

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.665 OF 2013

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 08.05.2013, passed in O.A.A.No.244 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad 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/- for the injuries suffered by him in a railway accident that took place on 13.08.2004 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 though the applicant had established that he was a *bona fide* passenger travelling by train No.336 Nagpur Passenger from Hasanparthy to Makodi and suffered amputation of left upper limb above elbow due to the injuries suffered in an untoward incident, for non-examination of doctor, the Tribunal erroneously dismissed the claim; that there is medical record and document to establish the said injury; that the Tribunal ought to have granted compensation as enumerated in Part III of the Schedule issued by the Ministry of Railways *vide* notification, dated 22.12.2016, and according to it, the applicant is entitled for a compensation of

Rs.5,60,000/- and interest thereon and ultimately, prayed to allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that the Tribunal had rightly recorded a finding that the applicant did not prove the amputation by leading cogent and convincing evidence; that non-examination of doctor is fatal to the case of the applicant, and rightly dismissed the claim application and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the point that arises for determination is:-

“Whether the appellant/applicant is entitled for compensation as enumerated in Part III of the Schedule issued by the Ministry of Railways vide notification, dated 22.12.2016?”

6. **P O I N T:-** While dealing with the subject matter, the Tribunal had framed the following issues:

“1) Whether the Applicant was a bonafide passenger of train No.336 Nagpur passenger travelling from Hasanparthi to Makodi on 13.8.2004?”

2) Whether the Applicant sustained injuries in an untoward incident of accidental fall from the said train?”

3) Whether the Applicant is entitled to claim Rs.4,00,000/- for the injuries sustained in the said accident?”

4) To what relief?”

7. The Tribunal answered that the applicant was a *bona fide* passenger and he had a fall from train No.336 of Nagpur Passenger on 13.08.2004. There is also admission on the part of the Railways to that effect, and the Tribunal, without any hesitation,

held that the applicant was a *bona fide* passenger and fell as a victim to an untoward incident. The Tribunal further held as under:-

“Contrary to the deposition of RW.2, in the Divisional Railway Manager’s report, copy filed along with the Written Statement, the Respondent railway has categorically admitted that the applicant was a bonafide passenger and further as per the message issued by the Station Superintendent, Hasanparthi to the Dy.Station Superintendent, Kazipet one male person namely Rajeshwar Rao S/o.Danaiah, Keyman, Makodi is said to have fallen down from 336 passenger, injured and left hand cut.

Therefore, in view of the clear admission made by the Respondent railway with regard to the bonafides and the accidental fall of the applicant from the train, I have no hesitation to hold that the applicant was a bonafide passenger and fell a victim to an untoward incident.”

8. So, for non-examination of the doctor and noticing certain discrepancies in the medical record, the Tribunal held that it was not proper to allow the application only placing reliance on the medical document with reference to the relevant injuries. As per the medical record placed before the Tribunal i.e., Ex.A-4 – copy of Discharge Card of the applicant issued from M.G.M. Hospital, Warangal, there was amputation of left upper limb above elbow. Admittedly, the doctor concerned was not examined. Ex.A-5 – copy of Physically Handicapped Certificate issued by the Medical Board also reveals the amputation of left upper limb above elbow. Further, the Tribunal had an opportunity to see the applicant when he deposed as A.W.1 and record its own observation regarding amputation of forearm. It did not do so. When there is medical record to establish the amputation of left hand above elbow, which can be seen and felt by the Tribunal. So, the

examination of doctor is not necessary. The only question is whether the amputation falls within Part II or Part III of the aforementioned Schedule. As there is amputation of left upper limb, it can be safely concluded that the said amputation is 8" from tip of acromion to less than 4 ½" below tip of olecranon. For the said amputation, an amount of Rs.5,60,000/- is payable as per the aforesaid schedule. In the given circumstances, non-examination of doctor is not fatal to the case of the applicant.

9. In view of these circumstances, the applicant is awarded a compensation of Rs.5,60,000/-. The respondent/Railways shall pay the compensation awarded within three (3) months from today failing which, interest at the rate of 9% per annum shall be paid on the compensation amount from the date of this order till the date of realisation.

10. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 08.05.2013, passed in O.A.A.No.244 of 2005 by the Tribunal. 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 : 01.10.2018
AMD

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