

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.227 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'Act'), is filed by the appellants - applicants challenging the order, dated 15.02.2016, passed in OA II (U) No.153 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short 'Tribunal'), whereby, the claim petition filed by the appellants - applicants for a compensation of Rs.4,00,000/- for the death of the deceased - Doni Narsimha alias Narsimha Reddy in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard Sri M. Lakshma Reddy, learned counsel for the appellants, and Sri A. Ravinder Reddy, learned standing counsel for Railways appearing for the respondent.

3. Perused the evidence on record, both oral and documentary.

4. The appellants herein are applicants in OA II (U) No.153 of 2009 before the Tribunal, while respondent - Railways is arrayed as such. For the sake of convenience, the parties herein are referred to as they were arrayed in the foresaid OA before the Tribunal.

5. The learned counsel for the applicants would contend that the deceased - Doni Narsimha alias Narsimha Reddy died in an untoward incident of accidental fall from Train No.273 Tirupati -

Kakinada Passenger, occurred on the intervening night of 05/06.04.2009; on 05.04.2009, the deceased along with his family members was travelling by the said train from Tirupati to Chirala, having a valid journey ticket; a statement to that effect was also given to the railway authorities by applicant No.4, who is son of the deceased; the Tribunal erroneously held that the deceased did not die in an untoward incident and held that while crossing the track, he met with a railway accident, and that the deceased was not a *bona fide* passenger; the findings of the Tribunal are erroneous; and ultimately prayed to set aside the order, which is impugned in the present appeal and allow the application as prayed for.

6. On the other hand, the learned standing counsel for Railways would submit that the deceased was not a *bona fide* passenger and a journey ticket was subsequently planted; there is no direct evidence to establish the incident of accidental fall from the train except self-serving statement made by applicant No.4; the Tribunal rightly dismissed the application; there is no infirmity in the order passed by the Tribunal; and ultimately prayed to dismiss the appeal.

7. In view of the above submissions made by both sides, the following points arise for determination in this appeal:

- i. Whether the deceased - Doni Narsimha alias Narsimha Reddy was a *bona fide* passenger of Train No.273 Tirupati - Kakinada Passenger, travelling from Tirupati to Chirala on 05.04.2009?

- ii. Whether the deceased - Doni Narsimha alias Narsimha Reddy died in an untoward incident of accidental fall from the said Train on the intervening night of 05/06.04.2009 at KM 82/1-2 at Renigunta Yard?
- iii. Whether the impugned order is liable to be set aside?
- iv. To what result?

Point Nos.(i) and (ii):-

8. To substantiate the claim of the applicants, son of the deceased, who is applicant No.4 was examined as AW.1 and got marked Ex.A.1- attested copy of first information report, Ex.A.2- attested copy of Inquest report, Ex.A.3-original ticket, Ex.A.4-attested copy of Post-mortem examination report, Ex.A.5-death certificate, Ex.A.6-attested copy of Part-II C.D., Ex.A.7-family members certificate and Ex.A.8-final report. On behalf of the respondent-Railways, one Sri D. Srinivas Rao, Inspector of Railway Protection Force, Renigunta was examined as RW.1, and got marked Exs.R.1 and R.2, which are Divisional Railway Manager's Report and letter of Inspector, Renigunta, respectively.

i) The Tribunal while dealing with the subject matter held that Ex.A.3 - journey ticket was planted for the purpose of the case to claim compensation and rejected the case of the applicants that the deceased along with his family members was travelling by the subject train from Tirupati to Chirala; the applicants and the deceased were sitting at different places in general compartment and the deceased

had accidentally fallen from the said train on the intervening night of 05/06.04.2009. As per the records, particularly Ex.A.2 - inquest report, the dead body of the deceased was found on 06.04.2009 around 9.40 a.m. at Renigunta North cabin KM 82/1-2 posts. The dead body was cut up to waist and separated and found lying between the tracks. Ex.A-2 also discloses that an aged person while coming from western side to eastern side without observing passing of trains, accidentally came under unknown train, sustained injuries and succumbed to those injuries.

ii) It is pertinent to state that AW.1, son of the deceased, who said to be a co-passenger, identified the death of his father on 11.04.2009 i.e., about five days from the date of death. Had AW.1 along with family members and deceased travelled in the subject train on the intervening night of 05/06.04.2009, at least he would have come to know about the occurrence of incident and about death of his father at least on the next day i.e., 06.04.2009. There would not have been any delay in coming to know the accidental death and finding of the dead body. It creates any amount of suspicion about AW.1 accompanying the deceased by the subject train on the date of the incident. Ex.A.3 - journey ticket meant to undertake the journey from Tirupati to Chirala on 05/06.04.2009. It appears that the said ticket is pressed into service to make illegal claim under Section 23 of the Act. There is also Ex.A.4 - post-mortem examination report, wherein the doctor opined that the cause of death was due to 'shock and

haemorrhage', but not due to accidental fall from the train. Under these circumstances, the Tribunal has rightly disbelieved the evidence of AW.1 and the documents marked on behalf of applicants, particularly Ex.A.3, and held that the deceased was neither a *bona fide* passenger, nor died in an untoward incident of accidental fall from the subject train. The impugned order passed by the Tribunal is inconsonance with the evidence on record. Accordingly, these points are answered against the applicants and in favour of the respondent - Railways.

Point No.(iii):-

9. The Tribunal had elaborately dealt with the contentions and the evidence on record and rightly reached the conclusion dismissing the claim petition. There is no infirmity in the impugned order. There is nothing to take a different view. Hence, the appeal is devoid of merit and is liable to be dismissed.

Point No.(iv):-

10. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the order, dated 15.02.2016, passed in OA II (U) No.153 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the present appeal, stand closed.

Dr. SHAMEEM AKTHER, J

December 05, 2018

Mgr

