

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER  
CIVIL MISCELLANEOUS APPEAL No.941 of 2013

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the Union of India, represented by its General Manager, South Central Railways, Secunderabad, challenging the order, dated 27.08.2013, passed in O.A.A.No.219 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal granted compensation of Rs.4,00,000/- in favour of the respondent-applicant for the death of her husband-Kagitha Bhaskara Rao (deceased) in an untoward incident of accidental fall from train No.7009 Seshadri Express at Ongole Railway Station, while travelling from Ongole to Chirala on 09.11.2003 holding journey ticket bearing No.20759270.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellant-Railways would contend that the deceased-Kagitha Bhaskara Rao was not a *bona fide* passenger and he did not die in an untoward accidental fall from the train No.7009 Seshadri Express at Ongole railway station while travelling from Ongole to Chirala on 09.11.2003; the Tribunal had not considered the record in a correct manner and erroneously held that the deceased was a *bona fide* passenger and died in an untoward accidental fall from the train; there is evidence of R.Ws.1 to 4 and the documents Exs.R1 to

R3, which falsifies the case of the respondent-applicant; and ultimately, prayed to set aside the order passed by the Tribunal.

4. On the other hand, the learned counsel for the respondent-applicant would contend that there is ample evidence to substantiate that the deceased was a *bona fide* passenger and died in an untoward accidental fall from the train No.7009 Seshadri Express at Ongole railway station while travelling from Ongole to Chirala on 09.11.2003 holding journey ticket bearing No.20759270; the Tribunal had analysed the entire evidence adduced by both sides and rightly concluded that the deceased was *bona fide* passenger and died in the subject incident; there is no infirmity to take a different view; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the points that arise for determination in this appeal are as follows: -

1. Whether the deceased-Kagitha Bhaskara Rao was a *bona fide* passenger travelling from Ongole to Chirala by train No.7009 Seshadri Express as on the date of the subject accident, i.e., on 09.11.2003?
2. Whether the deceased died in an untoward incident of accidental fall from the train No.7009 Seshadri Express?
3. Whether the impugned order dated 27.08.2013 passed by the Tribunal is liable to be set aside?

Points 1 to 3:

6. To substantiate the claim of the respondent-applicant, the claimant herself deposed as A.W.1 and got marked Ex.A.1-certified copy of FIR, Ex.A.2-certified copy of Inquest Report, Ex.A.3-certified copy of post-mortem examination report and Ex.A.4-proper person certificate issued by the Mandal

Revenue Officer, Karlapalem. On behalf of the appellant-Railways, R.Ws.1 to 4 were examined and Ex.R.1-copy of Guard's Rough Journal, Ex.R.2-copy of Free Way Bill and Ex.R.3-copy of message issued by Station Master, Ongole to the Sub Inspector of Police, GRP, Ongole.

7. There is evidence of A.W.1 that on 09.11.2003, her husband went to Ongole on his office work and after completion of his work, while he was returning from Ongole, he purchased a train ticket bearing No.20759270 from Ongole to Chirala and when he was boarding Seshadri Express, he was slipped and was crushed between the platform and coach, sustained grievous injuries and died instantaneously. Ex.A.1-certified copy of FIR and Ex.A.2-certified copy of inquest report reveals the same. Under Ex.A.3-certified copy of post-mortem examination report, several injuries are found over the dead body of the deceased and those injuries are caused due to fall from a train. Ex.A.4 is the proper person certificate issued by the Mandal Revenue Officer, Karlapalem. Exs.A.1 to A.3 supports the case of the respondent-applicant. As per Ex.A.2-certified copy of inquest report, a ticket bearing No.20759270 to travel from Ongole to Chirala on 09.11.2003 soaked in blood was found with the deceased. As per the record produced by R.W.3, the said ticket was issued on 09.11.2003 to travel from Ongole to Chirala. Though the appellant-Railways contended that the deceased was not travelling in the train, the evidence of R.W.3, coupled with the record filed by him and Ex.A.2-certified copy of the inquest report, reveals that the deceased wanted to undertake the

journey on a valid railway ticket. In the enquiry conducted by the Divisional Manager, it was concluded that though there are no eyewitnesses to the incident occurred within the station premises, the dead body was found in between the track and the platform, and it concluded that the deceased was careless and negligent in his journey and the incident occurred due to the deliberate act of the deceased but not due to any failure or negligence on the part of the railways. The same is the contention of the respondent herein-applicant. No person will deliberately fell between the train and the platform. It is appropriate to refer the decision of the Hon'ble Supreme Court in *Union of India vs. Rina Devi*<sup>1</sup>, wherein it is held as follows:

"We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd. versus Sunil Kumar* [2017 (13) SC ALF 652] laying down that plea of negligent of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

8. Above decision squarely applies to this case. As per the oral and documentary evidence adduced by both sides, it

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<sup>1</sup> Civil Appeal No.4945 of 2018 dated 09.05.2018

cannot be said that the deceased was in any way responsible for occurrence of the accident nor he was negligent in boarding the train. There was an accidental slip of the deceased between the train and the track due to the jerks. The Tribunal had elaborately dealt with all these issues and rightly held that the deceased died in an untoward incident of accidental fall on 09.11.2003 and ultimately granted compensation in favour of the respondent-applicant. There are no circumstances to take a different view than the view taken by the Tribunal. So, the contentions raised on behalf of the appellant-Railways do fail. The appeal is devoid of merit and is liable to be dismissed. So, these points are answered in favour of the respondent-applicant.

9. In the result, the appeal is dismissed, confirming the order, dated 27.08.2013, passed in O.A.A.No.219 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

26<sup>th</sup> October, 2018

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