

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.306 OF 2010

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 25.02.2010, in O.A.A.No.14 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 Section 124/124-A of the Railways Act, 1989 with regard to grant of compensation of Rs.2,00,000/- for the injuries sustained by him in an untoward incident of accidental fall that took place on 16.11.2004, was dismissed.

2. Heard the learned counsel for the appellant/applicant and the learned Standing Counsel for the respondent/Railways. Perused the material on record.

3. Learned counsel for the appellant/applicant would contend that the appellant/applicant – Nadupuru Krishna boarded train No.471 Vijayawada – Rayagada Passenger to travel from Powerpet to Gajapathinagaram along with his wife and children and for that, he purchased two journey tickets and one platform ticket for his brother, who accompanied him; that when the train proceeded from the said railway station, he had fallen from the said train accidentally and suffered amputation of right leg below the knee, but the Tribunal erroneously held that the applicant was not a *bona fide* passenger though there is evidence under Ex.A-1 – three

tickets i.e., two journey tickets and one platform ticket; that there is also evidence of A.W.2 – his brother, who accompanied him to see off the applicant and his family members and shifted him to the hospital, to support his claim and that there is clinching evidence to establish that the applicant was a *bona fide* passenger and had an accidental fall from train No.471 Vijayawada – Rayagada Passenger; that the Tribunal erroneously dismissed the claim application and ultimately, prayed to set aside the impugned order and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that there is evidence to substantiate that the applicant was not a *bona fide* passenger of train No.471 Vijayawada – Rayagada Passenger; that the applicant went to the railway station on 16.11.2004 to see off his family members and in that process, he boarded the train and when the train moved about 100 meters, he made an attempt to get down and in that process, he came in between the running train and the platform and suffered amputation of right leg and there is a finding with regard to that in Ex.R-1 – DRM's report; that there is also other evidence to substantiate the same; that further, the platform ticket of A.W.2 was belatedly purchased and planted for the purpose of this case; that the Tribunal rightly held that the applicant was not a *bona fide* passenger; that there is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the main dispute between the parties is that the

applicant reached the railway station on 16.11.2004 to see off his wife and children without purchasing any platform ticket and that he was not a *bona fide* passenger. So, the points that arise for determination are:

“1. Whether the appellant/applicant was a bona fide passenger of train No.471 Vijayawada – Rayagada Passenger to travel from Powerpet to Gajapathinagaram on 16.11.2004? and

2. Whether the appellant/applicant suffered injuries in an untoward incident of accidental fall from the said train on 16.11.2004?”

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

A.W.1, who is the applicant herein, clearly and categorically stated that on 16.11.2004, he purchased three tickets in total under Ex.A-1 i.e., two tickets for the journey of himself and his wife and one platform ticket for his brother – A.W.2. When he was travelling by train No.471 Vijayawada – Rayagada Passenger, he accidentally fell down from the said train due to rush and jerks. His brother – A.W.2 took him to Government Hospital, Eluru where his right leg below knee was amputated. He also suffered fracture in his left leg. Through him, Ex.A-1 – three tickets and Ex.A-2 – Wound Certificate (hospital record) were marked. A.W.2 had corroborated the evidence of A.W.1. On behalf of the railways, R.Ws.1 and 2 were examined and Ex.R-1 – DRM’s Report, Ex.R-2 – DTC Copy and Ex.R-3 – G.D. copy were marked.

7. R.W.1 – Commercial Supervisor, Powerpet, basing on Ex.R-2 – DTC Book Extract, stated that the platform ticket 86364 was not at all issued on 16.11.2004 and on that day, tickets up to 86219 were sold. He denied that the entries made in DTC Book are

incorrect. As per R.W.2 – GRP Constable, Eluru, no untoward incident was reported on 16.11.2004. As per the DRM's report, the injured/applicant came to railway station to see off his wife and children. He boarded the train, settled his wife and children in the coach. Meanwhile, the train started. Then, he made a fatal attempt to get down from the running train and had fallen down in between the train and the platform and sustained injuries. His wife and children got down from the train at Eluru. The Tribunal concluded that the applicant was not a *bona fide* passenger and the injuries suffered by him are self inflicted. The specific evidence of A.W.1 is that he had accidentally fallen from the train. As per Ex.A-2 – Wound Certificate, there are details of admission into Government Hospital, date of admission etc., and there is also specific mention that the applicant had accidentally fallen from a train.

8. It is contended vehemently on behalf of the railways that on the two tickets marked under Ex.A-1, there is no mention of details of issuance of tickets. On verification of these two tickets, it clearly reflects that these tickets were issued by the railways to travel from Powerpet to Gajapathinagaram. The time of issue and the date are not found therein. The case of the respondent/Railways is that these two tickets were also planted to claim compensation in this case. Absolutely, there is no evidence on behalf of the railway authorities to show that at which time, these tickets were issued, but the tickets were meant to travel from Powerpet to Gajapathinagaram. The oral evidence of A.Ws.1 and 2 is that these two tickets are meant to travel by the applicant/A.W.1 and his wife from Powerpet to Gajapathinagaram. In the DRM's report

or in any other document, there is no rebuttal evidence with regard to this aspect. When the railway authorities did not adduce necessary evidence to substantiate that the subject tickets are not meant to undertake the subject journey on the date of accident, when there is specific evidence of A.Ws.1 and 2, it can be safely concluded that these two tickets are meant to travel on 16.11.2004 from Powerpet to Gajapathinagaram by the applicant/A.W.1 and his wife. Under these circumstances, it cannot be held that the applicant was not a *bona fide* passenger.

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

There is ample evidence to substantiate that the applicant had accidentally fallen from train No.471 Vijayawada – Rayagada Passenger. The same is mentioned in DRM's report, so also in the medical record produced by the applicant. Under these circumstances, the applicant had proved that he had an accidental fall from train No.471 on 16.11.2004, which amounts to an untoward incident of accidental fall defined under Section 123(c) of the Railways Act, 1989. Both the points are answered accordingly.

10. The applicant had an amputation of right leg below the knee and also suffered fracture to his left femur bone. To prove the same, he has to lead cogent and convincing evidence to determine the compensation payable. Hence, the matter is required to be remanded to the Tribunal. Therefore, the order, dated 25.02.2010, in O.A.A.No.14 of 2005 passed by the Tribunal is set aside.

11. Accordingly, the appeal is allowed and the matter is remanded to the Tribunal for limited extent to adjudicate with regard to the nature of injuries suffered by the applicant and

award compensation accordingly, in accordance with law, as expeditiously as possible, within a period of three (3) months from the date of receipt of a copy of this judgment. Both the parties are entitled to lead evidence, if they choose to do so. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 27.11.2018
AMD



336

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



C.M.A.No.306 OF 2010

Date: 27.11.2018

AMD