

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.906 of 2010

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 30.09.2010, passed in O.A.A.No.260 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants-applicants claiming a compensation of Rs.4,00,000/- for the death of the deceased-Y.Nagaraju in an untoward incident of accidental fall from a running train, was dismissed.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that there is ample oral and documentary evidence on record to substantiate that the death of the deceased-Y.Nagaraju was on account of an untoward incident of accidental fall from a running train and he was a *bona fide* passenger. Though there are Ex.A.2-Inquest report, Ex.A.3-Post-mortem Examination report and other documents in favour of the appellants-applicants, the Tribunal had not properly analysed the same and erroneously concluded that the deceased did not die on account of an untoward incident of accidental fall from the train and ultimately prayed to set aside the order under challenge and grant compensation to the appellants-applicants as claimed.

4. On the other hand, the learned Standing Counsel for the respondent-Railways would contend that the Tribunal, after analysing

the entire evidence on record, rightly concluded that the deceased was neither a *bona fide* passenger of train No.178 Nellore – Sullurpet Passenger travelling from Nellore to Venkatachalam on 01.07.2005, nor died on account of an untoward incident of accidental fall from the said train. There is nothing to interfere with the impugned order and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether the deceased was a *bona fide* passenger of train No.178 Nellore – Sullurpet Passenger travelling from Nellore to Venkatachalam on 01.07.2005 and died as a result of an untoward incident of accidental fall from the said train?
2. Whether the order under challenge is liable to be confirmed/ set aside?
3. To what relief?

Points 1 to 3:

6. To substantiate the claim of the appellants-applicants, the appellants-applicants got examined A.W.1 and A.W.2 and got marked Ex.A.1-First Information Report, Ex.A.2-Inquest Report, Ex.A.3-Postmortem Examination Report, Ex.A.4-Dead body carrying certificate and Ex.A.5-Family Member Certificate. On behalf of the respondent-Railways, R.W.1 and R.W.2 were examined and Ex.R.1-Case Diary in Cr.No.79/05 and Ex.R.2-Divisional Railway Manager's report were marked.

7. There is no direct evidence to substantiate that the deceased died on account of an untoward incident of accidental fall from train No. passenger of train No.178 Nellore – Sullurpet Passenger on 01.07.2005. There was no recovery of ticket either from the apparel

of the deceased or from the place of his death. The Tribunal, while dealing with the subject matter, had elaborately dealt with the injuries mentioned in Ex.A.2-Inquest report and Ex.A.3-Postmortem Examination report. As per Ex.A.2-Inquest Report, the body of the deceased was cut at the waist, the head and the upper part of the body were separated from the lower part of the body, the skull was broken, the brain came out, two hands were separated at the wrist, the left shoulder bone and left leg above ankle level were broken and there were abrasions on the face and different parts of the body. The Tribunal, while dealing with the time of the alleged accident, held that the recitals of PME report and the testimony of A.W.1 and A.W.2 are inconsistent with each other. The Tribunal also held that since compensation can be claimed for the death of a person on account of an untoward incident of accidental fall from a running train, numerous cases of unnatural deaths are being projected as cases of falling from a running train. As per the material on record, the journey ticket purchased by the deceased was up to Nellore Railway station only. But the dead body of the deceased was between Vedayapalem and Venkatachalam railway stations, which are beyond Nellore railway station. Had the deceased missed Nellore railway station, he could have got down at the next railway station or two or three railway stations beyond Nellore railway station. Since the dead body of the deceased was cut into pieces, it is difficult to sustain that the death of the deceased was due to accidental fall from a running train. The injuries mentioned in Ex.A.2-Inquest report and Ex.A.3-PME report are possible only in case of a hit by a train and being dragged by it, rather than falling down from a running train. The Tribunal, after analysing the entire evidence on record in correct perspective,

recorded a finding that the deceased was neither a *bona fide* passenger of train No.178 Nellore – Sullurpet Passenger travelling from Nellore to Venkatachalam on 01.07.2005 nor died on account of an untoward incident of accidental fall from the said train. There is no infirmity in the findings recorded by the Tribunal. No different view favourable to the appellants-applicants can be taken. The appeal is devoid of merit and is liable to be dismissed.

8. In the result, the appeal is dismissed, confirming the order, dated 30.09.2010, passed in O.A.A.No.260 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

25th October, 2018
Bvv

Dr. SHAMEEM AKTHER, J

