

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.522 of 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'Act'), is filed by the Respondent - Railways challenging the order, dated 16.04.2012, passed in OAA No.165 of 2004 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short 'Tribunal'), whereby, the claim petition filed by the respondents - applicants for a compensation of Rs.4,00,000/- for the death of the deceased - Dollu Gowri Sankar Rao in an alleged untoward incident of accidental fall from a running train, was allowed.

2. Heard Ms. Pushpinder Kaur, learned standing counsel for the appellant - Railways, and Sri P.L. Rao, learned counsel for the respondents - applicants.

3. Perused the material on record, both oral and documentary.

4. The appellant herein is the respondent - Railways in OAA No.165 of 2004 before the Tribunal, the respondents are applicants, who are wife and daughters of deceased Gowri Sankar Rao.

5. For the sake of convenience, the parties herein are referred to as they were arrayed in the foresaid OAA before the Tribunal.

6. The learned standing counsel for the Railways would contend that the deceased - Dollu Gowri Sankar Rao was not a *bona fide* passenger and that he did not die in an untoward incident of accidental fall from the subject train; there is no mention of train number; there is also no mention as to by which train the deceased was travelling; further the season ticket found in possession of the deceased was valid up to 28.05.2004, whereas, the subject accident occurred on 31.05.2004 and, therefore, the deceased was not possessing any valid journey pass or ticket to undertake journey. It is further contended that the applicants have filed two claim applications viz., O.A.A. No.165 of 2004 and O.A.A. No.31 of 2006. Subsequently, O.A.A. No.31 of 2006 was withdrawn; there is inconsistency in the pleadings of the claim applications with regard to the journey ticket or validity of journey pass being possessed by the deceased at the time of subject fall, and ultimately prayed to allow the appeal by setting aside the order which is impugned in the present appeal.

7. On the other hand, the learned counsel for the applicants would contend that there is ample evidence on record to substantiate that the deceased died in an untoward incident of accidental fall from the subject train on 31.05.2004. Further, the Tribunal relied on the decision of the Bombay High Court in **Mehar Parveen v. Union of India**¹, and also held that it is for the Railways to prove that the

¹. 1 (2008) ACC 422

deceased was not possessing journey ticket at the time of accidental fall. The Tribunal rightly held that the deceased was *bona fide* passenger and had accidentally fallen from the train and rightly granted the compensation. There is no infirmity in the impugned order, and ultimately prayed to dismiss the appeal.

8. In view of the above submissions made by both sides, the following points that arise for determination in this appeal:

- i. Whether the deceased - Dollu Gowri Sankar Rao was not a *bona fide* passenger of the subject train on 31.05.2004?
- ii. Whether the deceased did not die in an untoward incident of accidental fall from the said train on 31.05.2004 in between Gumada and Parvathipuram Railway Stations?
- iii. Whether the impugned order is liable to be set aside?
- iv. To what result?

Point Nos.(i) and (ii):-

9. To substantiate the claim of the applicants, wife of the deceased, who is applicant No.1, was examined as AW.1 and got marked Exs.A.1 to A-6. On behalf of the respondent-Railways, RW.1 was examined.

i) AW.1, wife of the deceased, deposed that she was informed the accidental fall of her husband by the train by the Railway Police. She also stated that her husband possessed a valid journey pass, and further stated that other applicants are dependants on the deceased.

As per inquest *panchanama*, journey pass was found in the possession of deceased and it was valid up to 28.05.2004.

ii) There is no dispute about the alleged accidental fall on 31.05.2004. But, the journey pass found in the possession of the deceased was not valid to undertake journey on the date of alleged accidental fall. Further, as per the evidence, the deceased was picking waste plastics available in the compartments of trains, selling the same and making his livelihood. It goes to show that the deceased was travelling by trains on daily basis. Therefore, it can be culled out from the record that the deceased did not choose to renew his pass to travel by trains with effect from 29.05.2004. Further, it is also necessary to state that in O.A.A. No.165 of 2004, it is stated that the deceased was travelling with a valid season ticket. Whereas, in O.A.A. No.31 of 2006, it is stated that the deceased purchased a valid journey ticket and was travelling by train No.8517 Korba - Visakhapatnam Express in II Class General Compartment from Rayagada to Parvathipuram. In the former O.A.A., there is no mention of commencement and end of the journey to be undertaken by the deceased. However, O.A.A. No.31 of 2006 was withdrawn by the applicants. There is inconsistency in the pleadings of the applications with regard to possessing of valid journey ticket/season pass. As contended by the applicants, if the deceased was travelling by holding a valid journey pass, but no valid journey ticket/season pass was found in the possession of the deceased. Further, it is not the

case of the applicants that the season pass was renewed and the same was misplaced in the alleged accidental fall. The Tribunal held that burden is on the Railways to prove that the deceased was not travelling with a valid journey ticket/season pass. When there is no pleading with regard to season ticket or renewal of journey pass, and further when the pass found in the possession of deceased expired much before the alleged accidental fall, it can safely be held that the initial burden of travelling with a valid journey pass/season ticket has not been discharged by the applicants. Therefore, it can safely be concluded that the deceased was not *bona fide* passenger.

iii) As far as inquest and other material on record is concerned, the conclusion of *panch* witnesses is that the deceased had accidentally fallen from unknown train. The requisite pre-condition to grant compensation i.e., '*bona fide* passenger' had not been proved by the applicants. Further, no presumption can be drawn that the deceased being a *bona fide* passenger of the subject train had fallen from the train and died. On that score itself the applicants are not entitled for compensation. The Tribunal ought not to have allowed their claim application. The finding of the Tribunal is, therefore, liable to be set aside. Accordingly, these points are answered in favour of the appellant - respondent and against the respondents - applicants.

Point No.(iii):-

10. The Tribunal had not properly dealt with the contentions and the evidence on record and reached a wrong conclusion allowing the claim petition. There is infirmity in the impugned order and, therefore, the same is liable to be set aside.

Point No.(iv):-

11. In the result, the Civil Miscellaneous Appeal is allowed, setting aside the order, dated 16.04.2012, passed in O.A.A. No.165 of 2004 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the present appeal, stand closed.

Dr. SHAMEEM AKTHER, J

December 10, 2018
Mgr