

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.860 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the Union of India, represented by the General Manager, South Central Railway, Secunderabad, challenging the order, dated 09.12.2014 passed in O.A.A. No.103 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal granted compensation of Rs.4,00,000/- in favour of the respondents-applicants for the death of Kotha Subba Rao (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.471 Vijayawada-Rayagada passenger (hereinafter referred to, as 'the subject train') at KM 463/16-18 between Telaprolu and Nuzvidu on the down line on 1.2.2008, while he was travelling from Gannavaram to Visakhapatnam.

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 appellant-Railways would contend that the death of the deceased was on account of his own negligence and carelessness and therefore his case falls under exceptions under Section 124A of the Railways Act, 1989; that there is no evidence to substantiate that the deceased died in an untoward incident of accidental fall from a running train and no eye witness was examined; more over, the dead body of the deceased was found at 11.30 hours on the next day though

the deceased alleged to have fallen on the intervening night of 1/2.2.2008; that had the deceased fallen while travelling by the subject train, the dead body could have been found on the wee hours of 2.2.2008; that all these circumstances clinchingly establish that death of the deceased is not an outcome of an untoward incident of accidental fall from the subject train, and ultimately prayed to set aside the impugned order and dismiss the claim application.

5. On the other hand, the learned counsel for the respondents-applicants would contend that Ex.A1 journey ticket was found in the course of inquest panchanama; that as the dead body was in bushes, it was noticed by R.W.2-Keyman on the next day around 11.30 hours; that there is ample evidence to substantiate that the deceased was a *bona fide* passenger and died in an untoward accidental fall from the subject train; that the Tribunal, having analysed entire evidence on record, rightly allowed the claim application, and there is no infirmity to take a different view; and ultimately, prayed to dismiss the appeal.

6. In view of the above submissions, the points that arise for determination in this appeal are as follows:-

- 1) Whether the deceased K.Subba Rao was a *bona fide* passenger of train No.471 Vijayawada-Rayagada passenger on 01.02.2008 travelling from Gannavaram to Visakhapatnam?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No.471 Vijayawada-Rayagada passenger on 01.02.2008 at KM 463/16-18 between Telaprolu and Nuzividu railways stations on downline ?
- 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 respondents-applicants, the applicant no.1, who is wife of the deceased, was examined as A.W.1 and got marked Ex.A.1-ticket; Ex.A2-attested copy of First Information Report; Ex.A3-Attested copy of inquest report; Ex.A4-attested copy of post mortem examination report; Ex.A5-original death certificate; Ex.A6-family members certificate; Ex.A7-voter id card and Ex.A7-copy of ration card. On behalf of railways, R.Ws.1 and 2 were examined and Ex.R1-copy of rough journal was got marked.

8. Admittedly, A.W.1 is not an eye-witness to the incident. However, she deposed that her husband (the deceased) was travelling in the subject train on 01.02.2008 from Gannavaram to Visakhapatnam with a valid journey ticket Ex.A1. When inquest was conducted over the dead body of the deceased, Ex.A1 journey ticket was recovered from the dead body of the deceased. Under Ex.A3 inquest report, there is mention of Ex.A1 journey ticket. There is no dispute with regard to genuineness of Ex.A1 journey ticket to travel from Gannavaram to Visakhapatnam by the subject train. Therefore, it cannot be said that the deceased was not a *bona fide* passenger of the subject train.

9. R.W.1 is guard of the subject train. According to him, nobody pulled chain and reported the accidental fall. R.W.2 is the Keyman who found the dead body of the deceased in block section. He deposed that the dead body was lying in bushes by the side of down line track at KM 463/16-18. When the deceased was being hit by the train, there is every possibility the dead body falling at some distance in bushes. When the dead body is thrown into

bushes by running train, it is not possible to identify the same immediately on the morning of 02.02.2008. Therefore, some delay is bound to occur in finding the dead body of the deceased. The delay is not fatal, and from this, it cannot be said that there was no accidental fall from the subject train. There is no contra evidence that the deceased himself had fallen from the train nor committed suicide or died otherwise. The Tribunal rightly examined the recitals in Ex.A4-post mortem examination report to hold that deceased died due to violent hit by a moving train. When a person accidentally falls down from a running train, naturally, he is violently hit by the said train.

10. The Tribunal had elaborately dealt with all these issues and rightly held that the deceased was a *bona fide* passenger of the subject train and died in an untoward incident of accidental fall on 01.02.2008 and ultimately granted compensation in favour of the respondents-applicants. There are no circumstances to take a different view than the view taken by the Tribunal. So, the contentions raised on behalf of the appellant-Railways do fail. The appeal is devoid of merit and is liable to be dismissed. These points are answered in favour of the respondent-applicant.

11. In the result, the appeal is dismissed, confirming the order, dated 09.12.2014 passed in O.A.A. No.103 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

31.10.2018
DRK