
(2022) 09 TEL CK 0031

High Court For The State Of Telangana:: At Hyderabad

Case No: Civil Miscellaneous Appeal No. 503 Of 2019

Gyni Srinivas

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: Sept. 5, 2022

Acts Referred:

- Railways Act, 1989 - Section 123(c)(2)

Hon'ble Judges: Sambasiva Rao Naidu , J

Bench: Single Bench

Advocate: S Chandrasekhar, Raghavendra Reddy

Final Decision: Partly Allowed

Judgement

1. Being aggrieved by the Judgment dated 05-03-2019 in OA II (U) No.171 of 2015 on the file of Railway Claims Tribunal, Secunderabad Bench, the

appellants who are applicants in the above referred application filed the present appeal.

2. As could be seen from the record, the appellants herein are parents of one Vamshikrishna, who herein after will be referred as deceased was a

student and a bachelor. On 28-04-2015, the deceased with a view to attend a function of his friend at Bellampally, he left his house at Peddapally at

11.a.m., and reached railway station. He has purchased journey ticket from Peddapally to Bellampally and boarded a train but accidentally fell down

from the running train and died on the spot. In the evening hours, when the appellant No.2 made an attempt to contact the deceased, she could not

reach him. Thereafter, she was informed about the incident met by her son and died due to injuries. Thereby, the parents rushed to Mancheri where

they found the dead body of their son. Therefore, they filed the above referred application before the Railway Claims Tribunal for compensation. The

application was opposed by the respondent on the ground that the post-mortem report revealed the presence of alcohol in the abdomen of the

deceased. There was no eye-witness to the alleged incident. Even as per the General Diary entry and sketch prepared at the scene of accident it

would suggest that the dead body was found in between the track. Therefore, they claimed that they are not liable to pay any compensation.

3. The Tribunal framed four (4) issues. During the enquiry, the appellant No.2, who is mother of the deceased filed her evidence affidavit. She was

examined as AW.1. They have marked Exs.A1 to A9. No body was examined by the respondent but Divisional Railway Manager's report was

marked as Ex.R1. The Railway Claims Tribunal did not accept the contention of the appellants herein and placing reliance on the PME report, came

to a conclusion that the deceased did not suffer any untoward incident within definition under Section 123(c)(2) of Railways act, 1989, thereby,

dismissed the application.

4. The learned counsel for the appellant has submitted that the deceased, who purchased a valid journey ticket and who boarded Singareni passenger,

accidentally fell down from train, thereby, it is an untoward incident and thereby the appellants are entitled to compensation. The learned counsel has

further stated that though the appellants have examined AW.1 and marked documents in support of their claim and in spite of the fact that respondent

did not adduce any evidence, the Tribunal basing on Ex.R1 dismissed the application filed by the appellant herein. The learned counsel has submitted

that the findings of the Tribunal on the basis of post-mortem report are incorrect. Even as per the post-mortem report, Final report from the Forensic

Science Laboratory was not received. The Medical Officer gave a clear finding that the deceased died due to severe injuries received from the train

accident. Therefore, the learned counsel sought for setting aside the order passed by the Tribunal.

5. In the grounds of appeal, the appellants have claimed even though the application was filed for Rs.4,00,000/-, in view of the subsequent Gazette

issued by the Union of Government, they are entitled to enhanced compensation of Rs.8,00,000/-. Thereby, they prayed for a sum of Rs.8,00,000/-

with interest from the date of accident.

6. The learned counsel for the respondent has submitted the evidence placed by the appellants and report marked as Ex.R1 clearly shows that there

was alcohol in the abdomen of the deceased thereby, even if it is believed that the deceased fell down from the train it was due to influence of alcohol

but was not due to untoward incident. Therefore, the appellants are not entitled to any compensation, and therefore sought for dismissal of the appeal.

7. Now the points for consideration are :

1. Whether the findings of the Tribunal are incorrect? If so, whether they are liable to be set aside?

2. Whether the appellants are entitled to enhanced compensation of Rs.8,00,000/- as prayed for?

8. The learned counsel for the appellants while relying on a Judgment between Union of India Vs. Amaravati Devi AIR (DEL) 2004 0 218, and

submitted that even if liquid contents of the stomach smelt alcohol, that itself is not sufficient to prove that the deceased when he had fallen from the

train was intoxicated thereby, the appellants are entitled to compensation. He has also relied on another Judgment of this Court in C.M.A.No.78 of

2016 wherein, this Court opined that when there is no breath analysis test to find percentage of the alcohol in the blood of the appellant, it is difficult to

constitute that the appellant was preliminarily negligent and he himself responsible for fall from the subject train.

9. There is no dispute about the relationship between the parties. The journey of deceased in Singareni Passenger from Peddapally to Bellampally on

above referred date is also not in dispute. The respondent did not deny the contention of appellants that their son boarded the train, having purchased a

valid ticket. The evidence of AW.1 and documents marked as Exs.A1 to A9 which includes inquest, PME report etc., categorically shows that the

deceased, who traveled in the above referred train died and his dead body was found on the Railway track with multiple injuries over his body. The

Tribunal below placed reliance on the post-mortem report, but the Medical Officer who conducted post-mortem was not examined by the respondent.

It is true, there is a mention in the PME report to the effect that stomach contains alcohol smell. As per the opinion as to the cause of death by the

Civil Asst. Surgeon, it is stated that the deceased died due to multiple injuries and report from Forensic Science Laboratory was awaited. Therefore,

the respondent did not examine any qualified person to prove that there was alcohol in the blood of the deceased. No evidence is forthcoming. With

regard to the age, percentage of the alcohol in the blood of the deceased, most importantly there is no evidence before the Court to believe that the

deceased was under the influence of alcohol/he was intoxicated at the time of accident.

10. In the above referred Judgment, the Hon'ble High Court of Delhi made an observation that though the stomach contents gave alcohol smell

that itself not sufficient to prove that the deceased at the time of fall from the train was intoxicated. In another Judgment relied on by the appellant,

this Court made an observation that in the absence of breath analyser test and in the absence of evidence of percentage of alcohol in the blood of the

deceased, it is difficult to constitute that the appellant therein was under the influence of liquor.

11. In the case on hand except the sentence in the post-mortem report to the effect that the contents of the stomach gave alcohol smell, no scientific

evidence is placed to believe that the deceased consumed alcohol and he was under the influence of liquor when he fell down from the train. There is

no evidence as to the percentage of the liquor in the blood of the deceased. For all these reasons, it cannot be held that the deceased fell from the

running train due to the influence of liquor. Therefore, the death of the deceased can be considered as an untoward incident. There is evidence before

the Court to believe that the deceased purchased a ticket thereby, he is a bonafide passenger and he died in the untoward incident. Therefore, the

appellants are entitled to compensation.

12. However, this Court is not convinced with the argument of the learned counsel for the appellants that they are entitled to enhanced compensation.

The accident occurred on 28-04-2015. The Gazette came into effect on 22-12-2016. The appellants could not produce any material to show that the

Gazette Notification was issued with retrospective effect, therefore, they cannot claim enhanced compensation. But they are entitled to a sum of

Rs.4,00,000/- with costs and interest @ 9% per annum from the date of accident.

13. In the result, appeal is partly allowed. A sum of Rs.4,00,000/- is awarded with interest @ 9% on the compensation amount from the date of

accident till the amount is realized.

Consequently, Miscellaneous applications if any, are closed.

No Costs.