

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.392 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity), is filed by the appellants-applicants challenging the order, dated 28.10.2013, passed in O.A.A.No.261 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants-applicants claiming compensation of Rs.4,00,000/- for the death of the deceased-Guntubarki Pentayya in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard the learned counsel for the appellants-applicants and the learned Standing Counsel for the respondent-Railways and perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased-Guntubarki Pentayya was travelling from Visakhapatnam to Cheepurupalli by a passenger train on 06.03.2008 and he had unfortunately fallen down from the said train due to jerks and speed, suffered multiple injuries and died on the spot. In the course of inquest, ticket was found from the dead body of the deceased. There is final report filed by the police, which establishes the accidental fall from the train. No defence evidence was adduced by the railways. However, the Tribunal erroneously held that the distance between the place of

boarding at Visakhapatnam and destination was at Cheepurupalli is only 93 kms and the deceased would have reached after three or four hours of boarding and there was nothing on his part to continue the journey till the morning of 07.03.2008 and held that there was no evidence to hold that the deceased boarded any train or travelled during the intervening night of 6/7.03.2008 and the subject death was not the outcome of the untoward incident of accidental fall from the train. The learned counsel contends that the findings of the Tribunal are erroneous and ultimately, prayed to set aside the impugned order.

4. On the other hand, the learned Standing Counsel for the respondent-railways would contend that there was no journey ticket for the deceased to travel on 06.03.2008. There was no accidental fall on the intervening night of 06/07.03.2008. Further, there are no direct witnesses to that effect. Had the deceased fallen from the moving train, the co-passengers or somebody would have witnessed the same and reported to the railway authorities. There is no such evidence on record. The Tribunal rightly elaborated and dealt with the evidence. There is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:-

1. Whether the deceased was a *bona fide* passenger of any train on 06.03.2008?

2. Whether the deceased died in an untoward incident of accidental fall from train on the intervening night of 06/07.03.2008?
3. Whether the impugned order is liable to be set aside?
4. To what relief?

POINT Nos.1 and 2:-

6. To substantiate the claim of the appellants-applicants, the wife of the deceased deposed as A.W.1 and got marked Ex.A1-copy of FIR, Ex.A2-copy of inquest report, Ex.A3-copy of P.M.E. report, Ex.A4-copy of journey ticket, Ex.A5-copy of final report and Ex.A6-copy of Arogyashree health card. The railway authorities neither examined any of its employees nor marked any documents to substantiate that the deceased was not a *bona fide* passenger and he did not succumb to the injuries suffered in a railway accident.

7. There is only evidence of A.W.1-wife of the deceased, who is illiterate. Therefore, she could not specifically state, by which train, the deceased travelled on 06.03.2008. Ex.A4 is a journey ticket. The same is bearing No.X77258209. It is valid for journey on 06.03.2008 and the ticket was recovered during the inquest panchanama conducted over the dead body of the deceased. The dead body was also found by the side of railway tracks running between Nellimarla and Garividi railway station. In the inquest report, it is concluded that the deceased had an accidental fall from some train. The police concerned have conducted enquiry into the matter and filed a final report and it is marked as Ex.A5. It also discloses that the deceased travelled

by passenger train and accidentally fell down from the train due to heavy rush, sustained severe injuries and died on the spot and there is no foul play in the death of the deceased. Further, as per Ex.A3-postmortem report, there is mention that brain and skull damaged on the left side of the head due to train accident. No foul play could be suspected against the death. The injury mentioned in Ex.A3-postmortem report is possible in an accidental fall from the train.

8. As per the evidence, it is established that the deceased had purchased a ticket on 06.03.2008. His dead body was found at 6.30 hours on 07.03.2008. Therefore, there is every possibility of fall from the train on the intervening night of 06/07.03.2008. When the dead body was found by the side of the track and when the injuries found over the dead body of the deceased are possible in a railway accident, particularly when valid journey ticket was found in the possession of the dead body, it cannot be said that the deceased was not a *bona fide* passenger and did not accidentally fall down from the train. In DRM's report, there are statements of the guards, who were discharging their duties on train No.226 Dn. Visakhapatnam – Palasa passenger and train No.232 Dn. Visakhapatnam – Palasa passenger that they did not witness any accidental fall or notice any such fall during their duty hours on 06.03.2008. Since in the instant case, accidental fall is in the midnight, it might have gone unnoticed by the co-passengers as well as the guards. Merely because, the DRM's report is against the appellants, it cannot be held that the deceased did not die in an untoward

incident of accidental fall from train. There is ample evidence on record to hold that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall. The Tribunal had not properly appreciated all the facts and circumstances and erroneously, dismissed the application. These points are accordingly answered in favour of the appellants-applicants and against the respondent-railways.

POINT No.3:-

9. The findings of the Tribunal are not in consonance with the evidence on record. There is infirmity in the order under challenge and the same is liable to be set aside.

POINT No.4:-

10. In the result, the appeal is allowed and the order dated 28.10.2013 passed by the Tribunal in O.A.A.No.261 of 2008, is set aside. Consequently, the O.A. stands allowed. The appellants-applicants are entitled for a compensation of Rs.8,00,000/- (Rupees eight lakhs) in view of the 2016 amendment made to the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-Railways is directed to deposit the awarded compensation of Rs.8,00,000/- before the Tribunal within a period of three months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants are entitled for interest @ 6% per annum on the said amount, from the date of this judgment till the date of realisation. On deposit of the compensation, appellant No.1 is permitted to withdraw 50% of the compensation and the appellants 2 and 3, who are the

children of the deceased, are permitted to withdraw remaining 50% of the compensation in equal shares.

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

Dr. SHAMEEM AKTHER, J

Date: 14.11.2018
ssp

