

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.216 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'Act'), is filed by the appellants/applicants, challenging the order, dated 25.02.2015, passed in OAA No.285 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants/applicants claiming a compensation of Rs.4,00,000/- for the death of the deceased - Vakiti Suresh in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard both sides. Perused the record.

3. The Learned counsel for the appellants/applicants would contend that on 15.04.2006, the deceased - Vakiti Suresh, while travelling by Train No.526 Dhone - Secunderabad Passenger from Ulindakonda to Kurnool Town, along with his friend, S. Krishna Reddy, having purchased journey tickets, slipped from the subject train and fell down accidentally due to sudden jerks and heavy rush of passengers near Kurnool Railway Station and sustained severe injuries; the friend of the deceased, with the help of railway staff and co-passengers shifted the deceased to Government General Hospital, Kurnool and while undergoing treatment, the deceased died on

21.04.2006 at about 02.15 hours. There is ample evidence to substantiate the same, and ultimately prayed to allow the appeal.

i) He further contended that the Tribunal held that as per the police record the deceased while getting down from running train short of Kurnool Station, the incident occurred, due to which, he suffered injuries, and that those injuries were self-inflicted ones. It is further held that the deceased was fully cognizant of risk involved in his action of getting down from a running train, and ultimately holding that the subject incident was not an untoward incident, dismissed the application, which is erroneous, and prayed to set aside the impugned order and award compensation as claimed.

4. On the other hand, the learned Standing Counsel for the respondent-Railways supporting the order under challenge would contend that the deceased was responsible for his death; the injuries suffered by him were self-inflicted injuries; and the Tribunal, after analysing the entire evidence on record, rightly recorded the said findings basing on the evidence on record. There is no infirmity in the order under challenge and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. While dealing with the subject matter of the appeal, the Tribunal did not answer the other issues i.e., whether the appellants/applicants are dependants on the deceased; and whether the deceased was a *bona fide* passenger, after holding that the deceased

did not die in an untoward incident and ultimately dismissed the application.

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

- i. Whether the deceased-Vakiti Suresh was a *bona fide* passenger of Train No.526 Dhone - Secunderabad Passenger, travelling from Ulindakonda to Kurnool on 15.04.2006?
- ii. Whether the deceased - Vakiti Suresh died in an untoward incident of accidental fall from running Train No.526 Dhone - Secunderabad Passenger on 15.04.2006?
- iii. Whether the order under challenge is liable to be confirmed/set aside?
- iv. To what result?

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

7. To substantiate the claim of the appellants/applicants, father of the deceased deposed as A.W.1, friend of the deceased was examined as A.W.2 and got marked Ex.A.1- attested copy of First Information Report, Ex.A.2-attested copy of Inquest report, Ex.A.3- attested copy of Post-mortem Examination Report, Ex.A.4-copy of date of birth certificate of deceased, Ex.A.5-photostat copy of ration card, and Ex.A.6-copy of family member certificate. On behalf of the respondent-Railways, no evidence, both oral and documentary, was adduced.

i) Under these circumstances, it is appropriate to refer to the decision of the Hon'ble Supreme Court in **Union of India v. Rina Devi** in Civil Appeal No.4945 of 2018 [Special Leave Petition (Civil) No.10223 @ D.No.6059 of 2018].

ii) There is evidence of AW.2, who is friend of the deceased, that the deceased had accidentally fallen from Train No.526 Dhone - Secunderabad Passenger on 15.04.2006 just before Kurnool Railway Station. As per Ex.A-1, copy of FIR, the deceased had fallen from the subject train. As per Ex.A-2, inquest report also, there is specific mention that the deceased had fallen from the subject train. The Tribunal had believed the statements recorded by the police in the course of inquiry. It is evident from record that the deceased did not intend to get inflicted self-injuries, while getting down from the subject train, nor the deceased intended to suffer with any injury. Merely because the deceased made an attempt to de-board from the moving train, it cannot be held that he was responsible for the injuries suffered by him. As held by the Apex court in the above decision 'self-inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Even in the circumstances of the case, it cannot be held that the deceased was negligent in de-boarding the subject train. The principles of contributory negligence have no place in awarding compensation under Section 23 (c) read with 24-A of the Act.

8. When there is specific evidence of AW.2 that the deceased had accidentally fallen down from the subject train on 15.04.2006; when the same is found in Ex.A.2 - inquest report *panchanama* of the deceased; and AW.2, who was present at the time of inquest and stated the same, therefore, cannot be held that AW.2 had given false evidence to support the case of the appellants. Therefore, it is held that the deceased died in an untoward incident of accidental fall from the subject train on 15.04.2006.

9. It is the case of the appellants that journey ticket was lost in the accidental fall. As per evidence of AW.2, tickets were purchased by the deceased and the same were lost in the accident. In the aforesaid decision, it is also held that merely because journey ticket was not found in the possession of the dead body/injured, it cannot be said that the injured/deceased did not travel with a valid journey ticket. The same has to be considered by examining the circumstances of the case. There is specific evidence with regard to purchase of tickets by the deceased along with his friend to undertake the journey. There is possibility of losing journey tickets in accidental fall, so it can safely be concluded that the deceased was a *bona fide* passenger of Train No.526 on 15.04.2006.

10. There is also evidence on record to substantiate that the appellants/applicants are parents of the deceased and they were depending on him and except them, there are no other dependants on the deceased. In these circumstances, the impugned order passed by

the Tribunal is liable to be set aside. Accordingly, point Nos.1 and 2 are held in favour of the appellants/applicants and against the respondent - Railways.

Point No.(iii):-

11. The findings of the Tribunal are not in consonance with the evidence on record. There is infirmity in the order under challenge and the same is liable to be set aside.

Point No.(iv):-

12. In the result, the appeal is allowed and the order, dated 25.02.2015, passed in OAA No.285 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is set aside. Consequently, OAA No.285 of 2006 is allowed. The appellants-applicants are awarded a compensation of Rs.8,00,000/- (Rupees eight lakhs only), in view of the 2016 amendment made to the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-Railways is directed to deposit the awarded compensation of Rs.8,00,000/- before the Tribunal 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 for interest @ 6% per annum on the said amount, from the date of this judgment till realisation. On deposit of the compensation, the appellants/applicants are permitted to withdraw the same equally.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

December 05, 2018

Mgr

