

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.427 of 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity), is filed by the appellants/applicants, challenging the order, dated 05.01.2012, passed in O.A.A.No.334 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity).

2. Heard the learned counsel for the appellants/applicants, the learned Standing Counsel for the respondent-Railways and perused the record.

3. Learned counsel for the appellants/applicants would contend that the deceased-B.Govindu accidentally fell down from the running Train No.432 Kakinada-Vijayawada Fast passenger on the intervening night of 15/16.06.2005. He was found lying on the railway track around 8.00 A.M. on 16.06.2005. Immediately, he was admitted in hospital by one Bujji, who was Sarpanch of Atchuthapuram Village. He succumbed to the injuries on 02.07.2005 while undergoing treatment. There is specific mention in Ex.A.1-FIR and also in Ex.A.2-copy of Inquest Report that the deceased-B.Govindu accidentally fell down from the subject train. There is also evidence of A.W.2, who clearly and categorically stated that the deceased-B.Govindu purchased a journey ticket and boarded the subject train to travel from Kakinada Town to Vijayawada on 16.06.2005. The Tribunal did not appreciate the evidence on record in proper perspective and erroneously dismissed the claim petition holding that the deceased-B.Govindu was not a

bona fide passenger of Train No.432 Kakinada-Vijayawada Fast Passenger and did not fall down accidentally from the said train and ultimately prayed to set aside the order under challenge and grant compensation.

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 in proper perspective, rightly held that the deceased was not a *bona fide* passenger of Train No.432 Kakinada-Vijayawada Fast Passenger and he did not die in an untoward incident of accidental fall from the subject train. There is nothing to take a different view and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. It is not in dispute that the appellants/applicants are the dependents of the deceased-B.Govindu. The points that arise for determination in this appeal are as follows:-

1. Whether the deceased-B.Govindu was a *bona fide* passenger of Train No.432 Kakinada – Vijayawada Fast Passenger travelling from Kakinada Town to Vijayawada on 16.06.2005?
2. Whether the deceased-B.Govindu died in an untoward incident of accidental fall from Train No.432 Kakinada – Vijayawada Fast Passenger on 16.06.2005 while travelling from Kakinada Town to Vijayawada.
3. Whether the impugned order, dated 05.01.2012, passed in O.A.A.No.334 of 2005 by the Tribunal is liable to be confirmed/ set aside?
4. To what relief?

6. POINTS 1 & 2:- To substantiate the claim of the appellants/applicants, wife of the deceased-B.Govindu deposed as A.W.1, got examined A.W.2 and got marked Ex.A.1-copy of FIR, Ex.A.2-copy of Inquest Report, Ex.A.3-copy of P.M.E. Report and

Ex.A.4-No Objection Certificate. On behalf of the respondent/Railways, R.Ws.1 and 2 were examined and got marked Exs.R1 and R2. C.W.1 was examined as Court witness and Ex.C1-C.D. file in Crime No.7 of 2005 was marked through him.

7. The specific case of the appellants/applicants is that the deceased accidentally fell down from Train No.432 Kakinada-Vijayawada Fast Passenger on the intervening night of 15/16.06.2005. A.W.2 deposed that he had seen the deceased purchasing the journey ticket and boarding the subject train. As per the evidence placed on record, the Sarpanch of Atchuthapuram Village found the deceased on the railway track with injuries and shifted him to Government Hospital, Kakinada, on the same day. While undergoing treatment, the deceased succumbed to the injuries on 02.07.2005. Thereafter, Ex.A1-FIR was issued, inquest and post-mortem were conducted over the dead body of the deceased. Copy of inquest report and P.M.E. report were marked as Exs.A.2 and A.3. A.W.2 did not give any statement to the police with regard to the deceased purchasing a journey ticket and boarding the subject train. For the first time, he deposed the same before the Court. A.W.1 is not an eye witness to the purchase of the journey ticket by the deceased. A.W.1 gave a statement to the police in the course of enquiry that her husband left the house 16 days prior to his death stating that he would go to his relatives house situated at Chandolu, Vizianagaram District, and as he did not return, she searched for him. So, A.W.1 has no knowledge with regard to the deceased travelling by the subject train.

8. It is pertinent to state that the Inquest over the dead body was conducted on 03.07.2005. In the Inquest Report, it has come up that the deceased stated to the doctor that he suffered injuries by falling down accidentally from a running train. Under these circumstances, the best evidence would be the hospital record to find out whether the deceased made such a statement to the duty doctor or not. FIR in this case came into existence after the death of the deceased, i.e., on 02.07.2005, wherein, there is mention of the details of the deceased and arrival of his relatives. Therefore, there is every possibility of incorporating in the Inquest Report that the deceased had accidentally fallen from a running train. The respondent-Railways examined R.Ws.1 and 2 and also got marked Ex.R1-Guard's rough journal copy and Ex.A2-DRM's report. According to their evidence, there is no accidental fall of any person from the subject train on the intervening night of 15/16.06.2005. Further, no journey ticket was found either by the railway police or by the Sarpanch who admitted the deceased into the hospital. Through C.W.1, HC-521, the C.D. file relating to the said crime was marked as Ex.C.1. Ex.C.1 discloses the issue of F.I.R., conduct of inquest over the dead body of the deceased and holding that there is no foul play in the death of the deceased and dropping of further action.

9. When A.W.2 had not stated to the Railway police with regard to the deceased purchasing the journey ticket and travelling by the subject train and when A.W.1 was not aware about the whereabouts of the deceased for 16 days prior to his death and when no medical record is filed before the Tribunal to ascertain whether the deceased made any statement with regard to his cause

of death, it cannot be said that the deceased was a *bona fide* passenger of the subject train. Even the Sarpanch, who shifted the deceased to the hospital, was not examined to establish how the deceased suffered injuries. The initial burden is on the appellants/applicants to prove that the deceased was travelling with a valid journey ticket in the subject train. The entire case of the appellants/applicants is doubtful. When the deceased left his house stating to A.W.1 that he was going to the house of his relatives, there was no need for A.W.1 to search for the deceased. It also establishes that the relation between A.W.1 and the deceased was not good, so, he left the house. Viewed from any angle, it cannot be held that the deceased was a *bona fide* passenger of Train No.432 Kakinada – Vijayawada Fast Passenger and accidentally fell down from the said train on the intervening night of 15/16.06.2005. The Tribunal had elaborately dealt with all these aspects and rightly dismissed the claim petition. There is no infirmity in the impugned order. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

10. In the result, the appeal is dismissed, confirming the order, dated 05.01.2012, passed in O.A.A.No.334 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.

Dr. SHAMEEM AKTHER, J

Date: 23.11.2018
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