

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.815 OF 2014

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 22.07.2014, in O.A.II (U) No.310 of 2008 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 Section 124-A of the Railways Act, 1989 with regard to grant of compensation consequent on the death of the deceased Muthyala Kanakaiah in an untoward incident of railway accident was dismissed.

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/applicants would submit that the deceased while boarding train at Mancherial, accidentally fell down from the train and sustained severe injuries; that the ticket purchased by the deceased said to have lost in the journey; that the Tribunal had not properly considered the evidence both documentary and oral and erroneously dismissed the application and ultimately prayed to set aside the impugned order and grant compensation in accordance with the schedule prescribed under the Rules.

4. On the other hand, learned standing counsel for railways would submit that the deceased was trying to board the train from off-side; that the deceased was not possessing any ticket; that the deceased himself was negligent in boarding the train from off-side and therefore, the Tribunal rightly held that the deceased was not a *bona fide* passenger and accordingly, dismissed the application and ultimately prayed to sustain the order under appeal.

5. In view of submissions made by both sides, the following points arise for determination:

1. Whether the deceased was a *bona fide* passenger of Train No.324 of Singareni passenger?
2. Whether the deceased suffered amputation and other injuries due to accidental fall on 14.07.2008?
3. Whether the impugned order is liable to be set aside?
4. To what relief?

POINT Nos. 1 and 2:

6. During pendency of the application before the Tribunal, the legal representatives of the deceased were brought on record. Appellant No.2 is wife and appellant No.3 is daughter of the deceased. To substantiate the case of the appellants/applicants, appellant No.2, who is wife of the deceased, was examined as A.W.1 and got marked Ex.A.1-attested copy of FIR, Ex.A.2- Admission-cum-discharge card, Ex.A.3-death certificate, Ex.A.4-Family member certificate, Ex.A.5-Attested copy of MLC and Ex.A.6-Attested copy of case disposal report. On behalf of the Railways, R.W.1 was examined and Ex.R.1 was marked.

7. The case of the appellants/applicants is that the journey ticket said to have been purchased by the deceased was lost in the subject accident. Ex.A.1 is the First Information Report, dated 14.07.2008. As per the said document, a male person, aged about 33 years had fallen down from off-side of the train and the injured was shifted to Government Hospital for treatment. A.W.1 is only a hearsay witness for purchase of ticket and alleged accidental fall of the deceased from train. The evidence of R.W.1, who was working as Dy.Station Superintendent at Mancherial, reveals that on 14.07.2008, a passenger came to his office, informed that one person while boarding the subject train from off-side, accidentally had fallen down and severely injured. Basing on that information, R.W.1 issued a message to Sub-Inspector concerned and the said message is marked as Ex.R.1. Ex.R.1 also corroborates the evidence of R.W.1. In the cross-examination R.W.1 submits that he had not seen the injured. There is consistency in the evidence of R.W.1 and Ex.A.1-F.I.R issued in this case.

8. The case of the appellants/applicants is that the deceased intended to travel from Mancherial to Kolanoor and while boarding train at Mancherial Railway station, he had accidentally fallen down. Admittedly, the train halts at Mancherial station for two to three minutes and during that period the passengers have to board and get down from train. As per the material placed on record, the deceased made an attempt to board the subject train from off-side and accidentally fell down and suffered severe injuries. There is no evidence on record to establish that the deceased entered Mancherial railway station and purchased journey ticket to travel by train no.324 Singareni passenger. More over, no journey ticket

was filed before the Tribunal to substantiate the contentions made on behalf of the applicants. When the deceased had not entered Mancherial railway station, no inference can be drawn that the deceased possessed valid journey ticket. Under these circumstances, it can safely be concluded that the deceased was not a *bona fide* passenger and did not die in an untoward incident of accidental fall.

9. Learned counsel for the appellants relied on the decisions reported in **Ramesh Kurarin v. Union of India through General Manager¹** and **Mazidur Rahman S/o late S.K.Nabi Bax, Village Nista v. Union of India²**. The purpose of above decisions is that even a fall while boarding from off side of the train amounts to an untoward incident of accidental fall. In the case on hand, the deceased, without possessing a journey ticket, had fallen down from offside of the subject train while boarding the subject train. Therefore, the benefit extended in the above decisions to the victims therein cannot be extended to the applicants in the case on hand. The Tribunal dealt with these aspects have been elaborately and dismissed the application filed by the applicants for grant of compensation. The appeal is devoid of merits.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed.

Miscellaneous petitions pending, if any, in this appeal shall stand closed. There shall be no order as to costs.

DR.JUSTICE SHAMEEM AKTHER

NOVEMBER 12, 2018

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¹ 2006 ACJ 163

² LAWS (PAT) 2012 3 90

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