

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.594 of 2016

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 23.07.2011, passed in O.A.A.No.48 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal dismissed the claim application of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of K.Pullam Raju in an untoward incident of accidental fall while travelling from Nellore to Visakhapatnam on 07.01.2005 by train No.8614 Yeshwanthpur Express at Km.445/31 to 446/0 between Gannavaram and Mustabad. The appellants are the wife and children and respondent No.2 is the mother of the deceased.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased-K.Pullam Raju died due to accidental fall from train No.8614 Yeshwanthpurl Express on 07.01.2005 while travelling from Nellore to Visakhapatnam; copies of final report as well as inquest report establishes the accidental fall; the journey ticket was found during the course of inquest; the Divisional Railway Manager's report also reveals that the deceased had fallen from the subject train accidentally; the entire evidence on record clinchingly establish that the

deceased was accidentally fallen from the subject train; the Tribunal erroneously held that the deceased was not a *bona fide* passenger of the subject train without considering the evidence on record; the findings of the Tribunal are not based on evidence and record; and ultimately, prayed to set aside the impugned order and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways would contend that there are no direct witnesses to the alleged accidental fall; the deceased was not a *bona fide* passenger of the subject train and did not die in an accidental fall; the Tribunal rightly dismissed the claim application of the applicants; the findings of the Tribunal are based on evidence and record; there are no circumstances to interfere with the findings of the Tribunal; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the following points have come up for determination in this appeal:

- 1) Whether the deceased-K.Pullam Raju was a *bona fide* passenger of train No.8614 Yeshwanthpur Express and he died in an untoward incident of accidental fall from the said train while travelling from Nellore to Visakhapatnam on 07.01.2005?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 22.07.2011 passed by the Tribunal is liable to be set aside?

4) To what relief?

6. Point Nos.1 and 3: The case of the applicants is that the deceased-K.Pullam Raju was a *bona fide* passenger of train No.8614 Yeshwanthpur Express and he died in an untoward incident of accidental fall from the said train while travelling from Nellore to Visakhapatnam on 07.01.2005. The deceased had a valid ticket bearing No.00371191 at the time of accident. To substantiate the case of the applicants, the 1st applicant-wife of the deceased deposed as A.W.1 and got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of inquest report, Ex.A.3-attested copy of post-mortem examination report, Ex.A.4-attested copy of journey ticket, Ex.A.5-original Final Report and Ex.A.6-original Family Member Certificate. On behalf of the respondent-railways, R.W.1 was examined and Ex.R.1-Divisional Manager's Report was marked.

7. A.W.1 is the wife of the deceased. She deposed about the purchase of journey ticket by her husband to travel from Nellore to Visakhapatnam by train No.8614 Yeshwanthpur Express. She did not accompany the deceased during journey. It is pertinent to state that Ex.A.1-copy of F.I.R. and Ex.A.2-copy of inquest report reveals the falling of the deceased from the subject train. The details of the journey ticket given by the applicants are tallying with the details of the journey ticket marked as Ex.A.4. In Ex.A.5-final report prepared by the police, there is mention that the deceased might have fallen from the subject train. In Ex.R.1-DRM's report, there is mention of the deceased travelling from Nellore to Visakhapatnam by train

No.8614 Yeshwanthpur Express under the bridge No.13 between Gannavaram and Mustabad railway stations. The DRM's report also reveals that there was no possibility of the fall of the deceased unless the deceased was negligent. It also concludes that there are no other direct eyewitnesses to the alleged accidental fall. It concluded simply that the dead body was found by the side of the track. It cannot be presumed that the deceased was travelling by the subject train and the deceased was not the victim of untoward incident. When there is final report, inquest panchanama and also DRM's report exhibiting the fall of the deceased from the running train, there is no dispute with regard to the genuineness of the ticket recovered in the course of inquest panchanama to travel from Nellore to Visakhapatnam on 07.01.2005. All the circumstances clinchingly establishes that the deceased was a *bona fide* passenger of train No.8614 Yaswhanthpur Express and he was accidentally fallen from the said train at Km.No.445/31 to 446/0 between Gannavaram and Mustabad railway stations. Merely because Koteswar Rao, who is the companion of the deceased, was not examined, it would not defeat the claim of the applicants. In the given circumstances, the applicants have discharged their initial burden that the deceased was *bona fide* passenger of the subject train and died in an untoward incident of accidental fall. The Tribunal had not properly considered the documents placed on record by the applicants as well as the respondent-railways. The findings of the Tribunal are not in consonance with the documents placed before the Tribunal by both the parties.

Therefore, the impugned order is liable to be set aside. Accordingly, these points are answered.

8. Point Nos.2 and 4: The applicants 1 to 3, who are the wife and children, and respondent No.2-mother of the deceased, are dependents on the deceased. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants-claimants and respondent No.2-mother of the deceased are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

9. In the result, the appeal is allowed, setting aside the order, dated 22.07.2011, passed in O.A.A. No.48 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.48 of 2007 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants and respondent No.2-mother of the deceased as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants and respondent No.2 within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants and respondent No.2 are entitled to interest @ 6% per annum from the date of this judgment till realisation. The 1st applicant-wife of the deceased is entitled to Rs.5,00,000/- (Rupees five lakhs only) and the remaining amount of Rs.3,00,000/- shall be apportioned among appellant Nos.2 and 3 and respondent No.2 equally. On deposit, all the applicants and respondent No.2 are entitled to withdraw their respective shares. Pending

Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

10th December, 2018

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