

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

C.M.A.No.584 of 2012

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 02.01.2012, passed in O.A.A.No.538 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity).

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

3. Learned counsel for the appellants would contend that the deceased-M.Anand was having a pass to travel in the train on the date of accident. The deceased purchased the journey ticket as his pass had elapsed two days before the accident. The same was witnessed by A.W.2. A.W.2 clearly and categorically deposed about the deceased purchasing ticket and falling from running train. There is also DRM report and investigation conducted by the police supporting the accidental death of the deceased. The Tribunal without adverting to the substantial evidence adduced on behalf of the applicants erroneously dismissed the application and ultimately, prayed to allow the same.

4. On the other hand, the learned counsel for the respondent-railways would contend that there is no medical record to show that the deceased had fallen from the train. Further, A.W.2 was planted to claim compensation. The FIR in the instant case was lodged with

a delay of seven days. The Tribunal did not believe that the deceased was a *bona fide* passenger and had fallen from the train accidentally and rightly dismissed the application. There are no merits to consider the appeal and ultimately, prayed to dismiss the same.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:

1. Whether the deceased-M.Anand was a bona fide passenger of train No.526 Dhone-Secunderabad passenger travelling from Ulindakonda to Kurnool on 02.09.2005?
2. Whether the deceased-M.Anand died in an untoward incident of accidental fall from train No.526 Dhone-Secunderabad passenger on 02.09.2005?
3. Whether the order, dated 02.01.2012, passed in O.A.A.No.538 of 2005 by the Tribunal is liable to be set aside?"
4. To what relief?

6. POINTS 1 & 2:- To substantiate the claim, applicant No.1- father of the deceased deposed as A.W.1 and one of the friends of the deceased was examined as A.W.2 and got marked Ex.A1-copy of FIR, Ex.A2-copy of inquest report, Ex.A3-copy of P.M.E. report, Ex.A4-death certificate, Ex.A5-police certificate, Ex.A6-family members certificate, Ex.A7-study-cum-conduct certificate, Ex.A8-copy of community certificate and Ex.A9-copy of memo of marks.

7. The specific case of the applicants is that their son M.Anand was studying intermediate. He was travelling in the subject train bearing No.526 on 02.09.2005 and he accidentally fallen from the train and died and the deceased was having a valid journey ticket and they are entitled for compensation. Admittedly, A.W.1 is not a

direct witness. A.W.2, who is the friend of the deceased, deposed that the deceased had purchased the ticket, was travelling by train No.526 on 02.09.2005 and had an accidental fall from the train.

8. Admittedly, no co-passenger in the train had seen the deceased falling from the train. Nobody had pulled the chain and stopped the train and the railway authorities were not informed that the deceased had fallen from the train on 02.09.2005. No journey ticket was filed before the Tribunal. The information was given to the police with a delay of seven days. The applicants have not filed a single document relating to the treatment taken by the deceased in hospital. There is no reason why the applicants have not brought the hospital record on the file of the Tribunal.

9. It is contended that when the deceased had fallen from train on 02.09.2005 during evening hours, some vegetable vendors admitted the deceased in the hospital. No vegetable vendor is examined on behalf of the applicants. As per the DRM report, the deceased had fallen from the train on 02.09.2005. The entry was made in the DRM report basing on the information furnished by the Sub-Inspector of Police. The Sub-Inspector had received the subject information seven days after the alleged fall from the train. As per R.W.1, who was a guard, there was no untoward incident on 02.09.2005 as contended by the applicants. In the course of preparation of inquest report of the dead body of the deceased, there is no mention of A.W.2 witnessing the deceased purchasing tickets and boarding the train. The Tribunal observed that A.W.2 was pressed into service to support the applicants' case. When A.W.2 had seen the subject fall from the train, nothing prevented

him to inform the same to railway authorities or to the police concerned. The police commenced the investigation in this case after seven days of alleged fall/death. Under the circumstances of the case, it is difficult to hold that the deceased was a *bona fide* passenger and had an accidental fall from a train. The Tribunal elaborately dealt these aspects and determined against the applicants. 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.

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

Date: 25.10.2018
ssp

Dr. SHAMEEM AKTHER, J

