

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.582 of 2014

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 21.03.2014, passed in O.A.II(U)No.161 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal dismissed the claim application of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of D.Jaipal in an untoward incident of accidental fall while travelling from Uppal to Mancheri on 17.02.2008 by Singareni Passenger train at Km.340/29-341/1 between Uppal and Jammikunta.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased-d.Jaipal died due to accidental fall from Singareni Passenger train on 17.02.2008 while travelling from Uppal to Mancheri; there is specific mention of accidental fall from the train in the inquest panchanama; in the final report also, the concerned police concluded that the deceased had fallen from the train; there is direct evidence of A.W.2 with regard to the purchase of the ticket and falling of the deceased from the subject train; when there being any record, the Tribunal held that the deceased was not a *bona fide* passenger of the subject train and did not die in an untoward incident of accidental fall and erroneously concluded that there is

inconsistency in the evidence of A.W.1 and A.W.2; the findings of the Tribunal are not based on evidence and record; 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 would contend that there is no direct witness with regard to the accidental fall; the journey ticket was not recovered in the inquest panchanama conducted over the dead body; there is inconsistency in the evidence of A.W.1 and A.W.2; A.W.1 made a statement to the police that her husband had committed suicide; having considered the entire evidence on record, the Tribunal rightly dismissed the claim application of the applicants; the findings of the Tribunal are based on evidence and record; there are no circumstances to interfere with the findings 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 deceased-D.Jaipal was a *bona fide* passenger of Singareni Passenger train and he died in an untoward incident of accidental fall from the said train while travelling from Uppal to Mancherial on 17.02.2008?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 21.03.2014 passed by the Tribunal is liable to be set aside?

4) To what relief?

6. Point Nos.1 and 3: The case of the applicants is that the deceased-D.Jaipal was a *bona fide* passenger of Singareni Passenger train and he died in an untoward incident of accidental fall from the said train while travelling from Uppal to Mancherial on 17.02.2008. To substantiate the case of the applicants, the 1st applicant-wife of the deceased deposed as A.W.1 and got examined the friend of the deceased as A.W.2 and also got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of inquest report, Ex.A.3-attested copy of post-mortem examination report, Ex.A.4-attested copy of Final Report and Ex.A.5-Dependent Certificate. On behalf of the respondent-railways, no oral or documentary evidence adduced.

7. In Ex.A.4-final report, the police concluded that the deceased had accidentally fallen from train No.323 Singareni Passenger while travelling from Uppal to Mancherial to go to his uncle's place. The place of fall is mentioned as in between Uppal and Jammikunta railway stations at Km.No.340/29-341/1. There is also mention in the final report marked as Ex.A.4 that the deceased had accidentally fallen down from the subject train, suffered injuries and died. It is also specifically mentioned in column No.15 of the inquest report marked as Ex.A.2 that the statements of the wife and parents of the deceased were recorded and panchas opined that the deceased started from his home on 17.02.2008 saying to his parents that he would go to his maternal uncle at Mancherial to request him to part with for some amount as a house under Indiramma Scheme was

sanctioned and the deceased boarded some train at Uppal railway station; while travelling in the said train, he accidentally fell down from it between Uppal and Jammikunta railway stations at Km.No.340/29-341/1 Up-line and died due to severe injuries. The Tribunal while discussing the evidence, particularly, Ex.A.4-final report, held that the statement was given by A.W.1 to the police stating that the deceased had committed suicide. No copy of the statement is filed to substantiate the same by the respondent-railways. Had it been true, the same would have been reflected during the course of inquest panchanama under Ex.A.2-inquest report. There is no such mention at all in the inquest panchana, which was conducted immediately after the death of the deceased on 18.02.2008. There is also evidence of A.W.2-friend of the deceased that the deceased purchased the ticket and the deceased boarding the train No.323 Singareni Passenger on 17.02.2008. When the entire evidence and the documents are considered, the initial burden that the deceased was a *bona fide* passenger of the train No.323 Singareni Passenger had accidentally fallen from the said train on 17.02.2008 is established.

8. It is appropriate to refer the decision of the Hon'ble Supreme Court in Union of India vs. Rina Devi¹, wherein it is held as follows:

“Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari vs. Union of India

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

[(1993) ACJ 846] referring to the scheme of Railways Act, 1890, it was observed that since traveling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation.”

9. The case of the applicants is that the journey ticket was lost when the deceased had fallen from the train. Due to the friction created by the train, there is possibility of losing the journey in the accidental fall. Under these circumstances and in view of Rina Devi's case (supra), it can safely be concluded that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall from train No.323 Singareni Passenger on 17.02.2008. The fall was only an accidental fall and it amounts to untoward incident of accidental fall, as defined under Section 123(c) of the Railway Claims Tribunal Act, 1987. The Tribunal had not properly appreciated the evidence on record and erroneously dismissed the claim of the applicants. Therefore, the impugned order passed by the Tribunal is liable to be set aside. Accordingly, these points are answered.

10. Point Nos.2 and 4: All the applicants are dependents on the deceased. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants-claimants are

entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

11. In the result, the appeal is allowed, setting aside the order, dated 21.03.2014, passed in O.A.II(U) No.161 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.II(U) No.161 of 2008 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs 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. It is mentioned in the cause title of the grounds of appeal that appellant No.4 died. Therefore, appellants 1 to 3 and 5 are entitled to compensation awarded. The 1st applicant-wife of the deceased is entitled to Rs.5,00,000/- (Rupees five lakhs only) and the remaining amount of Rs.3,00,000/- (Rupees lakhs only) shall be apportioned among appellant Nos.2, 3 and 5 equally. On deposit, all the applicants are entitled to withdraw their respective shares. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

13th December, 2018

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