

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.1308 of 2011

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 12.10.2011, passed in O.A.A.No.172 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-claimants claiming a compensation of Rs.2,00,000/- for the injuries sustained by the 1st appellant-1st applicant in an untoward accidental fall from a running train No.237 Visakhapatnam – Kolapur DMU Passenger on 22.10.2005 at Parvathipuram Station, was dismissed. During pendency of the Original Application before the Tribunal, the appellants 2 and 3 were brought on record as the legal representatives of the 1st appellant on record.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the Tribunal had recorded specific finding that the 1st appellant had fallen accidentally from a train No.237 – Visakhapatnam – Kolapur DMU Passenger on 22.10.2005 and it is an untoward accidental fall from the said train, but the Tribunal recorded a finding that the 1st appellant was not a *bona fide* passenger in paragraph No.18 of its order, which is erroneous; the journey ticket was lost; and ultimately, prayed to

set aside the impugned order and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways supported the impugned order passed by the Tribunal and would contend that the Tribunal considering the evidence adduced by both parties, rightly dismissed the claim of the appellants; the 1st appellant did not possess any valid ticket and no ticket was filed before the Tribunal; the 1st appellant being a railway man could have been vigilant and ought not have travelled by train No.237 – Visakhapatnam – Kolapur DMU Passenger; the Tribunal had assigned reasons in holding that the 1st appellant-injured was not *bona fide* passenger; there is no infirmity in the impugned order of the Tribunal; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the following points have come up for determination in this appeal:

- 1) Whether the 1st appellant was a *bona fide* passenger of train No.237 – Visakhapatnam – Kolapur DMU Passenger, travelling from Gumada to Parvathipuram on 22.10.2005?
- 2) Whether the 1st appellant had fallen from the train No.237 and his right leg was crushed under the wheels in an untoward incident of accidental fall from the train?
- 3) Whether the 1st applicant is entitled to claim compensation as prayed for?
- 4) Whether the impugned order passed by the Tribunal is liable to be set aside?

6. Points 1, 2 and 4: The original application was filed by the 1st appellant stating that on 22.10.2005, he bought a ticket from Gumada to Parvathipuram, boarded the train No.237 – Visakhapatnam – Kolapur DMU Passenger and fell down accidentally at Parvathipuram Railway Station due to the jerks of the train and his right leg was crushed under the wheels. He further stated that his ticket was lost in the accident and his right leg was amputated below the knees and he also suffered other injuries also. As per the entire record placed before the Tribunal, there is no mention of the ticket number. The case of the injured is that he lost the ticket in the accident. During pendency of the proceedings before the Tribunal, the 1st appellant (injured) died on 11.07.2008 and thereafter, the appellants 2 and 3 were brought on record and the 2nd appellant deposed as A.W.1 and got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of wound certificate, Ex.A.3-attested copy of statement, Ex.A.4-xerox copy of legal heir certificate (compared with original) and Ex.A.5-xerox copy of death certificate (compared with original). On behalf of the respondent-Railways, R.W.1 was examined and Ex.R.1-attested copy of diary entry, Ex.R.2-attested copy of memo to GRP, Ex.R.3-memo of licensed porter and Ex.R.4-DRM's report were marked.

7. The Tribunal made certain remarks in paragraph No.18 of the impugned order that the 1st applicant being the railway man ought not have purchased the ticket and disbelieved that the 1st applicant was not a *bona fide* passenger. There is

specific evidence of A.W.1 that the 1st applicant (father of A.W.1) had purchased a valid journey ticket. The Tribunal had applied distinct scales to the general public and the railway man with regard to the appreciation of possession of journey ticket. On the date of commencement of evidence, the 1st appellant-injured was not alive. There was no opportunity to explain what happened to the ticket and how it was lost. But in his application to claim compensation, the 1st applicant had specifically stated that in the accident, the journey ticket was lost. It can also be presumed that there was no sufficient time to the 1st appellant-injured to obtain a pass to undertake the journey and he might have purchased the ticket to travel by the subject train No.237 – Visakhapatnam – Kolapur DMU Passenger. Further, it can also be held that if a railway employee is caught without a valid ticket by the railway special police/squad, the consequences would be severe, i.e., the person who caught while travelling in the train would loose his job and he can also be prosecuted for the offence under the Railways Act. No railway employee could invite such problem. Further, the general public and the railway employees cannot be put on different scales. There cannot be a distinction with regard to the possession of the valid journey ticket and whether victim is a *bona fide* passenger or not. Under these circumstances, as there is every possibility of losing the ticket in the accident, it can be safely concluded that the 1st appellant-injured was a *bona fide* passenger of train No.237 – Visakhapatnam – Kolapur DMU Passenger. The finding of the Tribunal is erroneous

and it is liable to be set aside. Accordingly, these points are answered.

8. Point No.3: As per the medical record available on record, the 1st appellant-injured suffered amputation of right foot. This injury is covered under the notification dated 22.12.2016, under Serial No.24 of Part III of the amended Schedule of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, i.e., amputation one foot resulting in end-bearing. Therefore, the 1st appellant-injured is entitled to Rs.2,40,000/- (Rupees two lakhs and forty thousand only) as compensation. Since the 1st appellant-injured died during pendency of the proceedings before the Tribunal, appellants 2 and 3, being the legal representatives of the 1st appellant-injured, are entitled to share the compensation awarded equally. Accordingly, this point is answered.

9. In the result, the appeal is allowed, setting aside the order, dated 12.10.2011, passed in O.A.A.No.172 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.172 of 2006 filed by the appellants-applicants is allowed granting Rs.2,40,000/- (Rupees two lakhs and forty thousand only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants are entitled to interest @ 6% per annum from the date of this judgment till realisation. On deposit, the appellants 2 and 3 are

entitled to withdraw the entire amount of compensation equally.
Pending Miscellaneous Petitions, if any, shall stand closed. There
shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

1st November, 2018

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