

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.591 of 2008

JUDGMENT

This Civil Miscellaneous Appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987, by the appellant-claimant aggrieved by the order, dated 28.01.2008, passed in O.A.A.No.233 of 2002 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short 'the Tribunal).

2. Heard the learned counsel for the appellant-applicant and the learned Standing Counsel for the respondent-Railways.

3. Learned counsel for the appellant-applicant would contend that the appellant suffered crush injury to his hand, which resulted in amputation. To substantiate the same, there is specific evidence of A.W.1-injured. He also examined A.W.2-eye witness, who was a canteen boy in Railway Station, and also examined A.W.3-GRP constable. As per Ex.A2-medical record produced before the Court, there is specific mention that the appellant suffered crush injuries in an untoward incident. However, the Tribunal erroneously held that the appellant was not a *bona fide* passenger and he did not suffer injuries in an untoward incident of Railway accident. The finding of the Tribunal is perverse. Further, in the evidence of R.W.1-Assistant Station Master, there is no mention with regard to the details of the ticket produced by the appellant. Merely because R.W.1 did not notice the occurrence of accident, it does not mean that the appellant did not fall from the train and suffered injuries.

4. On the other hand, learned Standing Counsel for the respondent-Railways would contend that no ticket was produced by the appellant. There is no record with Railways to establish that the appellant suffered crush injury, as contended, in an untoward incident of Railway accident that occurred on 17.04.2002 when he fallen from Janmabhoomi express. The Tribunal had analysed the entire evidence on record and rightly held that the appellant is not a *bona fide* passenger. Further, he did not met with an untoward incident as contended. There are no circumstances to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:-

1. Whether the appellant was a *bona fide* passenger?
2. Whether the appellant sustained injuries in an untoward incident of Railway accident on 17.04.2002 at Eluru Railway Station?
3. Whether the impugned order is liable to be set aside?

POINTS:-

6. The specific evidence of A.W.1-injured is that on 17.04.2002 he boarded Jhanmabhoomi express with a valid ticket to travel from Vizag to Eluru and when the train reached Eluru station, he accidentally slipped and fell down from the train at Eluru platform and suffered severe crush injuries and multiple fractures. According to him, journey ticket bearing No.06689653 from Vijayawada to Eluru was seized by GRP constable.

7. The appellant had also examined the said GRP constable as A.W.3. He clearly stated that he recorded the statement of the appellant on information given by police constable (1854 P.C., O.P. Eluru). The statement of the appellant recorded by A.W.3 is marked as Ex.A3. Ex.A3 corroborates with the evidence of A.W.1. A.W.3 further stated that after recording the statement of A.W.1, he enquired with the Station Master with regard to the subject incident. The Station Master replied that he has no knowledge about the subject incident.

8. The said Station Master was examined on behalf of the Railways as R.W.1. He deposed that as per the records, namely, GRP message register maintained at Railway Station, there is no mention with regard to the untoward incident taken place on 17.04.2002 or no one reported any untoward incident on that particular day.

9. The evidence of A.W.3-GRP constable is that he enquired with R.W.1 with regard to the subject incident. However, R.W.1 in his evidence deposed that nobody intimated him with regard to the occurrence of untoward incident on 17.04.2002. When A.W.3 brought the occurrence of accident to the notice of R.W.1, R.W.1 could have enquired in the Railway Station to find out whether such an untoward incident occurred or not. It goes to show that R.W.1 did not evince any interest to find out the truth of occurrence of accident or otherwise.

10. Further, as per Ex.A2-medical record produced by the Medical Superintendent, District Hospital, Eluru, there is

specific mention that the appellant stated to the hospital authorities when he was admitted into the hospital on 17.04.2002 at 3:25 pm that he sustained injuries in a Railway accident at Eluru Railway Station as he fell down from a train.

11. Under Ex.A2, there is specific mention with regard to the time of admission of the appellant into the hospital at 3:25 pm on 17.04.2002. It is not in dispute that the subject train did not reach railway station at 2:30 pm on 17.04.2002. Further, in Ex.A2-medical record, the time and place of accident is mentioned as 2:30 pm on 17.04.2002 at Eluru Railway Station. Under the medical record, there is specific mention of the crush injuries suffered by the appellant and the treatment given to him. When a patient is admitted in the hospital at 3:25 pm on 17.04.2002 and claims that he suffered injuries in a Railway accident at 2:30 pm on same day, got mentioned the same in hospital records to make a false statement to doctor and incorporate that the claimant suffered injuries in railway accident. Further, it is not possible within one hour of the occurrence of accident to think out and make a false foundation to lay a claim against the Railways. The statement given to the doctor cannot be discarded. Though the said accident occurred in the day light and when it is brought to the notice of R.W.1- Assistant Station Master, he did not make any enquiry with regard to the occurrence of accident. It is nothing but omission on the part of the Railways in taking notice of the occurrence of subject accident. It is also pertinent to state that there is specific evidence of A.W.2 with regard to the occurrence of

accident and the said evidence is corroborated with the evidence of A.W.1.

12. Under these circumstances, it can safely be concluded that the appellant suffered injuries in an untoward incident of Railway accident that occurred on 17.04.2002 at 2:30 pm at Eluru Railway Station. The Tribunal properly had not properly analysed the entire evidence and its finding is unsustainable.

13. So as far as the possession of the ticket by the appellant is concerned, he has given the details of the ticket. R.W.1 did not state that the ticket bearing No.06689653 was not issued at Vijayawada Railway Station. Further, the Railways did not adduce any evidence to demonstrate that ticket bearing No.06689653 was not issued at Vijayawada Railway Station to travel from Vijayawada to Eluru. When a person suffers with crush injuries and other bodily injuries and states that he has given the ticket to A.W.3-GRP constable, his statement cannot be disbelieved. Therefore, there is clinching evidence to establish that the appellant was a *bona fide* passenger. It is appropriate to refer item No.3 Part-III of the Schedule appended to the Railway Accidents and Untoward incidents (Compensation) Rules, 1990. As per the medical evidence on record, there was an amputation of left hand above elbow. Under these circumstances, it can be concluded that the appellant left hand was amputated from 8" from tip of acromion to less than 4½" below tip of olecranon. In such an event, he is entitled for an amount of Rs.5,60,000/- towards compensation.

14. In the result, the appeal is allowed setting aside the impugned order dated 28.01.2008 passed by the Tribunal in O.A.A.No.233 of 2002 and directing the respondent-Railways to pay compensation of Rs.5,60,000/- (Rupees five lakhs sixty thousand) within three months from the date of receipt of a copy of this order, failing which, the appellant is entitled to interest @ 6% per annum from the date of this order till the date of realisation.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Date : 03.10.2018
ssp

Dr. SHAMEEM AKTHER, J

