

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.1257 OF 2011

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railways Claims Tribunal Act, 1987 is directed against the order, dated 12.07.2011, in O.A.A.No.500 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellant/applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 (for short, 'the Act') with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased T.Govindappa in an untoward incident of railway accident that took place on 21/22.12.2004 was dismissed.

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 deceased T.Govindappa was a *bona fide* passenger of the train - Rayalaseema Express travelling from Cuddapah to Adoni and he accidentally fell down from the train on 21/22.12.2004 and succumbed to the injuries; that the Tribunal erroneously held that the deceased T.Govindappa was not a *bona fide* passenger and he did not fall from the said train on that day; that there is the evidence of A.W.2, who is an independent witness, and he clearly and categorically demonstrated about the purchase of the ticket of the deceased T.Govindappa and there is also ample evidence on

record to establish that the subject death occurred due to accidental fall from the said train and in view of that, the Tribunal ought to held that the deceased T.Govindappa is a *bona fide* passenger and accidentally, fell down from the train - Rayalaseema Express travelling from Cuddapah to Adoni on 21/22.12.2004; that the Tribunal ought to have granted Rs.4,00,000/- with appropriate interest thereon to the appellant, who is the wife of the deceased T.Govindappa, and ultimately, prayed to allow the application.

4. On the other hand, the learned Standing Counsel for the respondent/Railways would contend that A.W.2 is a planted witness and there is inconsistency in his evidence; that when the dead body of the deceased T.Govindappa was found, a panchanama was conducted and documents pertaining to his pension and PF settlement, photographs, cash, promissory note, house receipt were found in the possession of the dead body of the deceased T.Govindappa, but no railway travel ticket was found with him; that further, as per the evidence of A.W.2, the deceased T.Govindappa was travelling from Cuddapah to Adoni and the accident occurred between Adoni and Mantralayam, but there is no mention in the pleadings that A.W.2 purchased a ticket for the deceased T.Govindappa and was accompanying him in the subject train and so, A.W.2 is brought in after thought; that nobody had witnessed the deceased T.Govindappa falling from the train and the Tribunal had elaborately dealt with these aspects and ultimately dismissed the claim application holding that the deceased T.Govindappa was not a *bona fide* passenger and did not

succumb to the injuries in the untoward incident of railway accident and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the points that arise for determination are:

“1. Whether the deceased T.Govindappa was a bona fide passenger in train - Rayalaseema Express travelling from Cuddapah to Adoni on 21/22.12.2004?”

2. Whether the deceased T.Govindappa died in an untoward incident of accidental fall from the train - Rayalaseema Express travelling from Cuddapah to Adoni on 21/22.12.2004?”

6. **POINT No.1:-**

To substantiate the claim, the applicant deposed as A.W.1 and got examined one Sri S.Markandeyulu as A.W.2 and Exs.A-1 to A-7 were got marked. To rebut the same, the respondent/Railways examined R.Ws.1 and 2 and got marked Ex.R-1.

7. Admittedly, A.W.2 accompanying the deceased T.Govindappa in return journey from Cuddapah to Gooty and purchasing tickets, is not mentioned in the pleadings of the application. However, there is the specific evidence of A.W.2 who categorically stated that he purchased ticket to the deceased T.Govindappa to travel in Rayalaseema Express from Cuddapah to Adoni. A.W.2 travelled on that day from Cuddapah to Gooty. He came to know about the death of the deceased T.Govindappa five days after the incident. It has been observed by the Tribunal that in almost every case, there is A.W.2, who gives evidence to prove that there was a ticket and this does not mean that every A.W.2 must be disbelieved.

Admittedly, A.W.2 was not present during the course of inquest over the dead body of the deceased T.Govindappa. According to him, he came to know about the death of the deceased T.Govindappa after five days of the incident. Therefore, it was not possible to him to be present at the time of conduct of inquest over the dead body of the deceased T.Govindappa.

8. It is pertinent to note that Adoni Station is situated at K.M.494.64 and the dead body was found at K.M.495/0-1 just about less than half a kilometre away from the railway station. The DRM Report reveals that the deceased T.Govindappa was a non-bona fide passenger who might have fallen from a train. Further, under Inquest Report also, there is mention that the panchas opined that the deceased T.Govindappa might have fallen from the train while travelling between Adoni and Mantralayam. Admittedly, nobody had seen the deceased T.Govindappa proceeding towards the railway track to hold that this is a case of suicide. Further, the railway tracks are under surveillance by the Gang Man and Patrolling Troops. None of them had seen the deceased T.Govindappa proceeding towards the railway tracks and committing suicide. The dead body of the deceased T.Govindappa was found by the side of the railway track with multiple injuries all over his body. The time of occurrence of the subject accident is around 3.09 hours on 22.12.2004. The subject dead body was found just less than half a kilometre from the Adoni Railway Station and immediately passing of the subject train, after halting at Adoni. When it is established by examining A.W.2 that the deceased T.Govindappa was travelling in the subject train at that point of time and nobody had noticed the deceased T.Govindappa

proceeding towards the railway track and committing suicide and in view of finding the dead body by the side of railway track with multiple injuries, it can be safely concluded that the subject death occurred due to the untoward incident of railway accident caused by train - Rayalaseema Express travelling from Cuddapah to Adoni on 21/22.12.2004.

9. **POINT No.2:-**

There is the specific evidence of A.W.2 that the deceased T.Govindappa was a *bona fide* passenger. When there is the evidence of A.W.2, it is for the respondent/Railways to substantiate that the deceased T.Govindappa was not a *bona fide* passenger. In a decision rendered by the Apex Court in **Union of India vs. Rina Devi** in Civil Appeal No.4945 of 2018 [Special Leave Petition (Civil) No.10223 @ D.No.6059 of 2018], it is held at para No.17.4 as under:

“We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

10. In the given circumstances, when the applicant had discharged initial burden to prove that the deceased was travelling with a valid ticket by examining A.W.2, burden has shifted on the

Railways to substantiate that the deceased was a ticketless traveller. There is no evidence from the Railways to hold that the deceased T.Govindappa was a ticketless traveller. Under these circumstances, it can be safely concluded that the deceased T.Govindappa was a *bona fide* passenger travelling in train - Rayalaseema Express from Cuddapah to Adoni on 21/22.12.2004 and had accidentally fallen from the subject train and succumbed to the injuries. Both the points are answered against the respondent/Railways.

11. For the death of a *bona fide* passenger, the compensation payable is Rs.4,00,000/-. In view of the amendment made to the Act with effect from 01.01.2017, in case of a death of a person in an untoward incident of railway accident, the total compensation payable is Rs.8,00,000/-. Therefore, the applicant is awarded a compensation of Rs.8,00,000/-.

12. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 12.07.2011, passed in O.A.A.No.500 of 2005 by the Tribunal. The respondent/Railways shall deposit the compensation awarded within three (3) months from the date of receipt of a copy of this order failing which, it shall pay 6% interest from the date of this order till the date of realisation. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 26.09.2018
AMD

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