

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.440 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity), is filed by the appellant-applicant challenging the order, dated 26.08.2014, passed in O.A.A.No.438 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity).

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

3. Learned counsel for the appellant-applicant would contend that the appellant had suffered injuries on 14.10.2007 in an untoward incident of accidental fall from a passenger train and suffered fracture of right femur and other grievous injuries. There is direct evidence of A.Ws.1 and 2, i.e., appellant and his father to demonstrate the accidental fall and suffering of injuries. Further, the documents marked on behalf of the appellant i.e., Exs.A1 to A.5 also reveal the injuries suffered by the appellant in an accidental fall from a train. The Tribunal had not appreciated all the facts in a proper perspective and erroneously dismissed the claim application and ultimately prayed to allow the appeal.

4. Learned counsel for the respondent-railways would contend that there is a delay in filing of the FIR. The railway authorities were not put to notice with regard to the accidental fall. As per the evidence of R.W.1, no untoward incident took place at Phirangipuram and the appellant was not a *bona fide* passenger of

any train and he has not suffered any injuries on account of accidental fall. The Tribunal rightly considered the evidence and dismissed the application. There is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

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

1. Whether the appellant-K.Venkata Madhava Reddy was a *bona fide* passenger of the subject passenger train?
2. Whether the appellant suffered injuries in an untoward incident of accidental fall from the subject passenger train on 14.10.2007?
3. Whether the impugned order is liable to be set aside?
4. Whether the appellant is entitled for grant of compensation as prayed for?

6. **POINTS** :- To substantiate the claim of the appellant-applicant, he himself was examined as A.W.1 and got examined his father as A.W.2 and got marked Ex.A1-copy of FIR, Ex.A2-copy of police intimation, Ex.A3-copy of statement of injured, Ex.A4-original journey ticket and Ex.A5-discharge card. On behalf of the respondent-railways, R.W.1 was examined and Exs.R1 to R.3 were marked and through Court Ex.C1-case sheet was marked.

7. The details of the journey ticket were given in the claim application. The specific case of the appellant is that on 14.10.2007, after purchase of ticket, himself and his parents were travelling from Vinukonda to Vijayawada. Ex.A4-journey ticket reveals the travel of the applicant and his family members from Vinukonda to Vijayawada on 14.10.2007. A.W.1 corroborated the averments of the claim application. A.W.2, his father also

corroborates the same. A.W.3-doctor, who treated the appellant stated about the appellant getting admitted in the hospital on 14.10.2007 and stated that the appellant suffered injuries by falling from a train. Ex.C1 is the hospital record and in Ex.C1, there is specific mention that the appellant got admitted in Government General Hospital on 14.10.2007 at 9.33 p.m. There is also mention that he suffered injuries on that day in an accidental fall from a train around 5.00 p.m. There are also details of treatment taken by the appellant. Ex.A5 is the discharge card. A.W.3-doctor stated that the appellant suffered Supercondylar fracture right femur undisplaced. A.W.3 also stated that the injuries are possible by a fall from train. In Ex.C1-hospital record, there is mention that the railway authorities were intimated with regard to the subject fall of appellant at Phirangipuram station on 14.10.2007. R.W.1-Guard of the said train stated that there was no untoward incident at Phirangipuram on 14.10.2007. There is specific and direct evidence of A.Ws.1 and 2 with regard to the accidental fall of appellant at Phirangipuram on 14.10.2007 in the evening hours. There is also substantial medical record to establish the accidental fall from passenger train on 14.10.2007. There is also journey ticket marked as Ex.A4 to substantiate the same. Under Ex.A1-copy of FIR, it is mentioned that the appellant had fallen from a running train on 14.10.2007 at 5.00 pm. The FIR was issued on 20.10.2007 basing on the information furnished to the police by the hospital authorities. It is the case of the appellant that the intimation was sent through postal service. Therefore, there is a delay of issue of FIR. When there is so much oral and documentary evidence to demonstrate that the appellant had accidentally fallen from the

subject passenger train at 5.00 p.m. on 14.10.2007, the Tribunal ought not to have relied on the evidence of R.W.1 and Ex.R3-DRM report to hold that the appellant was not a *bona fide* passenger of train and did not suffer injuries in an untoward incident of accidental fall from train. The finding of the Tribunal is erroneous. As there is specific evidence of A.W.3-doctor that the appellant had suffered fracture of right femur, the same falls under Part-III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. As per the said schedule, the appellant is entitled to compensation of Rs.1,60,000/-.

8. In the result, the appeal is allowed, setting aside the impugned order, dated 26.08.2014 passed by the Tribunal in O.A.A.No.438 of 2007. Consequently, O.A.A. stands allowed, directing the respondent-Railways to pay compensation of Rs.1,60,000/- (Rupees one lakh sixty thousand), within three months from the date of receipt of a copy of this order, failing which, the appellant is entitled to interest @ 6% per annum from the date of this order till the date of realisation.

Pending miscellaneous petitions, if any, shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 06.12.2018
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