

(2016) 07 KAR CK 0029

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10082 of 2010 (RCT)

Smt. Neelamma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Railways Act, 1989 — Section 123(c)(ii)

Citation : (2016) AAC 2396

Hon'ble Judges : A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : Shri N.S. Sanjay Gowda, Advocate, for the Respondent; Shri C.H. Jadhav, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J. - An application filed under Section 16 of Railway Claims Tribunal Act against the respondent having been dismissed, the applicants being the wife, daughters and son respectively of deceased M. Manikappa, police constable, filed this appeal.

2. The first appellant is the wife, the 2nd and 3rd appellants are the daughters and the 4th appellant is the son of late M. Manikappa. On 25.12.1998, when M. Manikappa, GRP Constable No. 188 was on duty, was injured by Train No.7663 - Kachiguda Express and succumbed. Alleging negligence on the part of the driver of the train, O.A. No.7/2007 was filed before the Railway Claims Tribunal, Bangalore Bench to direct the payment of compensation by the Railway Administration.

3. The respondent filed reply under Rule 15 of the Railway Claims Tribunal Rules and contested the claim on the ground, that while Manikappa was going from platform No.2 to platform No. 1 by crossing the railway track was run over by Train No.7663 and succumbed to the injury which became clear from the final report submitted by the Sub-Inspector of Police, Bidar Railway Police Station. It

was contended that the incident does not attract the provisions of "untoward incident" covered under Section 123(c)(2) of the Railways Act, 1989 (for short, "the Act") and hence, the application being not maintainable is liable to be dismissed.

4. Based on the pleadings of the parties, the following issues were raised by the Tribunal:

1. Whether the applicants prove that they are the sole dependants of the deceased M. Manikappa?

2. Whether the applicants prove that the deceased M. Manikappa was a bona fide passenger on 25.12.98 by train No.7663 Kacheguda express?

3. Did the deceased die as a result of "untoward incident" as covered by Section 123 (c)(2) of Railways Act, 1989 or as stated in paras 2, 3 & 5 of reply statement by the Respondent?

4. Whether the applicants are entitled to compensation as per para 16 of the claim petition?

5. What order? What relief?

5. The 1st applicant got herself examined as AW-1 and produced the documents like FIR, Investigation Report, Post-Mortem Report, Final Report, Death Certificate of M. Manikappa, Living Family Members/Dependents Certificate, Study Certificates of three children, which were marked as Exhibits - A1 to A9.

6. The Tribunal by taking into consideration the rival contentions and after appreciation of the record of the case has held that the deceased was on platform duty and not on duty in the train and as such the application is devoid of merit.

7. Sri C.H. Jadhav, learned Senior Advocate for the appellant contended that the death of M. Manikappa inside the Railway Station premises being not in dispute and the deceased being on railway duty, the findings and the conclusion of the Tribunal in the impugned Judgment is erroneous. Learned advocate further contended that the case as was put forth has not been properly appreciated and hence, the impugned Judgment is liable to be set aside and the appeal allowed entitling the applicants/appellants to compensation.

8. Sri N.S. Sanjay Gowda, learned advocate, on the other hand, by referring to the record of the case which has been summoned from the Tribunal made submissions in support of the findings recorded by the Tribunal. Learned advocate submitted that the deceased being not a passenger or a railway servant on duty, the Tribunal is justified in dismissing the application.

9. Perused the record and considered the rival contentions. The point for consideration is, whether the Tribunal has committed any error in dismissing the application?

10. In the application filed before the Tribunal, as against column No. 6, it was stated "that the deceased was on duty in Train No.7663, Kachiguda Express, Bidar Railway Station and accidentally fell down from the train and sustained grievous injury to his right leg and while he was being shifted to the Government Hospital at Bidar, succumbed to the injury in the cycle rickshaw". In the reply filed by the Railway Administration, the said averment was specifically denied. It was stated that the deceased was a GRP constable discharging platform duty on 25.12.1998 at Bidar Railway Station and while he was going from platform No.2 to platform No. 1 by crossing the railway track, was run over by Train No.7663 and succumbed to the injury. It was submitted that the final report of the Sub-Inspector of Police made it clear that the deceased was run over by Train No.7663 and he did not fall from the train.

11. AW-1 in the cross-examination has admitted that her husband was working as a police and the incident occurred on 25.12.1998 and on the date of incident, he was on platform duty. She has stated that she had visited Bidar Railway Station earlier and that there is a over-bridge connecting different platforms and that the incident has occurred when her husband was crossing platform No.1 to platform No.2.

12. In Exhibit - A4, the final report prepared by the Sub-Inspector of Police, Bidar Railway Police Station, the statement of Smt. Neelavva, w/o deceased M. Manikappa has been recorded and the same being relevant is extracted here-in-below:

".... Manikappa while discharging the platform duty in morning accidentally stuck between the wheels of train and his right leg was cut and for taking treatment took him to Government hospital and I am afraid and went to the hospital and saw that my husband Manikappa was dead in the cycle rickshaw. My husband while discharging the platform duty accidentally came in contact with the moving train No.7663 and without observing accidentally struck between the wheels of the train and right leg was cut, while he was about to take treatment he was dead in the cycle rickshaw...."

13. Based on the statements recorded during the course of investigation by the Sub-Inspector of Police, Bidar Railway Police Station, it was concluded that the deceased, on the date of incident was discharging the platform duty and for some reason he was going from platform No.2 to platform No.1 in the Bidar Railway Station and at that time, without noticing Train No.7663 at platform No.1 when he was about to cross the railway lane, accidentally fell down and his right leg was cut and that he died when he was about to be taken to treatment in cycle rickshaw.

14. "Untoward incident" has been defined in Clause (c) of Section 123 of the Act. The case in question does not fall under sub-clause (2) of Clause (c) of Section 123. In view of the admission of AW-1 and Exhibit A4, the case is not one of accidentally falling of any passenger from a train carrying passengers. The

deceased while crossing one platform to the other, having come in contact with the moving train has suffered injury and succumbed. The injury sustained does not fall within the meaning and definition of "untoward incident" defined under Section 123(c) of the Act.

15. The Tribunal has correctly noticed the pleading and the admission of AW-1. Since the case does not fall within the meaning and definition of "untoward incident" defined under Section 123(c) of the Act, the Tribunal has rightly dismissed the application. The appreciation of the record of the case by the Tribunal is not perverse and there is no error committed in concluding that the case being not the one falling within the meaning and definition of "untoward incident", the application filed for directing payment of compensation is not maintainable.

16. There is no merit in the appeal and hence is dismissed.

17. No costs.