

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.624 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 27.05.2016 in O.A. (IIU) No.249 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-applicants claiming compensation for the death of K.Sambaiah (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.335 Nagpur-Kazipet passenger (hereinafter referred to, as 'the subject train') on 15.07.2002 at KM No.254/16-18 in between Ravindrakhani and Mancheria railway stations, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicants would contend that the deceased had accidentally fell down from the subject train at KM No.254/16-18 in between Ravindrakhani and Mancheria railway stations, on

15.7.2002 in early hours; that A.W.2, who was accompanying the deceased, clearly and categorically stated the accidental fall; that journey ticket was recovered from the dead body of the deceased and it was handed over to the son of the deceased, and the same was filed as Ex.A1; that the Tribunal failed to consider the veracity and genuineness of Ex.A1 and also evidence of A.W.2; that the recitals in Ex.A3 inquest report also clear that the death of the deceased was due to accidental fall from the subject train; but the Tribunal disbelieved Ex.A1 journey ticket and discarded Ex.A3 inquest report and the evidence of A.W.2 erroneously, and did not record a clear finding whether the deceased was a *bona fide* passenger or not, whether he had accidentally fallen from the subject train, and dismissed the claim application, and ultimately, prayed to set aside the impugned order and allow the claim petition.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that Ex.A1 journey ticket is planted for the purpose of claiming compensation; that in Ex.A4 postmortem examination report, head injury and other small injuries are found; that in case of fall from a train, there would be multiple fractures and cut injuries, and so, Ex.A4 falsifies the version that subject death was in an untoward incident of accidental fall from a running

train. He further contends that the claim application was filed with 6 years delay, and no records are available with the railway authorities to check genuineness of Ex.A1 journey ticket and other records connected to the subject accident; that there are laches on the part of the applicants; that the Tribunal rightly dismissed the claim application and the findings of the Tribunal are based on evidence on record and there is nothing to take a different view, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the deceased K.Sambaiah was a *bona fide* passenger of train No.335 Nagpur-Kazipet passenger on 15.07.2002 travelling from Ravindrakhani to Uppal ?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No.335 Nagpur-Kazipet passenger on 15.07.2002 at KM No.254/16-18 in between Ravindrakhani and Mancheria railway stations ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 3:

7. To substantiate the claim of the applicants, applicant no.1, who is wife of the deceased, was examined as A.W.1 and got examined A.W.2, and Ex.A1-original journey ticket; Ex.A2-copy of FIR; Ex.A3-copy of inquest report; Ex.A4-copy of portmortem examination report; Ex.A5-copy of death report; Ex.A6-copy of ration card; Ex.A7-copy of ration card and Ex.A3-family members certificate were got marked. There is no rebuttal evidence on behalf of respondent-railways.

8. The alleged subject accident occurred on 15.7.2002 and the claim application was filed on 12.8.2008. Application to condone delay was allowed. Defence of the railways is that records are not available to verify the genuineness of Ex.A1 journey ticket and other records connected to the alleged subject accident.

9. A.W.1 is wife of deceased. She deposed about deceased boarding the subject train on 15.7.2002 to travel from Ravindrakhani to Uppal by purchasing a ticket. Admittedly, she is not an eye-witness to the occurrence of the subject accident. A.W.2 deposed in his evidence that the deceased was doing fruit business at their place R.K. Puram and he knew the deceased for the last 15 years prior to the accident. He also stated that the deceased purchased a journey ticket to travel from Ravindrakhani to

Uppal. He also stated M.Jaipal Reddy was also travelling with them at that point of time. In chief-examination, he further stated that the deceased fell down accidentally from the subject train while travelling in general compartment due to speed and sudden jerks made by the subject train. He also deposed that he pulled chain and the train was stopped in about 1 KM distance from the place of accidental fall of the deceased; thereafter he rushed and reported to the Guard with regard to the accidental fall of the deceased. In cross-examination, he reiterated the same and denied that he was deposing false.

10. In Ex.A3 inquest report, there is specific mention of the deceased falling from subject train on 15.7.2002, suffering injuries and succumbing to the same. There is also mention in the inquest report about finding of a ticket with the dead body. It is also mentioned that cash and book found in possession of the deceased was handed over to the son of the deceased. Case of the applicants is that Ex.A1 is the said journey ticket. Admittedly, the application for compensation was filed with a delay of 6 years. Railways have not put up any defence either by way of oral or documentary evidence. Case of the railways is that they do not have any records and that even they could not verify the genuineness of journey ticket in question marked as Ex.A1. It is the case of the railways that they do

not preserve records relating to tickets beyond 3 years. When a ticket was found with the dead body of the deceased and when it is stated in the inquest report that ticket was handed over to son of the deceased, and when the applicants filed it in the Tribunal as Ex.A1 and contended that having purchased Ex.A1, the deceased was travelling by the subject train on the fateful day and when there is specific evidence of A.W.2 with regard to the deceased purchasing the ticket and undertook journey, it can safely concluded that the deceased was a *bona fide* passenger of the subject train. Further, there is clinching evidence of A.W.2 that the deceased had fallen from the subject train accidentally between Ravindrakhani and Mancherial railway stations. The dead body was found in that place.

11. As per Ex.A4 post mortem examination report, the Doctor opined that the death was due to shock and haemorrhage due to head injury, and that the head injury is sufficient to cause death of a person. As contended by the learned standing counsel appearing for the railways, no cut or other grievous injuries are found on the dead body of the deceased. Suffering of the injuries depends upon the speed of the train. In cases of accidental fall, there need not be cutting of hands or legs. When there is clinching evidence of A.W.2 with regard to the accidental fall of the

deceased coupled with recitals in Ex.A3-inquest report, and when the deceased was a *bona fide* passenger of the subject train, reliance can be placed on his evidence, on Ex.A.1 ticket and recitals in Ex.A3 to hold that the deceased died in an untoward incident of accidental fall from the subject train on 15.7.2002.

12. The Tribunal gave much emphasis on filing the claim application with a long lapse of time and that the railways had no opportunity to verify genuineness of Ex.A1-ticket, and that the opinion of panchas was given in inquest report basing on presumptions and version of family members. However, when the evidence of A.Ws.1 and 2 and the record placed before the Tribunal is considered, the probable outcome would be that the deceased was a *bona fide* passenger of the subject train and accidentally fell down from it, which is an untoward incident of accidental fall, resulting in his death. The Tribunal has not analysed the evidence on record in right perspective. Hence, the impugned order passed by the Tribunal is liable to be set aside. The points are answered in favour of the applicants and against the railways.

Point No.4:

13. In the result, the C.M.A. is allowed. The impugned order of the Tribunal is set aside. The claim application O.A. (IIV) No.249 of 2008 filed by the applicants is allowed awarding compensation of Rs.8,00,000/- (Rupees eight lakhs) to the applicants as per the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways are directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicants are entitled to interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. Out of the compensation awarded, applicant no.1 is entitled to 50%, and the remaining 50% shall be shared by the other applicants equally. On deposit, the applicants are entitled to withdraw their respective shares along with accrued interest.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

24.10.2018
DRK