

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.494 of 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the Union of India, represented by the General Manager, East Coast Railway, Bhubaneshwar, challenging the order, dated 18.04.2012 passed in O.A.A. No.281 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal allowed the claim petition filed by respondents/applicants granting compensation of Rs.4,00,000/- in their favour for the death of one Payala Narasinga Rao (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from a train at KM NO.274/13-15 upline at Marripalem railway station on 24.09.2002, while he was travelling from Anakapalli to Visakhapatnam.

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 appellant-Railways would contend that the deceased committed suicide; that he was not a *bona fide* passenger of the train; that A.Ws.2 and 3 are planted to claim compensation; that the manner in which the dead body was found demonstrates that it is a case of suicide and therefore the present case falls under exceptions under Section 124A of the Railways Act, 1989; that the Tribunal had not properly appreciated the facts and circumstances of the case and erroneously held that the deceased was a *bona fide* passenger and died in an

untoward incident of accidental fall from the subject train, and ultimately prayed to set aside the impugned order and dismiss the claim application.

5. On the other hand, the learned counsel for the respondents-applicants would contend that the deceased died in an untoward incident of accidental fall from the train while travelling from Anakapalli to Visakhapatnam on 24.9.2002; that there is inquest panchanama; that there is also evidence of A.Ws.1 to 3 to establish that the deceased had accidentally fall from the train; that the books and pass held by the deceased were not returned to the family members; that the deceased was holding a valid journey pass; that the Tribunal, having analysed entire evidence on record, rightly allowed the claim application, and there is no infirmity to take a different view; and ultimately, prayed to dismiss the appeal.

6. In view of the above submissions, the points that arise for determination in this appeal are as follows:-

- 1) Whether the deceased Payala Narasinga Rao was a *bona fide* passenger of a train on 24.09.2002 travelling from Anakapalli to Visakhapatnam ?
- 2) Whether the deceased Payala Naarasinga Rao died in an untoward incident of accidental fall from running train on 24.09.2002 at KM NO.274/13-15 upline at Marripalem railway station ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 3:

7. To substantiate the claim of the respondents-applicants, the applicant no.1, who is father of the deceased, was examined as A.W.1 besides A.Ws.2 and 3

and got marked Exs.A.1 to A.12. On behalf of railways, R.Ws.1 and 2 were examined and Ex.R1-DRM's report was got marked.

8. Though the appellant/railways contends that the deceased did not die in an untoward incident of accidental fall from running train, no direct witnesses are examined. R.Ws.1 and 2 were examined on behalf of the railways. They deposed about finding of the dead body at the railway track and the injuries found over the dead body. Neither of them had seen the deceased proceeding towards railway track or in any other manner coming under the running train. There is evidence of A.W.2, who is co-passenger of the deceased. He categorically deposed that the deceased had accidentally fallen from the running train. He reiterated the same in his cross-examination. A.W.3 is brother of the deceased. His evidence reveals that he dropped the deceased on cycle at railway station. The evidence of A.Ws.2 and 3 reveals that the deceased was travelling from Anakapalli to Visakhapatnam on 24.9.2002. In the inquest panchanama as well as statutory report, there is mention that the subject death was out of an accidental fall from a train or suicide. When there is evidence of R.W.2, a co-passenger and friend of the deceased, to the effect that the deceased had accidentally fallen from the running train and when there is no evidence from the railways to hold that the deceased committed suicide, it can be safely concluded that the deceased died in an untoward incident of accidental fall from the train.

9. As far as possession of valid journey ticket is concerned, it is the case of the applicants that the deceased was possessing MST pass which is marked as Exs.A7 and A8. It expired on 21.08.2002. The subject death occurred

on 24.09.2002. The Tribunal, relying on a decision in *Mehar Parveen & another v. Union of India*¹ and *Muhammed Kanju & others v. UoI*,² held that there was no intention on the part of the deceased to travel without a ticket as he was a daily commuter to attend his duty and held that the deceased was travelling as a *bona fide* passenger on the day of the incident. It is pertinent to state that there is no mention in DRM report that the deceased was not possessing a valid journey ticket or journey pass. Under these circumstances, the finding of the Tribunal that the deceased was a *bona fide* passenger, cannot be disturbed.

10. The Tribunal had elaborately dealt with all these issues and rightly held that the deceased was a *bona fide* passenger of the subject train and died in an untoward incident of accidental fall on 24.09.2002 and ultimately granted compensation in favour of the respondents-applicants. There are no circumstances to take a different view than the view taken by the Tribunal. So, the contentions raised on behalf of the appellant-Railways do fail. The appeal is devoid of merit and is liable to be dismissed. These points are answered in favour of the respondent-applicant.

11. In the result, the appeal is dismissed, confirming the order, dated 18.04.2012 passed in O.A.A. No.281 of 2005 passed by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

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¹ 1 (2008) ACC 422

² 2005 ACJ 1356

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