
(2010) 08 AP CK 0040
In the Andhra Pradesh High Court
Case No : C.M.A. No. 3802 of 2003

Smt. Shaik Muskin Bee

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Citation : (2011) 6 RCR(Civil) 2784 : (2011) 1 TAC 129

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Manikya Valli, for the Appellant; T.S. Venkata Ramana, for the Respondent

Judgement

L. Narasimha Reddy, J.—The Appellant filed O.A.A. No. 233 of 1999 before Secunderabad Bench of Railway Claims Tribunal (for short "the Tribunal") claiming compensation on account of the death of her father, by name Dhodiyam Imam Saheb. It was pleaded that Imam Saheb was doing business in clothes by travelling from place to place and that on 8th July, 1999, he purchased a ticket at Rajampet Railway Station to go to Kadapa by Train No. 6012 Madras-Dadar Express. It is stated that in the evening of 8th July, 1999, he boarded the train, but on account of sudden jerk, he fell down and came between the platform and the train, resulting in his death.

2. The Respondent filed a written statement opposing the claim. It denied the allegation that the death was on account of the sudden jerk or in an untoward incident. It was pleaded that when the train was leaving the station at 16.20 hours, it was found that a person aged about 40 years attempted to get into the running train and in the process, fell and came under the wheels. According to it, the death of the deceased occurred on account of his own negligence. Through its order, dated 18th March, 2002, the Tribunal dismissed the O.A.A. by recording a finding to the effect that the deceased was not a bona fide passenger and that the death occurred on account of his own negligence. The same is challenged in this appeal.

3. Heard Smt. A. Manikya Valli, learned Counsel for the Appellant and Sri T.S. Venkata Ramana, learned Standing Counsel for the Respondent.

4. The Appellant claims to be the only legal heir of the deceased. She pleaded that her father boarded the train on 8th July, 1999 after purchasing the ticket and on account of the sudden jerk, when the train started, he fell down and came between the platform and the train. In the written statement, the Respondent did not deny the occurrence of the accident or the death of the deceased. According to them, the deceased died when he made an attempt to get into the running train.

5. The Tribunal framed the following issues for its consideration:

(1) Whether the applicant is the sole dependent of the deceased Dhodiyam Imam Saheb?

(2) Whether the deceased was a bona fide passenger of train in question?

(3) Whether the incident resulting in death of the deceased cannot be termed as an untoward incident?

(4) To what amount, if any, the applicant is entitled to as compensation?

6. The first issue was held in favour of the Appellant, since there was no contest to her claim. Other issues were held against the Appellant. Substantial portion of the discussion of the Tribunal centred round the inconsistency in the version put forward by the Appellant on the one hand and the contents of the inquest panchanama on the other. All that would have assumed significance, if only there was any dispute about the death of the passenger. In clear and categorical terms, the Respondent stated that the deceased died when he was attempting to board the train. Therefore, the fact that the deceased died in an untoward incident cannot be doubted at all. The relevant question, however, would be as to whether the deceased was a bona fide passenger and whether he died on account of any negligence on his part. So far as the first question is concerned, the Tribunal was impressed mostly by the fact that the ticket number was inserted in the panchanama through overwriting. In case there was overwriting, the Appellant cannot be held liable for that. In a way, the Tribunal suspected the very version of the prosecution. Even assuming that the deceased did not hold valid train ticket, on that basis alone, it cannot be said that he was not a bona fide passenger. There is no reason to disbelieve the version of the Police that the panchanama was prepared after the inquest was conducted and the ticket was found underneath the body when it was being lifted. That obviously resulted in necessity to insert the number of the ticket. Therefore, the finding of the Tribunal in that regard cannot be sustained.

7. Now, it remains to be seen as to whether there was any negligence on the part of the deceased. The Appellant is not an eye witness to the accident. The persons, who have seen the incident, stated that the deceased was attempting to get into the train when it was in motion. Whether or not he did it negligently and

without proper care, or whether there was heavy rush in the train, the question, such as, whether despite his proper care, he fell down could have been examined, if only there was evidence in this regard. Since, the Appellant was not an eye witness, there was no occasion for her to speak about it. On its part, the Railway Administration did not examine any independent witness to suggest that the deceased was negligent while boarding the train. The Tribunal, no doubt, made an observation to the effect that the deceased was the victim of an untoward incident. A Full Bench of this Court in Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others, held that in case a passenger sustained injuries or died on account of his own negligence, the Railway Administration cannot be held liable to pay the compensation. Not being aware of this principle, the Tribunal proceeded on the assumption that an attempt on the part of the passenger to board a moving train is not an exception to the untoward incident. The said finding cannot be accepted. This Court is of the view that taking into account, the statement made by the Respondent that the passenger fell when the train was in motion, the negligence to the extent of 50% can be attributed.

8. Hence, the appeal is partly allowed and a sum of Rs. 2,00,000/- is awarded as compensation on account of the death of the deceased, to the Appellant. The amount shall carry simple interest at the rate of 6% per annum from the date of application in view of the judgment of the Hon"ble Supreme Court in Civil Appeal No. 3658 of 2009, dated 14th May, 2009. There shall be no order as to costs.