

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

C.M.A.Nos.567, 572 & 795 of 2006

COMMON JUDGMENT:

These three appeals are filed under Section 23 of the Railway Claims Tribunal Act, 1987. The appellants filed O.A.A.Nos.254, 279 and 320 of 2003, before the Secunderabad Bench of the Railway Claims Tribunal (for short '*the Tribunal*'). It was pleaded that on 02-07-2003, Shaik Fareed, husband of the appellant in C.M.A.No.567 of 2006; Shaik Chunnu, husband of the 1st appellant in C.M.A.No.572 of 2006, and Kumaraswamy, husband of the 1st appellant in C.M.A.No.795 of 2006, together, were travelling in an auto rickshaw, on the under bridge road, at Warangal.

The engine of Train No.7201 – Golkonda Express has fallen on the road from the bridge, and the auto rickshaw, along with the three individuals, named above, were crushed, leading to instantaneous death. It was pleaded that the deceased died in an accident, due to the negligence on the part of the railway administration, and claims for compensation were made.

The respondent-railways raised objection, as to the maintainability of the claims. They pleaded that the Tribunal has jurisdiction to adjudicate the claims, only where the passengers in a train received injuries, or died in an accident, or untoward incident, and since the deceased were not passengers, the claim petitions are not maintainable in law. The Tribunal accepted that contention and dismissed the claim petitions. Hence these three civil miscellaneous appeals.

Heard Sri Chalapathi Rao and Sri Narayan Laxman Rao, learned counsel for the appellants, and Sri B.H.R. Choudary, learned counsel for the respondent.

There is no denial of the fact that the three persons, referred to above, died, on account of the fall of an engine of the train on the auto rickshaw. A list of victims has been prepared by the railway administration. All the above named three persons were included. Their dependents were paid *ex gratia* of Rs.1 lakh, each.

The claims were presented before the Tribunal, placing reliance upon Sections 124 and 124-A of the Railways Act, 1890 (for short 'the Act'). A perusal of the two provisions, referred to above, makes it clear that the railway administration is placed under obligation to compensate the victims of an accident, or untoward incident, even if no negligence existed on the part of the railways. However, the benefit under those provisions is confined and restricted to the passengers in a train, in case they are injured, and to the dependents, if they died in the accident. To put it in other words, the Tribunal is not conferred with the jurisdiction to entertain the claims of non-passengers, or their dependents, even if the injury or death was on account of the accident, involving a train, are part of it. The Tribunal examined the relevant provisions and arrived at a just a proper conclusion.

It is not as if that the appellants do not have any remedy. Sections 124 and 124-A of the Act cover only a part of the tortious liability of the railway administration. It is only the cases covered by those provisions, that are required to be dealt with by the Tribunal. If the appellants are of the view, that there was any other form of negligence, or tortious liability, on the part of the railways, they can certainly file suits, or institute proceedings under any other enactment, covering the subject.

This Court is of the view that the Tribunal ought to have returned the claims, instead of dismissing them, on merits, so that the

remedies could have been pursued before the proper forum. Even now, that facility can be created, by saving the limitation, covered by the period, during which the proceedings were pending before the Tribunal, and before this Court.

The appeals are accordingly dismissed, leaving it open to the appellants to prosecute the remedies before a Civil Court, or any other forum. It is directed that, in case, suits or other appropriate proceedings are instituted, within a period of three months from today, they shall be entertained by the concerned Court, or Forum, as having been presented within limitation.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.07-10-2009.

Note:

CC in ten days.

(B/O) KO