

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.110 of 2017

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity), is filed by the appellants-applicants challenging the order, dated 04.11.2016, passed in O.A.II(U) No.37 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants-applicants claiming compensation of Rs.4,00,000/- for the death of the deceased-Madina Narasimhamurthy in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard the learned counsel for the appellants-applicants and the learned Standing Counsel for the respondent-Railways and perused the record.

3. Learned counsel for the appellants-applicants would contend that the deceased-Madina Narasimhamurthy was a *bona fide* passenger of Konark Express Train. He boarded the said train on 09.11.2008 at Sompeta railway station to go to Vijayawada. Due to jerks of the train and due to rush in the general compartment, he accidentally fell down from the train and succumbed to the injuries. The ticket was lost in the accident. There is statement of Madina Mohana Rao, who is the brother of the deceased. In the Inquest report and the final report, there is a mention that the deceased had accidentally fallen from Konark Express. The Tribunal erroneously dismissed the application and ultimately, prayed to

allow the appeal in favour of the appellants, who are wife and children of the deceased.

4. Learned counsel for the respondent-Railways would contend that for four days, the dead body was not identified. The statement of Madina Mohana Rao is a planted one. Merely because the dead body was found with multiple injuries by the side of the railway track, no presumption can be drawn that the deceased had fallen from Konark Express. The deceased wanted to go to Bangalore. There are direct trains from Sompeta to Bangalore. There is no need to the deceased to board Konark Express. The story put up by the appellants is concocted and the Tribunal rightly dismissed the claim petition and there is no infirmity 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 as follows:-

1. Whether the deceased-Madina Narasimhamurthy is a *bona fide* passenger of train No.1019 Konark Express on 09.11.2008?
2. Whether the deceased died in an untoward incident of accidental fall from train No.1019 Konark Express?
3. Whether the impugned order is liable to be set aside?
4. To what relief?

POINT Nos.1 to 3:-

6. To substantiate the claim of the appellants-applicants, wife of the deceased was examined as A.W.1 and got marked Ex.A1-copy of FIR, Ex.A2-copy of inquest report, Ex.A3-copy of post-mortem report, Ex.A4-copy of final report, Ex.A5-copy of ration card and Ex.A5A-statement of Madina Mohana Rao. On behalf of the

respondent-railways, no oral evidence was adduced, but Ex.R1-DRM's report was marked.

7. The specific case of the appellants is that on 31.10.2008, the deceased came to his village to attend a function in his house. After attending the function, on 09.11.2008, he reached Sompeta railway station to go to Bangalore and boarded train No.1019 Konark Express in a general compartment. He was accompanied by his brother-Madina Mohana Rao, who purchased the journey ticket. On the night of 09.11.2008, the deceased accidentally fell down from Konark Express and succumbed to the injuries. A.W.1, who is the wife of the deceased, is not an eye witness to the purchase of journey ticket or accidental fall of the deceased from the said train. Admittedly, on seeing the Newspaper on 14.11.2008, the appellants came to know about the death of the deceased which came to light on 13.11.2008 and identified the dead body. On 13.11.2008, Inquest was conducted and on 14.11.2008 Post Mortem Examination was conducted over the dead body of the deceased. The case of the appellants is that the deceased was working as a cooli in Bangalore. A.W.1-wife and Madina Mohana Rao - the brother of the deceased enquired with the owner of the deceased about whereabouts of the deceased.

8. As per the records, Konark Express does not go to Bangalore. When Madina Mohana Rao boarded his brother-the deceased in Konark Express train, within 12 hours, the deceased has to reach the destination i.e., Bangalore. There is no convincing evidence that A.W.1-wife and the brother of the deceased made efforts to find out the whereabouts of the deceased between 10.11.2008 and

13.11.2008. Had the brother of the deceased really accompanied the deceased, he would have enquired as to what happened to the deceased when he did not reach Bangalore within 12 hours. A.W.1 and the brother of the deceased kept quiet till they saw the news item in the newspaper with regard to the death of the deceased. On seeing the newspaper only, they proceeded to the railway station concerned. Inquest report and the final report in the subject case were filed basing on the statement given by the brother of the deceased. When there is a direct train to go to Bangalore from Sompeta, there was no reason for the deceased to board Konark Express. Merely because dead body was found by the side of the railway track at km No.647/23-25 between Sompeta and Barva stations on 13.11.2008 with some injuries, it cannot be said that the deceased succumbed to the said injuries due to an accidental fall from a train. Further, no ticket was found in the apparels of the deceased or nearby the place where the dead body was found. As per Ex.R1-DRM's report, there was no untoward incident of accidental fall from the train on 09.11.2008. The Tribunal was pleased to hold that the initial burden had not been discharged. Except pleading that the brother of the deceased accompanied the deceased to Sompeta railway station, there is no other evidence to establish that the brother of the deceased purchased any journey ticket to travel from Sompeta to Vijayawada for the deceased or that the deceased had an accidental fall from such train. Since the statement of Madina Mohana Rao is a doubtful one, the Tribunal rightly rejected the claim. The finding of the Tribunal is based on evidence on record. There is no infirmity in the impugned order. There is nothing to take a different view. It can safely be concluded

that the deceased is not a *bona fide* passenger and did not die in an untoward incident of accidental fall from train. These points are answered accordingly.

Point No.4:-

9. In the result, the appeal is dismissed, confirming the order, dated 04.11.2016, passed in O.A.II(U).No.37 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

Date: 04.12.2018
ssp

Dr. SHAMEEM AKTHER, J

