

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.682 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 02.06.2016, passed in OAI(U) No.205 of 2011 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.8,00,000/- for the death of the deceased-A.Krishna 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 though there is ample evidence on record to substantiate that the deceased-A.Krishna was a *bona fide* passenger of train No.2296 Patna – Bangalore Sangamitra Express travelling from Nagpur to Vijayawada on 23.08.2010 and that he died in an untoward incident of accidental fall from the said train at Kondapalli Railway Station, due to speed and sudden jerks of the said train, the Tribunal erroneously concluded that the deceased-A.Krishna was not a *bona fide* passenger of the said train and dismissed the claim petition. The findings of the Tribunal are contrary to the settled legal position and ultimately prayed to set aside the order under challenge and grant compensation to the appellants-applicants as claimed. In

support of his contentions, the learned counsel for the appellants-applicants relied on the decision of this Court in *The Union of India Vs. Kilari Kotiratnam*¹.

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, held that the deceased was not a *bona fide* passenger of train No.2296 Patna – Bangalore Sangamitra Express travelling from Nagpur to Vijayawada on the date of the subject accident. There was no valid journey ticket. There is no infirmity in the order under challenge and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. The death of the deceased-A.Krishna in an untoward incident of accidental fall from the train No.2296 Patna – Bangalore Sangamitra Express on 23.08.2010 is not in dispute. Hence, the points that arise for consideration in this appeal are as follows:

1. Whether the deceased was a *bona fide* passenger of train No.2296 Patna – Bangalore Sangamitra Express travelling from Nagpur to Vijayawada on 23.08.2010?
2. Whether the appellants-applicants are entitled for compensation?
3. To what relief?

Points:-

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,

¹ Decided on 25.01.2016 by this Court in CMA No.743 of 2011

Ex.A.3-Postmortem Examination Report, Ex.A.4-Family Members Certificate, Ex.A.5-copy of AADHAR card and Ex.A.6-copy of PAN card. On behalf of the respondent-Railways, R.W.1 was examined and Ex.R.1-copy of Rough Journey of Guard and Ex.A.2-Divisional Railway Manager's report were marked.

7. The case of the appellants-applicants is that the deceased-A.Krishna along with his friend G.Sudhakar, went to Nagpur about two months prior to his accidental death, on a contract work. In return, both of them went to Nagpur Railway Station in the evening hours of 23.08.2010, purchased a II class train journey combined ticket to travel from Nagpur to Vijayawada, boarded train No.2296 Patna – Bangalore Sangamitra Express and were travelling in the said train. The deceased-A.Krishna, while he was going to toilet in the train, suddenly slipped and fell down accidentally from the said train at Kondapalli Railway Station due to speed and sudden jerks of the train in the morning hours of 24.08.2010 and sustained fatal injuries. While the railway officials were shifting him to Government General Hospital, Vijayawada, he succumbed to the fatal injuries, on the way to hospital.

8. The Tribunal, on appreciation of oral and the documentary evidence on record, held that the journey ticket purchased by the deceased and his friend was a ticket for single person from Nagpur to Khammam, but not a combined ticket from Nagpur to Vijayawada. The residence of the deceased is at Miryalguda, which is near to Khammam. One has to get down at Warangal

to catch another train to go to Khammam. It was established that the journey undertaken by the deceased was from Nagpur to Khammam, but not up to Vijayawada. The attempt of the deceased to get down from the subject train moving in slow motion at Kondapalli Railway Station after it crossed Khammam Railway Station and accidentally falling down from the subject train makes it clear that the destination of the deceased was Khammam but not Vijayawada. In the claim petition it is stated that the deceased went to Nagpur two months prior to his accidental death on a contract work and after completion of his contract work, he was about to come to his residence at Miryalguda, but not at Vijayawada. There is negligence on the part of the deceased in getting down from a running train at Kondapalli Railway Station. The journey of the deceased and his friend was beyond their destination and ultimately concluded that the deceased was not a *bona fide* passenger of train No.2296 Patna – Bangalore Sangamitra Express travelling from Nagpur to Vijayawada on 23.08.2010 and accordingly dismissed the claim petition.

9. In similar circumstances, this Court, in Kilari Kotiratnam's case supra held that the deceased therein was a *bona fide* passenger, relying on a decision of another single Judge of this Court in B.Narayana Vs. Union of India (Decided on 22.07.2010 in C.M.A.No.20 of 2003), wherein, it was held as follows:

“ In fact, no evidence, both oral and documentary, was adduced by the respondent. In the absence of any rebuttable evidence of B. Krishna Murthy, brother of the

deceased, or even otherwise, in view of the valid railway ticket recovered from the body of the deceased, simply because he travelled, during the night, little more distance than Giddalur, it cannot be said that he was not a *bona fide* passenger of the train, and therefore, he could not have been denied compensation as claimed by the applicants.

16. Further, in view of Section 138(2)(b) of the Railways Act also, deceased cannot be said to be an unauthorized passenger, as he was holding valid railway journey ticket bearing No.5573 for Guntur to Giddalur and as he is liable to pay any difference between the fare paid by him and the fare payable in respect of the excess journey he has made beyond the Station to which he has valid ticket.”

10. The provision of Section 138 of the Railways Act, 1989, permits levy of excess charge and fare for travelling without proper pass or ticket or beyond authorised distance. At the most, the passengers, who travelled beyond their destination in a train, would be liable to pay excess fare or charge for the over-travelled distance. But merely on the ground that a person travelled beyond his destination in a train, it cannot be held that he is not a *bona fide* passenger without a proper pass or ticket. The mere fact that a passenger had over-travelled beyond the destination does not necessarily warrant a finding that he was not a *bona fide* passenger, though such person is liable to pay proper or excess fare to the Railways. In the instant case, the Tribunal held that as per Ex.R-2-DRM's report, the friend of the deceased G.Sudkahar had shown a general ticket bearing No.79176461 from Nagpur to Khammam and hence, the journey ticket was a ticket for single person from Nagpur to Khammam and not a combined ticket from Nagpur to Vijayawada. Even if the said finding of the Tribunal is accepted as true, there is a provision under the Railways Act, 1989, to collect the fare for the

excess journey beyond the destination. There are number of decisions to the effect that the persons who travelled beyond their destination in a train cannot be held to be not *bona fide* passengers. Under these circumstances, it can be safely concluded that the deceased-A.Krishna was a *bona fide* passenger of train No.2296 Patna – Bangalore Sangamitra Express travelling from Nagpur to Vijayawada on 23.08.2010 and that he died in an untoward incident of accidental fall from the said train at Kondapalli Railway Station, due to speed and sudden jerks of the said train. The findings of the Tribunal are not in consonance with the evidence on record and settled legal principles. There is infirmity in the order under challenge and the same is liable to be set aside.

11. In the result, the appeal is allowed and the order, dated 02.06.2016, passed in OAI (U) No.205 of 2011 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is set aside. The appellants-applicants are entitled for a compensation of Rs.8,00,000/-. The respondents-Railways is directed to deposit the awarded compensation of Rs.8,00,000/- before the Tribunal within a period of three (03) months from the date of receipt of a copy of this order, failing which, the appellants-applicants are entitled for interest @ 6% per annum on the said amount, from the date of this order till realisation. On deposit of the compensation, the 1st appellant-1st applicant, who is the wife of the deceased, is permitted to withdraw Rs.4,00,000/- and the appellants 2 to 4/applicants 2 to 4, who are the children and

parents of the deceased, are permitted to withdraw the remaining amount of Rs.4,00,000/- in equal shares.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

26th October, 2018
Bvv

