

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.147 of 2018

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant-applicant, challenging the order, dated 05.12.2017 in O.A. II (U) No.58 of 2011 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellant-applicant claiming compensation of Rs.2,40,000/- for the injuries sustained by him in an untoward accidental fall from train No.471 Vijayawada-Rayagada passenger (hereinafter referred to, as 'the subject train') while travelling from Powerpet to Bobbili on 02.02.2008, was dismissed.

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 applicant would contend that though there is evidence to the effect that the applicant is a *bona fide* passenger of the subject train and sustained injuries and amputation in an untoward incident of accidental fall from the subject train, the Tribunal erroneously dismissed his claim application; that the findings of the Tribunal are not on proper appreciation of

the evidence on record, and hence, he prayed to set aside the impugned order and allow the claim application awarding compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that no medical record is filed by the applicant to substantiate his contentions; that the applicant is not a *bona fide* passenger of the subject train; that the findings of the Tribunal are based on evidence on record and there is nothing to take a different view, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the applicant was a *bona fide* passenger of train No. 471 Vijayawada-Rayagada passenger travelling from Powerpet to Bobbili on 02.02.2008 ?
- 2) Whether the applicant sustained the injuries and amputation in an untoward incident of accidental fall from running train No. 471 Vijayawada-Rayagada passenger travelling from Powerpet to Bobbili on 02.02.2008 ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 4:

7. To substantiate the claim, the applicant himself deposed as A.W.1 and marked Ex.A1-attested copy of FIR; Ex.A2-orthopaedically handicapped certificate and Ex.A3-

O.P. chits. On behalf of railways, no oral evidence was adduced, but Ex.R1-DRM report was marked.

8. There is no single record to prove the injuries said to have been sustained by the applicant. As per own admission of the applicant, the untoward incident alleged to have taken place on 02.02.2008. He filed medical record before the Tribunal viz. Ex.A3-O.P. chits, one of which shows the date of admission was on 18.04.2008; the other one shows the date of admission was on 25.07.2008, the date of surgery was on 12.08.2008 and the date of discharge was on 25.08.2008. When the alleged accident occurred on 02.02.2008 and the applicant said to have suffered crush injuries to fingers of right hand, he would have got admitted on 02.02.2008 in the hospital and taken treatment for the injuries. There is no such medical record to establish the same. The applicant produced medical record relating to 25.07.2008 onwards which is about 5 months after occurrence of the alleged accident. The Tribunal had rightly dealt with the medical evidence and rightly concluded that the applicant failed to prove the injuries sustained by him. Further, no journey ticket was produced by the applicant. There is no record to substantiate that the applicant was a *bona fide* passenger of the subject train and suffered injuries in an untoward incident of accidental from it on 02.02.2018.

9. The findings recorded by the Tribunal are based on evidence on record and cannot be faulted. There is no infirmity. 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. No costs. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

06.12.2018
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