

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.496 OF 2010

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 16.04.2010, in O.A.A.No.195 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the respondents/applicants under Section 125 of the Railways Act, 1989 read with Section 16 of the Railway Claims Tribunal Act, 1987 with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Paleti Venubabu in an untoward incident of accidental fall from running train that took place on 18.05.2005 was allowed.

2. Heard the learned Standing Counsel for the appellant/Railways and the learned counsel for the respondents/applicants. Perused the material on record.

3. Learned Standing counsel for the appellant/Railways would contend that the deceased was not a *bona fide* passenger of the subject train, that the Tribunal erroneously found that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall, that the Tribunal was not properly constituted as required under Section 4 of the Railways Act, that the grant of compensation in favour of respondents/applicants is unsustainable

and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, the learned counsel for the respondents/applicants would contend that the Tribunal had rightly dealt with all the contentions and recorded the findings in favour of the respondents/applicants and granted compensation of Rs.4,00,000/- for the death of deceased Paleti Venubabu that occurred in an untoward incident of accidental fall on 18.05.2005, that there is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the points that arise for determination are:

1. *Whether the deceased Paleti Venubabu was a bona fide passenger of Train No.477 passenger travelling from Ongole to Uppugunduru on 18.05.2005 ?*
2. *Whether the Tribunal was properly constituted as required under Section 4 of the Act ?*

POINT No.1:-

6. There is not much dispute with regard to the death of Paleti Venubabu in an untoward incident of accidental fall from Train No.477 on 18.05.2005. There is specific mention in the post-mortem report-Ex.A-3 that the deceased died in an untoward incident of falling from Train No.477 on 18.05.2005. The dispute is only with regard to possession of journey ticket and constitution of Tribunal.

7. In a decision rendered by the Apex Court in Union of India vs. Rina Devi in Civil Appeal No.4945 of 2018 [Special Leave Petition

(Civil) No.10223 @ D.No.6059 of 2018], it is held at para No.17.4 as under:

"We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

8. When there is an accidental fall from train, there is every possibility of misplacement of journey ticket as well as belongings of the deceased. In the instant case, merely, because the deceased was not possessing journey ticket, it cannot be said that he was not a *bona fide* passenger of Train No.477. It is also appropriate to state that AW.2, who dropped the deceased in the Railway Station, clearly and categorically stated that the deceased purchased ticket and boarded Train No.477 on 18.05.2005. The Tribunal, after appreciating the oral and documentary evidence, particularly the evidence of AW.2, held that the deceased was a *bona fide* passenger and, therefore, there is no need to take a different view. Hence, the point is answered in favour of respondents/claimants and against appellant/Railways.

POINT No.2:-

9. It is contended by the learned Standing Counsel that the impugned order was passed by the single Member (Judicial) of the Tribunal and there is no mention in the order that the said Member was authorized by the Chairman. Admittedly, such objection was

not raised during pendency of O.A.A. before the Tribunal and now it is taken for the first time before this Court. Generally, no Member would take up the lis without delegation by the Chairman. Therefore, it can be presumed that the Chairman, exercising powers under Section 4 of the Act, authorized the Member (Judicial) to take up the lis and the same was disposed of by the Member (Judicial). Therefore, it cannot be held that the application was taken up by Member (Judicial) without authorized delegation by the Chairman of the Tribunal. There is no infirmity in the findings recorded by the Tribunal. Accordingly, the point is answered in favour of respondents/claimants and against appellant/Railways.

10. In view of the above, the appeal is dismissed. No order as to costs.

11. During the course of hearing, learned counsel for the appellant/Railways submitted that the appellant has already deposited 50% of the awarded amount.

12. In view of the same, the appellant/Railways is directed to deposit balance 50% of the awarded amount within three months from the date of receipt of a copy of this order.

Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR. JUSTICE SHAMEEM AKTHER

Date : 15.11.2018
Pv

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



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Prv

