

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.839 of 2016

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 15.06.2016 in O.A.A. No.121 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellants-applicants claiming compensation for the death of one Paidaiah (hereinafter referred to as 'the deceased') in an untoward incident of accidental fall at KM 427/2-3 posts between Komatapalli and Donkinavalasa railway stations, from train No.228 Visakhapatnam-Rayapur passenger (hereinafter referred to, as 'the subject train') while travelling from Vizianagaram to Donkinavalasa on 27.2.2007, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicants would contend that the journey ticket was found in the apparels of the deceased and the same is mentioned in Ex.A2-inquest panchanama; that copy of ticket is marked as

Ex.A3; that the Tribunal erroneously held that the deceased was not a *bona fide* passenger and that as admitted by wife of the deceased, the deceased was suffering from giddiness and fits and the injuries resulting thereby from unknown circumstance would not amount to a case within the purview of the Act, and declined to grant compensation; that the Tribunal did not consider the evidence in right perspective and arrived at perverse findings, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the deceased was not a *bona fide* passenger of the subject train and did not die in an untoward incident of accidental fall from the said train; that the injuries suffered by the deceased were self-inflicted; that the Tribunal elaborately dealt with the oral and documentary evidence on record and rightly dismissed the claim application; that there is no infirmity, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the deceased was a *bona fide* passenger of train No. 228 Visakhapatnam-Rayapur

passenger travelling from Vizianagaram to Donkinavalasa on 27.2.2007 ?

2) Whether the deceased died as a result of accidental fall from train No. 228 Visakhapatnam-Rayapur passenger while travelling from Vizianagaram to Donkinavalasa on 27.2.2007 ?

3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?

4) To what relief ?

Points 1 to 4:

7. To substantiate the claim of the applicants, the applicant no.1 deposed as A.W.1 and Ex.A1-attested copy of FIR; Ex.A2-attested copy of inquest report; Ex.A3-attested copy of journey ticket; Ex.A4-attested copy of case diary part-III; Ex.A5-attested copy of statement of applicant no.1; Ex.A6-photo copy of ration card; Ex.A7-attested copy of final report and Ex.A8-family member certificate, were got marked.

On behalf of railways, R.Ws.1 and 2 were examined and Ex.R1-copy of enquiry report; Ex.R2-copy of station diary and Ex.R3-copy of rough journal were got marked.

8. It is the case of the applicants that on 27.02.2007, while the deceased was travelling from Vizianagaram to Donkinavalasa by the subject train, he accidentally fell down from the said train at KM 427/2-3

posts between Komatapalli and Donkinavalasa railway stations due to jerks, jolts, etc., sustained injuries and succumbed to the same. R.Ws.1 and 2 are not direct witnesses to the occurrence of the incident. Their evidence demonstrates about finding of a dead body at KM 427/2-3 posts between Komatapalli and Donkinavalasa railway stations. A.W.1 is also not a direct witness to the accidental fall. Inquest over the dead body of the deceased was conducted on the same day of fall i.e. on 27.2.2007. In Ex.A2-inquest panchanama, there is mention of ticket particulars and about fall of the deceased accidentally from the subject train due to jerks, etc. Further, Ex.A3-copy of ticket was marked. These two circumstances were not contradicted by the railway authorities from the beginning either by oral or documentary evidence. Nowhere it has come up that the deceased was not a *bona fide* passenger of the subject train or that the ticket details given in the inquest panchanama are not meant to travel by the subject train on 27.02.2007. When a valid journey ticket was found in possession of the deceased in the course of inquest panchanama and a copy thereof is filed before the Tribunal, it can be safely concluded that the deceased was a *bona fide* passenger of the subject train on 27.02.2007.

9. The Tribunal, merely relying on the evidence of A.W.1 in cross-examination, where she admitted that her

husband was suffering from giddiness, fits, etc., held that the deceased might have died in other circumstances. When the dead body was found at the railway track at KM 427/2-3 posts between Komatapalli and Donkinavalasa railway stations, when there is valid railway ticket and when there is evidence of A.W.1 with regard to the deceased travelling by the subject train, it cannot be said that the deceased did not fall accidentally from the subject train due to jolts and jerks, etc. The fall amounts to an untoward incident under Section 123 (c) of the Railway Act, 1989. No other conclusions are possible.

10. From the aforesaid discussion, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train and died of the injuries sustained by him in an untoward incident of accidental fall from the subject train. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Under these circumstances, the points are held in favour of the applicants and against the railways.

Point No.4:

11. In the result, the C.M.A. is allowed. The impugned order dated 15.06.2016 in O.A.A. No.121 of 2007 on the file of the Railway Claims Tribunal, Secunderabad

Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicants are awarded compensation of Rs.8,00,000/- (Rupees eight lakhs only) in view of the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways is directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicants are entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization.

12. It is brought to the notice of this Court that applicant no.4 died. From out of the compensation awarded, applicant no.1 is entitled to Rs.5,00,000/- and the applicants 2, 3 and 5 are entitled to Rs.1,00,000/- each. On deposit, the applicants are entitled to withdraw their respective shares with accrued interest.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

13.12.2018
DRK

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.839 of 2016



13.12.2018

DRK