

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.1189 OF 2008

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 03.05.2006, in O.A.A.No.177 of 2000 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Boya Venkata Kanakaiah in an alleged untoward incident of railway accident that took place on 20.03.2000 was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways. Perused the material on record.

3. Learned counsel for the appellants/applicants would contend that the Tribunal had not properly analysed the entire evidence on record; that the death of the deceased Boya Venkata Kanakaiah occurred due to accidental fall from train No.336 UP passenger on 20.03.2000 while he was travelling from Odela to Ravindrakhani and there is specific evidence of A.Ws.3 and 4 to that effect; that there is also the evidence of A.W.1, who saw the deceased Boya Venkata Kanakaiah purchasing the ticket and boarding the train; that there is also other medical record to

substantiate that the deceased Boya Venkata Kanakaiah was possessing a valid ticket and travelling by the said train on 20.03.2000; that further, the Halting Contractor – R.W.2 did not maintain proper accounts with regard to the issuance of the ticket and therefore, his evidence is of no use to the Railways; that the ticket marked as Ex.A-5 was the journey ticket of the deceased Boya Venkata Kanakaiah and therefore, the deceased Boya Venkata Kanakaiah was a *bona fide* passenger and travelling by train No.336 UP passenger on 20.03.2000 had fallen accidentally from the said train, suffered injuries and died and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that the deceased Boya Venkata Kanakaiah was not at all a *bona fide* passenger; that R.W.2 had produced the relevant register to show that Ex.A-5 ticket was not issued on 20.03.2000 and it was issued on 21.03.2000; that the F.I.R. and the final report are dated belatedly and further, A.Ws.3 and 4 were also pressed into service to support the applicants; that as per the entire Railways records and the evidence adduced on behalf of the Railways, there is no untoward incident of accidental fall on 20.03.2000; that there is also specific evidence under Ex.A-7 – Death Certificate issued by Singareni Hospital, Kothagudem that the death was caused due to cardio respiratory arrest; that the deceased Boya Venkata Kanakaiah was not a *bona fide* passenger and he did not die in an untoward incident of accident, as contended by the applicants, and a false claim was made; that the Tribunal rightly analysed the entire evidence on record and was pleased to dismiss the claim

application; that there are no merits in this appeal and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the points that arise for determination are:-

“1. Whether the deceased Boya Venkata Kanakaiah was a bona fide passenger in train No.336 UP passenger on 20.03.2000?”

2. Whether the deceased Boya Venkata Kanakaiah had fallen from the aforesaid train on 20.03.2000 and succumbed to the injuries suffered in that accident?”

3. Whether the order, dated 03.05.2006, passed in O.A.A.No.177 of 2000 by the Tribunal is liable to be set aside? and

4. To what relief?”

6. **POINT Nos.1 & 2:-**

There is no dispute that the applicants are the dependents on the deceased Boya Venkata Kanakaiah. To substantiate that the deceased Boya Venkata Kanakaiah had purchased the ticket, Ex.A-5 journey ticket was pressed into service. A.W.2, who is the son of the deceased Boya Venkata Kanakaiah, had clearly stated that he saw the deceased Boya Venkata Kanakaiah purchasing a ticket at 8:10 P.M. and boarding the train and he gave send off to him on 20.03.2000. The Railways examined R.W.2 – Halting Contractor, who gave details of the tickets issued on 20.03.2000 and produced the relevant records, when he was examined before the Tribunal. He specifically stated in his evidence that Ex.A-5 ticket was issued on 21.03.2000. In the cross examination, he reiterated the same. R.W.2 has denied a suggestion that the

entries would be noted subsequently even though tickets were issued on a particular day.

7. **POINT Nos.3 & 4:-**

A.W.2 is said to have seen the deceased Boya Venkata Kanakaiah falling from the subject train on 20.03.2000, but he did not report the same to any of the authorities of the railway station. Further, the deceased Boya Venkata Kanakaiah was taken to a different hospital and ultimately, said to have succumbed to the injuries caused in the railway accident. But, no hospital record is filed to substantiate that the deceased Boya Venkata Kanakaiah had an accidental fall from train No.336 UP passenger. Generally, when the patients are admitted in the hospital, the Duty Doctor would record the statements of the injured person and if the injured is not conscious, he would record the statement of the companion to find out how the patient suffered injuries. Had the deceased Boya Venkata Kanakaiah fallen from a train as contended, certainly, either the deceased Boya Venkata Kanakaiah or his companion would have stated to the Duty Doctor that the injuries suffered by the deceased Boya Venkata Kanakaiah were due to fall from a train. Absolutely, in the documents produced before the Tribunal, there is no single document to show the same. It is also pertinent to state that in Ex.A-7 - Death Certificate, it is mentioned that the cause of death is shown as cardio respiratory arrest. The applicants have filed Ex.A-1 - final report, dated 30.06.2000, and also the statements of A.Ws.3 and 4 and also Ex.A-5 - F.I.R. wherein it is stated that the deceased Boya Venkata Kanakaiah had fallen from a running train. These documents are

belatedly brought into existence. The Tribunal had also analysed these documents and disbelieved the same. The best evidence in this case would be the medico legal record of Rohini Hospital, Warangal, N.I.M.S. Hospital, Hyderabad and the Singareni Hospital, Ramakrishnapuram. That has not been filed before the Tribunal to establish that the injuries and death of the deceased Boya Venkata Kanakaiah were due to accidental fall from train No.336 UP passenger.

8. Learned counsel for the appellants/applicants has relied on a decision reported in **P.Ramaswamy vs. Union of India, represented by General Manager, South Central Railway, Secunderabad [2002 Law Suit (AP) 137]** wherein it was the contention of the Railways that the ticket therein was issued on 02.01.1997 and it was not issued on 01.01.1997. On this basis, the Tribunal referred the ticket along with sample tickets to the Forensic Science Laboratory for expert's opinion. The F.S.L. gave a report that the ticket was punched on 01.01.1997, but not on 02.01.1997 as claimed by the Railways. So, it was held therein that the deceased was having a valid ticket. Here the circumstances are distinct. The above decision has no application to the instant case. In the instant case, the punching made on the ticket is not visible. However, there is specific evidence of R.W.2 with regard to the issuance of the ticket on 21.03.2000 i.e., much after the alleged occurrence of accident. As per the evidence adduced on behalf of the Railways, there was no untoward incident of accidental fall on 20.03.2000. There is the specific evidence of R.W.1 to that effect. When there is no mention of accidental fall in the medico legal records and when there is specific evidence of

R.W.1, who was on duty at that point of time, that there was no untoward incident of accidental fall at the relevant point of time, and when the ticket issued under Ex.A-5 was not a journey ticket and further, when there was a specific mention that the death was due to cardio respiratory arrest, it is difficult to hold that the deceased Boya Venkata Kanakaiah was a *bona fide* passenger and had an accidental fall from train No.336 UP passenger. The Tribunal had elaborately discussed the entire oral and documentary evidence and negated the claim of the applicants. There is no infirmity in the impugned order and there is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 25.10.2018
AMD

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