

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.160 of 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 29.02.2012 in O.A.A. No.221 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellants-applicants claiming compensation for the death of one V.Suresh (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from a train on 08.03.2002 while travelling from Pithapuram to Tuni, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicants would contend that applicant no.1 is father, and applicant no.2 is widow sister, of the deceased; that the deceased died in an untoward incident of accidental fall from train no.7480 Tirupati-Puri while travelling from Pithapuram to Tuni on 08/09.03.2002; that he was a *bona fide* passenger of the

said train; that there is evidence of A.Ws.1 to 4 to substantiate the purchase of ticket by the deceased and his accidental fall from the said train; that there is no rebuttal evidence from the side of railways; that the Tribunal erroneously held that the deceased was not a *bona fide* passenger and did not die in an untoward incident of accidental fall from running train, and dismissed the claim petition, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the fall of the deceased would not fall under definition of untoward incident under Section 123 (c) of the Railways Act, 1989; that there is no valid journey ticket; that there is no legally acceptable evidence to hold that the deceased was a *bona fide* passenger; that the Tribunal rightly dismissed the claim petition and there is no infirmity, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the applicants are dependants of the deceased V.Suresh ?

2) Whether the deceased V.Suresh was a *bona fide* passenger of train No.7480 Tirupati-Puri Express travelled from Pithapuram to Tuni on 08.03.2002 ?

3) Whether the deceased V.Suresh died in an untoward incident of accidental fall from running train No.7480 Tirupati-Puri Express while travelling from Pithapuram to Tuni on 08.03.2002 ?

4) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?

5) To what relief ?

7. To substantiate the claim of the applicants, A.Ws.1 to 4 were examined and Exs.A1-FIR; Ex.A2-inquest report; Ex.A3-postmortem report; Ex.A4-CD Part-I; Ex.A5-death certificate and Ex.A6-family member certificate, were got marked before the Tribunal. No oral or documentary evidence was adduced on behalf of the railways.

Point no. 1:

8. The respondent-railways filed counter denying the averments of the claim application and contending that the deceased might have died of some other reasons and his dead body might have been kept in the yard to claim compensation. It is further contended that the deceased might have died by his own criminal act. To substantiate

the said contentions, no oral or documentary evidence is placed on record by the railways.

9. A.Ws.1 and 2 are father and sister respectively of the deceased. They deposed that they were dependants on the deceased. In support of their contention, they filed Ex.A8-family member certificate, which reveals that A.Ws.1 and 2 are family members of, and dependants on, the deceased. There is also their oral evidence to that effect. Therefore, it can be safely concluded that the applicants were dependants on the deceased. Accordingly, point no.1 is answered in favour of the applicants and against the respondent.

Points 2 to 4:

10. Specific case of the applicants is that on 08.03.2002, the deceased was travelling by train no.7480 Tirupati-Puri Express to go to Tuni from Pithapuram, and in the night, he had accidentally fallen from the said train due to jerks, and the journey ticket was lost in the accident. Admittedly, no journey ticket is found in possession of the dead body or within the vicinity of place of finding the dead body. As per Ex.A1-FIR, the dead body was found near the track at KM 646/14-16 in GLP yard. In Ex.A2-inquest panchanama, it had come up that the deceased might have fallen from a train and died. In

Ex.A3-post mortem examination report, there is mention of several injuries over the dead body of the deceased. They are possible in a railway accident. Ex.A4-CD Part-I file reveals that the deceased had fallen from unknown train, suffered injuries and succumbed to the same.

11. The evidence of A.Ws.1 and 2 reveals that the deceased was going to Tuni to attend a function and he informed them that he would go to Pithapuram on 08.03.2002 and meet his friend there and would go to Tuni by train. He purchased a ticket at Pithapuram railway station to travel to Tuni through a passenger train during night of 08.03.2002. The ticket was to travel by general compartment. They also stated that the deceased had fallen on the intervening night of 08/09.03.2002 due to jerks and speed of the train. In cross-examination, they reiterated the same.

12. The evidence of A.W.3 reveals that his native place is nearby Pithapuram; that on 08.03.2002, he along with the deceased went to Pithapuram railway station, where the deceased purchased a journey ticket to travel from Pithapuram to Tuni and boarded train no.7480 Tirupati-Howrah; that after dropping his friend, the deceased, at platform, he returned to his native place. The evidence of A.W.4, resident of Tuni, reveals that he is

friend of the deceased. He learnt from the deceased that the latter was coming to Tuni to attend a birthday function in his house on 09.03.2002. He also stated that on 08.03.2002, the deceased informed him about his visit to Tuni and also that he was coming by train no.7480. He also deposed about father and sister of the deceased calling him with regard to arrival of the deceased to Tuni. A.W.4 also stated that the deceased did not attend his birthday function on 09.03.2002. A.Ws.3 and 4 reiterated in cross-examination what they stated in chief-examination.

13. On remand from this court, A.Ws.3 and 4 were examined by the Tribunal. When there is specific mention in inquest report as well as Part-I C.D. (criminal case record) that the deceased had fallen from a train, there is specific evidence of A.W.2 that the deceased boarded the train no.7480 after purchasing ticket and when there is evidence of A.Ws.1, 2, 3 and 4 to prove the proposed travel of the deceased, it is not proper to disbelieve their evidence, particularly when there is no statutory enquiry report from the respondent-railways. The defence set up by the respondent-railways that the deceased might have committed suicide or died due to his criminal act, is not supported by any oral or documentary evidence. The evidence of A.Ws.1 to 4 and the documents marked on

behalf of the applicants clearly establish that the deceased was a *bona fide* passenger of train no.7480 and died in an untoward incident of accidental fall from the said train. There is no other evidence from the side of the railways to prove that the injury suffered by the deceased is self-inflicted injury and falls under exceptions narrated under Section 124A of the Railways Act, 1989. Principles of strict liability can be applied to the instant case. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Accordingly, points 2 to 4 are answered in favour of the applicants and against the railways.

Point No.5:

14. In the result, the C.M.A. is allowed. The impugned order dated 29.02.2012 in O.A.A. No.221 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. Consequently, the O.A.A. is allowed. The applicants are awarded compensation of Rs.8,00,000/- (Rupees eight lakhs only) in view of the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways is directed to deposit the said amount within a period of three months from the date

of receipt of a copy of this judgment, failing which the applicants are entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. On deposit, the applicants are entitled to withdraw the amount with accrued interest equally.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

04.12.2018
DRK



Dr. SHAMEEM AKTHER, J