

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CIVIL MISCELLANEOUS APPEAL No.1156 of 2017

JUDGMENT :

1. This appeal is filed challenging the order dated 11.09.2017 in O.A.II (U) No.23 of 2011, passed by the Railway Claims Tribunal, Secunderabad Bench. Appellants are applicants before the Tribunal.

2. Facts of the case in nutshell are that on 06.05.2008 the deceased/Nookala Subba Ratnamma, along with her relatives, boarded Train No.7481/Howrah-Tirupathi express at Akividu and got down at Singarayakonda Railway Station. Further, in order to go to Kandukuru, she climbed down the platform and when the deceased attempted to climb the platform, Train No.6687/Navajeevan Express suddenly came from Kavali side without blowing whistle and when the deceased moved backward, her sari obstructed her movement as it stuck to the tracks, due to which, she fell down and the train hit her and

dragged to some distance and she died on the spot. Therefore, the applicants filed O.A. claiming compensation of Rs.8,00,000/- from the Railways.

3. The Tribunal, on considering the entire oral and documentary evidence adduced before it, dismissed the O.A. Hence, the applicants are before this Court.

4. Heard both sides and perused the record.

5. It is contended by the learned counsel for appellants that the Tribunal has passed the impugned order without appreciating the evidence on record in proper perspective. It is contended that there is every chance of misplacement of the journey ticket due to the accident, but as the accident occurred within the railway station premises, the Tribunal ought to have granted compensation.

6. The learned Standing Counsel for Railways, on the other hand, contended that the deceased had died due to her

negligent act of crossing the tracks while the train was coming, hence, it cannot be termed as an untoward incident. It is further contended that the act of crossing the tracks by the deceased would amount to criminal trespass, therefore, the Tribunal have rightly dismissed the claim of the applicants for compensation and contended that there are no grounds to interfere with the well reasoned order passed by the Tribunal and prayed for dismissal of the appeal.

7. In the present case, it is to be seen that the death of the deceased was not caused due to an accidental fall from the train so as to term it as an untoward incident. The evidence on record show that the deceased had died on being hit by Train No.6687/Navajeevan Express while she was crossing the tracks, as has been admitted by AW-1, who was none other than the son of the deceased. AW-1 further admitted in his cross-examination that the incident had occurred due to the negligence of his mother.

8. Further, it is to be noticed that though there is foot-over bridge in the railway station, instead of using the same, the deceased went on crossing the railway tracks, which would amount to criminal trespass as rightly contended by the learned Standing Counsel for respondent. As per human psychology, no person will try to cross the tracks when the train is coming. More over, the applicants came to know about the death of the deceased only on seeing the newspaper clippings and till then, it was an unknown dead body. Further, no FIR was registered on behalf of the applicants that the deceased was missing. There was also no evidence put-forth by the appellants that the sari of the deceased got stuck to the tracks due to which the accident had occurred. Therefore, the said version cannot be accepted.

9. It is also relevant to refer to Section 124-A of the Railways Act, which reads as under :

“124-A. Compensation on account of untoward incident:- When in the course of working a railway

an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to---

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation :- For the purpose of this section, 'passenger' includes –

- (i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

10. The applicants failed to prove that the death of the deceased was due to an untoward incident. Further, the oral evidence of AW-1 i.e. the son of the deceased show that the accident was the result of the negligent act of crossing the tracks by the deceased. Therefore, the appellants are not entitled for any compensation from the Railways.

11. For the reasons recorded above, this appeal is devoid of merits and it is accordingly dismissed, confirming the impugned order of the Tribunal. No order as to costs.

12. Pending miscellaneous applications, if any, shall stand closed.

G. ANUPAMA CHAKRAVARTHY, J

Date: 12.04.2022

ajr