

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.230 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'Act'), is filed by the Respondent - Railways challenging the order, dated 14.08.2015, passed in OAA No.496 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short 'Tribunal'), whereby, the claim petition filed by the respondent - applicant for a compensation of Rs.4,00,000/- for the death of the deceased - Kankanala Chinna Jagannadham in an alleged untoward incident of accidental fall from a running train, was allowed.

2. Heard Ms. Pushpinder Kaur, learned standing counsel for the appellant - Railways, and Sri P.L. Rao, learned counsel for the respondent - applicant.

3. Perused the evidence on record, both oral and documentary.

4. The appellant herein is the respondent - Railways in OAA No.496 of 2005 before the Tribunal, while respondent is the applicant. For the sake of convenience, the parties herein are referred to as they were arrayed in the foresaid OA before the Tribunal.

5. The learned standing counsel for the Railways would contend that the deceased - Kankanala Chinna Jagannadham was run over by the train while crossing track and he was a trespasser; there is

evidence of Loco Pilot of train No.471 Visakhapatnam - Rayagada Passenger; in Ex.R.1 - Divisional Railway Manager's Report also, the same has come up; the deceased was neither a *bona fide* passenger, nor died in an untoward incident of accidental fall; the Tribunal erroneously allowed the claim application awarding compensation to the applicant; and ultimately prayed to set aside the order which is impugned in the present appeal, by allowing the appeal.

6. On the other hand, the learned counsel for the applicant would contend that there is substantial evidence to believe that the deceased died in an untoward incident of accidental fall; the Tribunal rightly considered the evidence and awarded the compensation; there is no infirmity in the order passed by the Tribunal; and ultimately prayed to dismiss the appeal, confirming the order under challenge.

7. In view of the above submissions made by both sides, the following points that arise for determination in this appeal:

- i. Whether the deceased - Kankanala Chinna Jagannadham was a *bona fide* passenger of Train No.471 Visakhapatnam - Rayagada Passenger, and was travelling from Bobbili to Parvathipuram on 01.07.2005?
- ii. Whether the deceased - Kankanala Chinna Jagannadham died in an untoward incident of accidental fall from the said Train on 01.07.2005 near Sithanagaram Station?
- iii. Whether the impugned order is liable to be set aside?
- iv. To what result?

Point Nos.(i) and (ii):-

8. To substantiate the claim of the applicant, who is wife of the deceased, she herself was examined as AW.1 and got examined AW.2 and got marked Ex.A.1- attested copy of first information report, Ex.A.2-attested copy of inquest report, Ex.A.3 - attested copy of Post-mortem examination report, Ex.A.4-statement of applicant, Ex.A.5- attested copy of final report, and Ex.A.6- legal heir certificate. On behalf of the respondent-Railways, RWs.1 and 2 were examined, and got marked Ex.R.1-Guard's rough journal, Ex.R.2-Divisional Railway Manager's report, and Ex.R.3-Joint report. CW.1 was examined as Court witness and got marked Ex.C.1-original ticket No.80511.

i) In order to substantiate the defence set up by the respondent - Railways, as already referred to above, RWs.1 and 2 were examined on behalf of the Railways. RW.1 is a Train-guard and RW.2 is Loco Pilot of the subject train. Both of them did not state any-where in the evidence that the deceased while crossing the railway track was run over by a train. Both of them stated, in their evidence, before the Tribunal that they received information with regard to one person running over by train. RW.1 stated that on coming to know the same, he stopped the train. He also gave other details about his service and driving the train on 01.07.2005. So, there is no direct witness to the alleged defence of trespass set up by the Railways. There is specific evidence of AW.2 with regard to the deceased purchasing a journey ticket, boarding the subject train and accidentally falling from the

subject train. When RW.1 and RW.2 did not state that the deceased trespassed into the railway track and was run over by a train, the recitals mentioned in Ex.R.2-DMR's report are of no use to the Railways. The Tribunal had elaborately dealt with all the contentions put forth, and rightly allowed the claim application. Under these circumstances, the Tribunal has rightly held that the deceased was a *bona fide* passenger, and died in an untoward incident of accidental fall from the subject train. The impugned order passed by the Tribunal is inconsonance with the evidence on record. Accordingly, these points are answered against the appellant - respondent and in favour of the respondent - applicant.

Point No.(iii):-

9. The Tribunal had elaborately dealt with the contentions and the evidence on record and rightly reached the conclusion allowing the claim petition. There is no infirmity in the impugned order. There is nothing to take a different view. Hence, the appeal is devoid of merit and is liable to be dismissed.

Point No.(iv):-

10. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the order, dated 14.08.2015, passed in OAA No.496 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the present appeal, stand closed.

Dr. SHAMEEM AKTHER, J

December 05, 2018

Mgr

