

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.453 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant-applicant, challenging the order, dated 16.03.2016 in O.A. II (U) No.338 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition of the appellant-applicant claiming compensation of Rs.4,00,000/- for the death of Mahamad Kasim @ Nazar (hereinafter referred to, as 'the deceased'), who is son of the appellant-applicant, in an untoward accidental fall from train No.180 Visakhapatnam-Kakinada passenger (hereinafter referred to, as 'the subject train') on 28.06.2007 at KM No.712/13-11 in between Regupalem and Narsipatnam railway stations, was dismissed.

2. Heard both sides. Perused the record.

3. The Tribunal settled the following issues.

“(i)Whether the applicants are dependents of the deceased?

(ii) Whether the deceased was a *bona fide* passenger of train in question ?

(iii) Whether the deceased died as a result of an untoward incident of accidental fall from the said train ?

(iv) To what relief ?”

4. On behalf of the appellant-applicant, she examined herself as A.W.1 and examined one Konada Srinu as A.W.2, and got marked Ex.A1-copy of F.I.R.; Ex.A2-copy of inquest report; Ex.A3-original ticket; Ex.A4-copy of no objection certificate and Ex.A5-attested copy of post mortem examination report. On behalf of respondent-railways, no oral evidence was adduced, but Ex.R1-Divisional Railway Manager's report was marked.

5. On hearing both sides, the Tribunal held issue no.1 against the appellant-applicant. Issue No.1 reads, "Whether the applicants are dependents of the deceased?". There is sole applicant in this case. In the claim application, she gave her name as 'Mohammed Ameena Beebi'. In Ex.A4-No objection certificate, her name is mentioned as 'Ameena Beebi'. In inquest panchanama Ex.A2, name of father of the deceased is mentioned as 'Mohaboob Jani'. In the claim application, name of husband of the applicant is mentioned as 'late Mahaboob Janee'. Merely because 'Mohammed' is not found in Ex.A4, it cannot be said that the applicant Mohammad Ameena Beebi and Ameena Beebi are distinct persons. On oath, the applicant stated that she is mother of the deceased. There is no rival claim. Under these circumstances, it can safely be concluded that the appellant-applicant was dependent on the deceased. Issue no.1 is answered in

favour of the applicant accordingly. The other issues are not adjudicated by the Tribunal. They are required to be determined by the Tribunal after affording opportunity to both the parties to the claim application. With these observations and findings, the impugned order is set aside. O.A. is restored to file of the Tribunal for disposal in accordance with law after affording opportunity to both the parties by answering the unanswered issues.

6. The appeal is allowed accordingly remanding the matter. No costs.

Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

29.11.2018
DRK

Dr. SHAMEEM AKTHER, J

