

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.101 of 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants/applicants, challenging the order, dated 11.04.2011, passed in OAA No.476 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants/applicants claiming a compensation of Rs.4,00,000/- for the death of the deceased-K.Appaiah in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard both sides. Perused the record.

3. The Learned counsel for the appellants/applicants would contend that the deceased-K.Appaiah died in an untoward incident of accidental fall from the Train No.229 Passenger while travelling from Ambodala to Parvathipuram on 03.05.2006. In the records submitted by the Government Railway Police, there is mention that the deceased fell down accidentally from the subject train on 03.05.2006. There is also mention in the said records that the deceased was travelling in the subject train with a valid journey ticket. Further, there is also mention in the said records that A.W.2 accompanied the deceased in the subject train. The Tribunal, without considering the entire evidence on record in proper perspective, erroneously dismissed the claim petition holding that the deceased was not a *bona fide* passenger

of Train No.229 Passenger travelling from Ambodala to Parvathipuram on 03.05.2006 and ultimately prayed to allow the appeal by setting aside the order under challenge and award compensation as claimed.

4. On the other hand, the learned Standing Counsel for the respondent-Railways would contend that no journey ticket was found with the deceased when the dead body of the deceased was searched at the first instance on 03.05.2006 by the Junior Engineer, who reported the same to the railway authorities. Thereafter, the journey ticket said to have been found on 04.05.2006. The Tribunal, after analysing the entire evidence on record, rightly dismissed the claim petition. There is no infirmity in the order under challenge and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. In view of the above submissions made by both sides, the points that arise for determination in this appeal are as follows:

1. Whether the deceased-K.Appaiah was a *bona fide* passenger of Train No.229 Passenger travelling from Ambodala to Parvathipuram on 03.05.2006?
2. Whether the deceased – K.Appaiah died in an untoward incident of accidental fall from running Train No.229 Passenger while travelling from Ambodala to Parvathipuram on 03.05.2006?
3. Whether the order under challenge is liable to be confirmed/ set aside?
4. To what result?

Point Nos.1 and 2:-

6. To substantiate the claim of the appellants/applicants, A.W.1 and A.W.2 were examined and Ex.A.1-copy of First Information Report, Ex.A.2-copy of Inquest Report, Ex.A.3-copy

of Post Mortem Examination Report, Ex.A.4-copy of Final Report and Ex.A.5-Family Member Certificate are filed. On behalf of the respondent-Railways, R.W.1 and R.W.2 were examined and Ex.R.1-certified copy of letter to GRP was filed. C.W.1 and C.W.2 were examined by the Tribunal.

7. The specific case of the appellants/applicants is that the deceased-K.Appaiah, along with A.W.2-K.Yendaiah went to Ambodala Railway Station, purchased a journey ticket bearing No.13827 to travel from Ambodala to Parvathipuram and boarded Train No.229 Passenger on 03.05.2006. When the deceased moved towards toilets in a compartment of the subject train, he accidentally fell down from the running train due to jerks of the train and died on the spot. In this case, though the subject accident occurred on 03.05.2006, the D.R.M's report was prepared on 28.08.2006. As per the Railway Passengers (Manner of Investigation of Untoward Incidents) Amendment Rules, 2007, the D.R.M's report has to be filed within sixty days of the occurrence of the untoward incident. So, the D.R.M's report was filed belatedly in this case. In D.R.M's Report, it is mentioned that the deceased, while crossing a railway track in contravention of Railway Rules, met with the subject accident and succumbed to the injuries. There is no mention in the D.R.M's report as to how such a finding was arrived at. A.W.2 had clearly and categorically deposed about the purchase of journey ticket and about the deceased falling down accidentally from the subject train on 03.05.2006. In the Inquest conducted over the dead body of the deceased by the Government Railway

Police, it has come up that A.W.2 was accompanying the deceased in the subject train from Ambodala to Parvathipuram on 03.05.2006 and that the journey ticket was found in the apparel of the deceased. The details of the journey ticket are given in column No.7 of the inquest Panchanama. The case of the appellants/applicants is that the Government Railway Police did not handover the journey ticket recovered from the apparel of the deceased to them and hence, they could not file the journey ticket before the Tribunal. On the other hand, the Railways did not produce any record to show that the journey ticket of the deceased was handed over to the appellants/applicants.

8. In Ex.A.2-Inquest Panchanama, it has come up that the deceased was travelling by Train No.229 Passenger from Ambodala to Parvathipuram on 03.05.2006 and had accidentally fell down from the said train. There is also evidence of A.W.2 that the deceased had accidentally fallen down from the subject train at Gummada Railway Station due to jerks of the train and that he got down the subject train at the next railway station, went to the place of accidental fall, i.e., Gummada Railway Station, found the dead body of the deceased and got scared and thereafter, he informed the incident to a MPTC member and other persons. The Tribunal disbelieved the evidence of A.W.2 and held that so many railway accidents are being reported at Parvathipuram Railway Division. The Tribunal further held that the Junior Engineer who found the dead body of the deceased at the first instance did not find any journey ticket in the apparel of

the deceased. There is no legally acceptable evidence to establish that whether the Junior Engineer, who found the dead body of the deceased at the first instance, had thoroughly checked the apparel of the deceased or not. R.W.1 is the Junior Engineer who found the dead body of the deceased at the first instance. He did not state in his evidence that he thoroughly checked the dead body of the deceased to find out whether the deceased was travelling with a journey ticket or not. He deposed only with regard to the finding of the dead body of the deceased at Gummada Station. When the oral evidence of A.W.2 coupled with the documentary evidence under Ex.A.2 reveals that the deceased was travelling by Train No.229 Passenger from Ambodala to Parvathipuram on 03.05.2006 with a valid journey ticket and had accidentally fallen down from the said train, the Tribunal ought to have considered the same and ought to have awarded compensation in favour of the appellants/applicants.

9. C.W.2 is the Sub-Inspector, Railway Police, Tuni. He spoke about recovery of the journey ticket from the apparel of the deceased. C.W.1 is the Sub-Inspector, Railway Police, Eluru. He stated that he submitted the journey ticket of the deceased to his superior officer. Through C.W.1, the case diary was marked, which reveals that the deceased accidentally fell down from the subject train due to jerks of the train.

10. R.W.2, a railway employee, deposed that R.W.1 informed that a male dead body was lying by the side of Up Line between

Gumada-Kenuru at KM 374/5-6 and that he sent a memo to GRP, duly entering in the Station Diary about the incident. The evidence of C.W.1, C.W.2 and R.W.2 corroborates the evidence adduced on behalf of the appellants/applicants. Under these circumstances, it is held that the deceased-K.Appaiah was a *bona fide* passenger of Train No.229 Passenger travelling from Ambodala to Parvathipuram on 03.05.2006 and he died in an untoward incident of accidental fall from the subject train at Gummada Railway Station. The findings recorded by the Tribunal on these two points are not based on evidence and record and are, accordingly, set aside. These points are answered in favour of the appellants/applicants and against the respondent-Railways.

Point No.3:-

11. 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:-

12. In the result, the appeal is allowed and the order, dated 11.04.2011, passed in OAA No.476 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is set aside. Consequently, OAA No.476 of 2006 is allowed. The appellants/applicants are granted a compensation of Rs.8,00,000/- (Rupees eight lakhs only), 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 (03) 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 realisation. On deposit of the compensation, the appellants/applicants are permitted to withdraw the same in equal shares.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

30th November, 2018
Bvv

Dr. SHAMEEM AKTHER, J

