disbelieved the evidence of AW-2 and CW-1 on the ground that no money or any luggage or articles were found with the deceased. When it is the case of accidental fall from the train, it is quite natural that no part of his luggage would be with him when he slipped from the train. Therefore, the finding recorded by the Tribunal that the deceased did not die in an untoward incident is unsustainable. When once the applicants proved that the deceased died in an untoward incident, they are entitled to claim compensation of Rs. 4,00,000/-.

15. ISSUE No. 2: Coming to the issue of awarding interest, learned Counsel appearing for the respondent submits that the provisions of the Railways Act or the Railway Claims Tribunal Act do not provide for grant of interest on the compensation and therefore, the appellants/applicants are not entitled for interest.

16. Per contra, the learned Counsel appearing for the appellants/applicants submits that the issue as to whether the applicants are entitled for interest on the compensation is no more res integra in view of the judgment of the Supreme Court in Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another,

17. By following the above referred judgment, a learned single Judge of this Court granted interest on the compensation in case of Smt. Parisa Anjali and Ors. v. Union of India rep. by its General Manager, South Central Railway, O/o. Secunderabad in Civil Miscellaneous Appeal No. 1069 of 2009 on 07-10-2009 and in case of B. Innaiah Reddy and Anr. v. The Union of India, rep. by its General Manager, South Central Railway, Secunderabad in C.M.A. No. 1025 of 2005 on 08-09-2009.

18. The controversy or difference of opinion, has been set at rest by the Supreme Court in Tahazhathe Purayil Sarabi and Ors. v. Union of India (UOI) and Anr. cited supra, wherein it was held that the amount awarded as compensation by the Railway Claims Tribunal shall carry interest at 6% per annum from the date of presentation of the claim petition till the date of award, and thereafter, at 9% per annum till the date of realization.

19. In view of the above discussion, the appeal is allowed setting aside the order, dated 12-12-2001 passed in O.A.A. No. 178 of 1998 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad and consequently the appeal filed by the applicants was stand allowed awarding a sum of Rs. 4,00,000/- (Rupees four lakhs only) as compensation to the appellants/applicants. The compensation amount shall carry interest at 6% per annum, from the date of presentation of the claim petition, till the date of award, and

thereafter, at 9% per annum, till the date of realization. There shall be no order as to costs.