

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.78 of 2016

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant/applicant, challenging the order, dated 01.05.2012, passed in OAA No.394 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellant/applicant claiming a compensation of Rs.4,00,000/- for the injuries sustained by him in the alleged untoward incident of accidental fall from a running train, was dismissed.

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

3. The learned counsel for the appellant/applicant would contend that the appellant/applicant-K.Pedasubbaiah was a *bona fide* passenger of Train No.8563 Prashanthi Express travelling from Markapur Road Station to Cumbum on 24.10.2005; he boarded the general compartment of the subject train at Markapur Road Station and since the said compartment was heavily crowded, he was standing near the door of the general compartment of the subject train. Suddenly, the train started with heavy jerks due to which, the appellant/applicant lost balance and accidentally fell down from the subject train on the Markapuram Road Station platform itself, suffered grievous injuries and fell unconscious. The railway officials, after rendering first aid, sent him to the local hospital for treatment. Later he was shifted to Government Hospital, Guntur, for better treatment, where, his left hand was amputated up to wrist level. The Tribunal erroneously held that the

appellant/applicant was in drunken state at the time of the alleged incident and that the injuries suffered by him are self-inflicted. The findings of the Tribunal are erroneous and ultimately prayed to set aside the impugned order and grant compensation as claimed.

4. On the other hand, the learned Standing Counsel for the respondent-Railways contended that the appellant/applicant was in drunken state at the time of the alleged incident. There is a specific mention to that effect in Ex.A-4—original summary sheet. Further, the case sheet of the appellant/applicant reveals that some words, which are against the appellant/applicant, were struck off and in that place, some words favouring the appellant/applicant were inserted. The Tribunal had elaborately dealt with all the aspects and held that the injuries suffered by the appellant/applicant in the alleged incident are self-inflicted and would fall under proviso (d) of Section 124A of the Railways Act, 1989. The findings of the Tribunal are based on evidence and record. There is no infirmity in the order under challenge and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. There is no dispute with regard to the purchase of the journey ticket by the appellant/applicant and boarding the Train No.8563-Prashanthi Express to travel from Markapur Road Station to Cumbum on 24.10.2005. In view of the above submissions, the points that arise for determination in this appeal are as follows:

1. **Whether the appellant/applicant was in a fully drunken state when he boarded the Train No. 8563—Prashanthi Express to travel from Markapuram Road Station to Cumbam on 24.10.2005?**
2. **Whether the injuries suffered by the appellant/applicant are self-inflicted and would**

attract Proviso (d) of Section 124A of the Railways Act, 1989?

3. Whether the order under challenge is liable to be confirmed/set aside?

4. To what result?

Point Nos. 1 and 2 :

6. To substantiate the claim of the appellant/applicant, the appellant/applicant himself deposed as A.W.1 and Ex.A.1-original ticket, Ex.A.2-Statement of the injured, Ex.A.3-original Case Sheet and Ex.A.4-original Summary Sheet were marked. On behalf of the respondent-Railways, R.W.1 and R.W.2 were examined and Ex.R.1-Station Diary copy and Ex.R.2-D.R.M's report were marked.

7. The specific defence set up by the respondent-Railways is that the appellant/applicant was in a fully drunken state when he boarded the subject train and had fallen down from the subject train due to his own negligence and the said act of the appellant/applicant would fall under Proviso (d) of Section 124 A of the Railways Act, 1989.

8. As per evidence of R.W.1 and R.W.2, the applicant was smelling alcohol when he was found by the side of the railway track at Markapur Road Station with injuries. In Ex.A.3-original Case Sheet, the words 'fully drunken state' were struck off and the words 'conscious state' and 'coherent' were inserted. Further, in Ex.A.3 itself, the words 'drowsy', 'irritative' and 'alcohol' were struck off and the words 'answering to questions' were inserted. The Tribunal, having examined these aspects, held that no doctor was examined to demonstrate that the appellant/applicant was conscious, coherent and capable of answering the questions at the time of his admission into the hospital and ultimately declined to grant compensation holding that the injuries suffered by the appellant/applicant were self inflicted.

9. Admittedly, the appellant/applicant was not subjected to breath analyser test to find out the percentage of the alcohol present in his blood. Merely because the doctor made an endorsement in Ex.A.3 Case Sheet that the appellant/applicant was in fully drunken state, drowsy, irritant and smelling alcohol at the time of his admission into the hospital, that would not *ipso facto* make out a case that the appellant/applicant had fallen from the subject train due to his own negligence, there is no direct evidence to substantiate the same. As per the evidence of AW.1 (appellant/applicant), he accidentally fell down from the subject train due to jerks and speed and suffered injuries. When there is no breath analyser test to found the percentage of alcohol in the blood of the appellant/applicant, it is difficult to construe that the appellant/applicant was preliminarily negligent and was himself responsible for fall from the subject train and suffering amputation of wrist of his left hand. Further, there are no eye-witnesses to the alleged incident. The Railways Act, 1989, is a beneficial piece of legislation. Its object is to compensate the dependents of the deceased or the injured in an untoward incident. When two views are possible and when there are no eye-witnesses to support the defence set up by Railways, the view which is favorable to the applicant is required to be adopted. There was no intention on the part of the applicant to suffer the injuries. Moreover, the appellant/applicant cannot be called upon to strictly prove the manner in which he sustained injuries. So it cannot be held that the injuries suffered by the appellant/applicant are self-inflicted injuries and would fall under Proviso (d) of Section 124A of the Railways Act, 1989. Under these circumstances, it can be safely concluded that the appellant/applicant suffered injuries in an untoward incident of accidental fall from the Train No. 8563–Prashanthi Express

while travelling from Markapuram Road Station to Cumbam on 24.10.2005. These two points are answered in favour of the appellant/applicant and against the respondent-Railways.

Point No.3:

10. The findings of the Tribunal are not in consonance with the evidence on record. There is infirmity in the order under challenge and the same is liable to be set aside.

Point No.4:

11. As per the medical record placed before the Court, the appellant/applicant suffered crush injury to his left forearm, which resulted in traumatic amputation at the level of wrist with JK in/on up till middle of left fore arm exposing underlying muscles. The said injury would fall under Sl.No.4 of part III of the 2016 amended Schedule to the Railway Accidents Untoward Incidents (Compensation) Rules 1990. Accordingly, the appellant/applicant is awarded a compensation of Rs.4,80,000/-. The respondent-Railways is directed to deposit the awarded compensation of Rs.4,80,000/- before the Tribunal within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellant-applicant is entitled for interest @ 6% per annum on the said amount, from the date of this judgment till realisation. On deposit of the compensation, the appellant – applicant is permitted to withdraw the same.

12. The appeal is allowed accordingly. There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

28th November, 2018.
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THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



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JR