

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.1066 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 03.01.2011, passed in O.A.A.No.412 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 Bhaskaruni Suseela (mother of applicants) in an untoward incident of accidental fall from train No.274 Tirupathi Passenger at Tangutur railway station while travelling from Chirala to Tangutur on 03.12.2007.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the daughter of the deceased examined as A.W.1 who purchased the ticket and boarded the deceased in train No.274 Tirupathi Passenger to travel from Chirala to Tangutur, but her mother had accidentally fallen while getting down from the said train; the same is mentioned in the inquest report and F.I.R.; the Tribunal erroneously held that the deceased might not have fallen from the subject train and dismissed the claim application, further held that the deceased was not a *bona fide* passenger of the subject train; the journey ticket of the deceased was lost in the accidental fall; the injuries suffered by the deceased are possible in an accidental fall from

the train; the findings of the Tribunal are not based on evidence and record, which are erroneous; 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 the deceased was not a *bona fide* passenger of the subject train; there is no untoward incident of accidental fall of the deceased from the subject train; there is no record to prove that the deceased purchased the train ticket and fallen from the train; 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 was a *bona fide* passenger of train No.274 Tirupathi Passenger and she died in an untoward incident of accidental fall from train at Tangutur railway station while travelling from Chirala to Tangutur on 03.12.2007?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 03.01.2011 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-Bhaskaruni Suseela (mother of the applicants) was a *bona fide* passenger of train No.274 Tirupathi Passenger and she died in an untoward incident of accidental fall from train at Tangutur railway station while travelling from Chirala to Tangutur on 03.12.2007. To substantiate the case of the applicants, the 1st applicant-daughter of the deceased deposed as A.W.1 and got marked Ex.A.1-F.I.R., Ex.A.2-inquest report, Ex.A.3-death certificate and Ex.A.4-proper person certificate. On behalf of the respondent-railways, R.Ws.1 and 2 were examined and Ex.R.1-Memo given by YPA, Ex.R.2-Control Message and Ex.R.3-DRM's report were marked.

7. As per Ex.A.1-copy of F.I.R. and Ex.A.2-copy of inquest report, there is mention that the deceased-Bhaskaruni Suseela had fallen from the train No.274 Thirupathi Passenger. R.Ws.1 and 2 have conceded that there was accidental fall. As per the material placed before the Tribunal by the respondent-railways, the fall was from the train No.478 Passenger but not from the train No.274. None of the direct witnesses were examined on behalf of the respondent-railways to prove the accidental fall. A.W.1 is the daughter of the deceased, who categorically stated that she purchased the ticket and boarded her mother (deceased) in train No.274 Thirupathi passenger to travel from Chirala to Tangutur, while getting down at Tangutur railway station, her mother had fallen from the train and succumbed to the injuries. A.W.1 is the only witness to the journey undertaken by the deceased possessing valid journey

ticket on 03.12.2007. A.W.1 is not an eyewitness to the accidental fall. The dead body was identified at 3-50 hours on 04.12.2007. Ex.R.3-DRM's report demonstrates the fall of the deceased from train No.478 passenger. As per Ex.R.3-DRM's report, on the intervening night of 3/4.12.2007, number of trains have passed at the subject route. The train No.274 passenger arrived at Tangutur at 21-53 hours and left a minute later. The train No.478 passenger arrived at Tangutur at 00-04 hours and left a minute later. Train No.2734 Express passed the route at 3-47 hours. So, it goes to show that number of trains have passed at that particular hour. When there is evidence of A.W.1 that the deceased boarded train No.274 at Chirala to go to her native place Tangutur, who is a direct witness to the deceased boarding the subject train, there cannot be a fall of the deceased from the other train except train No.274 Passenger. The findings given in Ex.R.3-DRM's report are not supported by the direct witness. Under these circumstances, it can be safely concluded that the deceased had fallen accidentally from train No.274 Thirupathi Passenger.

8. It is appropriate to refer the decision of the Hon'ble Supreme Court in Union of India vs. Rina Devi¹, wherein it is held as follows:

“Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari vs. Union of India [(1993) ACJ 846] referring to the scheme of Railways Act, 1890, it was observed that since

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

traveling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation.”

9. The case of the applicants is that the journey ticket was lost when the deceased had fallen at midnight and suffered multiple injuries all over the body. Due to the friction created by the train, there is possibility of losing the journey in the accidental fall. Under these circumstances and in view of Rina Devi's case (supra), it can safely be concluded that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall from train No.274 Thirupathi Passenger on the intervening night of 3/4.12.2007. The fall was only an accidental fall and it amounts to untoward incident of accidental fall, as defined under Section 123(c) of the Railway Claims Tribunal Act, 1987. The Tribunal had not properly appreciated the evidence on record and erroneously dismissed the claim of the applicants. Therefore, the impugned order passed by the Tribunal is liable to be set aside. Accordingly, these points are answered.

10. Point Nos.2 and 4: The applicants are dependents on the deceased. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation)

Rules, 1990, the appellants-claimants are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

11. In the result, the appeal is allowed, setting aside the order, dated 03.01.2011, passed in O.A.A.No.412 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.412 of 2007 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants 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 to interest @ 6% per annum from the date of this judgment till realisation. The applicants 1 and 2 are entitled to share the compensation awarded equally. On deposit, both the applicants 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

27th November, 2018

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