

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.95 OF 2014

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 21.02.2011, in O.A.A.No.146 of 2004 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124 & 124-A of the Railways Act, 1989 (for short, 'the Act') with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Yekkirala Venkata Srikanth in an untoward incident of railway accident that took place on 23.02.2004 was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondents/Railways. Perused the material on record.

3. Learned counsel for the appellants/applicants would contend that the Tribunal failed to appreciate the final report filed by the police; that the deceased Yekkirala Venkata Srikanth fell down when he was travelling from Visakhapatnam to Vizianagaram on 23.02.2004; that the subject death occurred due to accidental fall from a running train; that there is evidence of A.W.2 that the deceased Yekkirala Venkata Srikanth was travelling by 2VV passenger train; that though ticket was not found, the evidence of A.W.2 would show that the deceased Yekkirala Venkata Srikanth

purchased the ticket and boarded the train; that the ticket might have lost in the accident; that the Tribunal did not appreciate the facts and circumstances of the case in correct perspective and erroneously dismissed the application and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that there is no evidence to substantiate that the deceased Yekkiral Venkata Srikanth was travelling in 2VV passenger train between Visakhapatnam and Vizianagaram; that A.W.2 was pressed into service to support the case of the applicants; that there is specific evidence of R.Ws.1 and 2, which demolishes the case of the applicants; that further, the findings recorded in the Post Mortem Examination Report are also against the applicants; that the dead body of the deceased Yekkiral Venkata Srikanth was found in between the track and it can be a case of suicide; that the Tribunal, while dealing with the matter, had elaborately dealt with all the aspects and dismissed the claim; that there is no infirmity in the impugned order and there are no circumstances to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the following points arise for determination:

“1. Whether the deceased was a bona fide passenger? and

2. Whether the subject death of the deceased Yekkiral Venkata Srikanth was the result of an untoward incident of accident by accidental fall from 2VV passenger train?”

6. **POINT Nos.1 & 2:-**

Admittedly, A.W.1, who is the father of the deceased Yekkirala Venkata Srikanth, is not an eye witness to the alleged incident, to substantiate that the deceased Yekkirala Venkata Srikanth had boarded the train and travelled to Vizianagaram. Though A.W.2 deposed that he saw the deceased Yekkirala Venkata Srikanth purchasing the ticket and boarding 2VV passenger train, in the final report and investigation conducted by the police, he was not figured as a witness. Further, admittedly, no ticket was found from the possession of the dead body of the deceased Yekkirala Venkata Srikanth. There is evidence of R.W.1 that he is not aware of the fall of the deceased Yekkirala Venkata Srikanth from a train. There is also evidence of R.W.2 – Deputy Station Superintendent, Korukonda that he was informed by the driver of a goods train that the dead body was lying in the middle of the track. R.W.3 is the person, who conducted investigation with regard to the subject death. He came to the conclusion that the deceased Yekkirala Venkata Srikanth was not a *bona fide* passenger and might have intentionally or otherwise came on the track and got hit by a train. As per the material placed on record, the dead body was found on the down line track by the driver of a goods train. Had the deceased Yekkirala Venkata Srikanth travelled from Visakhapatnam to Vizianagaram, the dead body would not have been found on the down line track, which has to be found on upline of the track. There is evidence of A.W.2 that the deceased Yekkirala Venkata Srikanth purchased ticket and boarded the train. When the dead body was subjected to post mortem examination, it was deteriorated and cut injuries were

found, which suggests that the deceased Yekkirala Venkata Srikanth was hit by a train while on the track and did not fall from a train. So, the finding of the dead body on down line of the track falsifies the version that the deceased Yekkirala Venkata Srikanth had travelled between Visakhapatnam and Vizianagaram. Had the deceased Yekkirala Venkata Srikanth travelled from Visakhapatnam to Vizianagaram as contended, the dead body would have found on the upline of the track.

7. There is also one more loop line. The dead body was found in the middle of the down line at Korukonda Yard, which is away from Vizianagaram Station. There was no need to the deceased Yekkirala Venkata Srikanth to get down at that place. So, it is not an untoward incident of accidental fall while boarding or deboarding the train. So, while analysing the entire evidence on record with regard to the deceased Yekkirala Venkata Srikanth possessing ticket and travelling by 2VV passenger train from Visakhapatnam to Vizianagaram, the Tribunal held that the deceased Yekkirala Venkata Srikanth was not a *bona fide* passenger and did not fall from a train and succumbed to the injuries. The initial burden i.e., to possess ticket and an accidental fall from a train, had not been established by the applicants. The Tribunal had given elaborate reasons in dismissing the application for compensation. Under these circumstances, no case is made out for grant of any compensation to the applicants. There is no infirmity in the impugned order and the same is confirmed. The appeal is devoid of merits and is liable to be dismissed.

8. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 10.10.2018
AMD



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