

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.454 OF 2016

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 21.03.2016, in O.A. II(U) No.35 of 2009 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-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Pallapu Madhu in an untoward incident of railway accident that occurred on 27.12.2005 was dismissed.

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

3. Learned counsel for the appellants/applicants would contend that the deceased Pallapu Madhu died in an untoward incident of railway accident that occurred on 27.12.2005 while travelling by Krishna Express; that A.W.2 is a direct witness, who clearly and categorically deposed about the deceased Pallapu Madhu purchasing a ticket and boarding Krishna Express; that there is also Inquest Report and other record to substantiate that the death of the deceased Pallapu Madhu was due to a fall from Krishna Express and it is an untoward incident of railway accident

by fall from a train; that the Tribunal failed to analyse the entire evidence i.e., both oral and documentary evidence on record in correct perspective and erroneously held that the deceased Pallapu Madhu was not a *bona fide* passenger and the subject death did not occur in an untoward incident of railway accident by falling from a train and ultimately, prayed to set aside the impugned order and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that there is a delay in filing the Original Application; that in the application, there are no details of A.W.2 informing A.W.1/applicant No.1 with regard to the deceased Pallapu Madhu boarding Krishna Express and purchasing of ticket; that further, in the evidence of A.W.1 also, there is no such mention; that A.W.2 is a planted witness for the purpose of claiming compensation; that there is no untoward incident of railway accident by fall from a train as contended; that the application was filed with false and frivolous contentions; that the Tribunal rightly analysed the entire evidence and came to the said conclusion; that there are no grounds to interfere with the impugned order and 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 Pallapu Madhu was a bona fide passenger of Krishna Express? and**
- 2. Whether the death of the deceased Pallapu Madhu occurred by fall from a running train and such incident is an untoward incident of railway accident?”**

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

To substantiate the case of the applicants, A.Ws.1 and 2 were examined and Exs.A-1 to A-5 were got marked. On behalf of the Railways, none were examined and Ex.R-1 was got marked.

7. Applicant No.1, who is the wife of the deceased Pallapu Madhu, is not a direct witness to the purchase of ticket, or boarding of Krishna Express, by the deceased Pallapu Madhu. The evidence of A.W.2 reveals that he accompanied the deceased Pallapu Madhu to the railway station and saw him purchasing the ticket and keeping the ticket in his pocket. He also stated that the deceased Pallapu Madhu boarded Krishna Express. These aspects were not mentioned in the application filed by the applicants. In the evidence of A.W.1 also, there is no mention of presence of A.W.2 at all. It is pertinent to state that the subject death took place on 27.12.2005. The application for compensation was made on 16.02.2009. A.W.1 was examined on 03.12.2012. It goes to show that the applicants got ample opportunity to incorporate the details of the deceased Pallapu Madhu boarding Krishna Express and purchasing ticket being witnessed by A.W.2. It is also pertinent to state that A.W.2 was examined on 13.02.2013 i.e., much after the occurrence of accident and filing of the claim application. There is a gap of about more than two months in examining A.W.2 and A.W.1. Further, A.W.2 had not given the dates of purchase of ticket in his evidence.

8. As per Ex.R-1 – Divisional Railway Manager's Report, which is based on the report of investigation conducted by the Railway Protection Force Commander, the deceased Pallapu Madhu was

not a *bona fide* passenger and no incident of fall from a running train took place on 27.12.2005 as contended by the applicants. Some cash and other articles were found in the possession of the dead body of the deceased Pallapu Madhu and those were handed over to the applicants. When cash and some other articles were found in the possession of the dead body of the deceased Pallapu Madhu, had the deceased Pallapu Madhu purchased a ticket and kept in his pocket, the same would have been found in his pocket or it would have been found somewhere near the dead body. In this case, there is no recovery of ticket. Therefore, it is difficult to hold that the deceased Pallapu Madhu was a *bona fide* passenger.

9. It is also appropriate to state that there are number of injuries over the dead body of the deceased Pallapu Madhu and those have come to light in the Post Mortem Examination Report. In the scene of offence panchanama also, blood was found. In the Inquest Panchanama, some blood was found inside the track. It appears that A.W.2 was pressed into service to support the case of the applicants. The evidence of A.W.2 is not reliable. Under these circumstances, it cannot be said that the fall of the deceased Pallapu Madhu was from Krishna Express. The Tribunal had examined the entire evidence on record and held that the deceased Pallapu Madhu was neither a *bona fide* passenger nor died in an untoward incident of railway accident by fall from a running train i.e., Krishna Express. The findings recorded by the Tribunal do not suffer from any infirmity. There is nothing to take a different view. There is no infirmity in the impugned order. The appeal is devoid of merits and is liable to be dismissed.

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

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

DR.JUSTICE SHAMEEM AKTHER

Date : 12.10.2018
AMD



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