

P. Ramaswamy Vs. Union of India (Uoi) Represented by General Manager, South Central Railway

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Court : Andhra Pradesh

Decided On : Aug-21-2002

Reported in : 2003ACJ1934

Judge : G. Bikshapathy, J.

Appeal No. : A.A.O. No. 107 of 1998

Appellant : P. Ramaswamy

Respondent : Union of India (Uoi) Represented by General Manager, South Central Railway

Advocate for Def. : Dantu Srinivas, Adv.

Advocate for Pet/Ap. : S. Chandrasekhar, Adv.

Disposition : Appeal allowed

Judgement :

G. Bikshapathy, J.

1. This appeal is filed against the order, dated 24.11.1997 passed by the Railway Claims Tribunal, Secunderabad Bench in O.A.A. No. 21 of 1997.

2. The appellant is the claimant, who laid a claim before the Tribunal, claiming compensation in respect of the death of his wife Geeta. It is the case of appellant that himself and his wife Geeta were travelling from Bollaram to Dayanandnagar on 1.1.1997 by the local train No. BS 16. The appellant and his wife boarded in two different compartments. When the train reached Ramakrishnapuram Railway Station, the wife of the appellant got down from the compartment in which she was sitting and tried to enter into the compartment in which the appellant was sitting. In the process of getting down from the compartment, she fell and came under the wheels of the train and died instantaneously. Therefore, the appellant laid a claim for compensation.

3. The Tribunal found that the accident falls within the definition of 'untoward incident', but however on the question of coming to the bona fides of the passenger, a dispute arose with regard to the railway ticket. Admittedly the deceased was possessing ticket No. 73881 and it was the contention of the Railways that the said ticket was issued on 2.1.1997 and it was not issued on 1.1.1997. On this basis the Tribunal referred the ticket in question along with sample tickets to the Forensic Science Laboratory for expert's opinion. The Expert of the Forensic Science Laboratory gave his opinion to the effect that the ticket in question was punched on 1.1.1997, but not on 2.1.1997 as claimed by the Railways. However, another contention was raised by the Railways before the Tribunal that tickets were issued at 20.00 hours while the train started at Bollaram Railway Station at 19.20 hours and, therefore, the ticket in question does not relate to the passenger, who died in the accident. This contention was accepted by the Tribunal and Tribunal held that the deceased Geeta was not a bona fide passenger and accordingly dismissed the claim petition, by order 24.11.1997, against which the present appeal is filed.

4. Learned Counsel for the appellant, however, submits that the deceased was a bona fide passenger and she possessed the ticket No. 73881. The only contention advanced by the Railways before the Tribunal was that the ticket in question was not issued on 1.1.1997, but was issued on 2.1.1997 and this contention was not accepted by the Tribunal and on the basis of the opinion received from Forensic Laboratory the Tribunal held that the ticket in question was in fact issued on

1.1.1997. However, the Tribunal rejected the claim on the basis that the ticket in question was issued at 20.00 hours on 1.1.1997. It is not in dispute that the Railways never disputed the accident and that the only contention sought to be raised before the Tribunal was that the ticket in question was issued on 2.1.1997, but not on 1.1.1997. When it was established that the ticket in question was issued on 1.1.1997 the burden of proof lies on the Railways to contend that the ticket in question was issued after departure of the train. But this aspect was never pleaded in the counter filed by the Railways before the Tribunal. When the principal defence was rejected holding that the ticket in question was issued on 1.1.1997, it would not lie in the mouth of the Railways to further contend that the ticket in question was issued at 20.00 hours. It is stated by the Railways that normally tickets are issued one hour earlier to the departure of the train and when the train departed at 19.20 hours, the ticket in question ought to have been issued one hour prior to 19.20 hours and, therefore, the Tribunal appears to have believed the version of the Railways. But a close scrutiny of the contention itself shows that the Railways have committed any amount of irregularities in this case. Firstly, they tried to avoid the claim on the ground that the ticket in question was issued on 2.1.1997, but in fact on the basis of the opinion received from the Forensic Science Laboratory, the Tribunal held that ticket in question was issued on 1.1.1997. As per the records maintained by the Railways, the sale of ticket in question was not at all reflected on 1.1.1997, but the sale of the ticket was reflected on 2.1.1997. In view of the irregularities committed by the Railway sit would not be safe to rely on the statement of the Railways that the ticket in question was issued at 20.00 hours. Thus I am of the clear opinion that the Tribunal has misdirected itself and rendered erroneous finding to the effect that the ticket in question did not belong to the deceased. The evidence as a whole has to be considered and the conduct of the Railways has to be taken into consideration while dealing with the matter in respect of the accident that took place. It was not the case of the Railways at all that the numerical figures relate to 20.00 hours and that even assuming that the ticket in question was issued on 1.1.1997 the ticket did not relate to train No. BS 16. Under those circumstances, I am satisfied that the Railways have not been able to discharge the burden placed on them. In the recent judgments in *Union of India v. B. Koddekar* : AIR 2003 AP23 and in

Godisela Rajamma v. Union of India : 2002(4)ALD632 , the Division Bench of this Court held that the burden is on the Railways to prove that the deceased was not a bona fide passenger. Under those circumstances, I am of the opinion that the finding of the Tribunal that the deceased was not a bona fide passenger has necessarily to be set aside. Accordingly, I hold that the deceased was a bona fide passenger and, therefore, the appellant is entitled to compensation under the provisions of the Railways Act.

5. The appeal is accordingly allowed awarding a total amount of Rs. 2,00,000 (rupees two lakh only) to the appellant with interest at 12 per cent per annum from the date of the petition till the date of realization. The respondent Railways shall deposit the compensation amount along with interest before the Tribunal within a period of two months from the date of receipt of a copy of this order. On such deposit, the Tribunal shall release the amount in favour of the petitioner without seeking any security. No costs.

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