

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.66 OF 2016

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 09.07.2013, in O.A.A No.288 of 2006 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellant/applicant under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989, with regard to grant of compensation for the injuries sustained by him in an untoward incident of accidental fall from Delta passenger, was dismissed.

2. Heard the learned counsel for the appellant/applicant, the learned Standing Counsel for the respondent/Railways and perused the record.

3. Learned counsel for the appellant/applicant would contend that on 08.06.2006, the appellant/applicant purchased ticket bearing No.25721399 to travel from Secunderabad to Tenali and boarded Delta passenger; that on the next day i.e., on 09.06.2006 in the early hours, when the subject train reached Tenali railway station, the appellant had accidentally fallen from the subject train at Tenali Railway station and sustained severe injuries; that the appellant was possessing valid journey ticket, which is marked as Ex.A.1, to travel from Secunderabad to Tenali; that the appellant gave statement to the railway police that he was pushed by some unknown person when he was standing at the door of the train at

Tenali railway station, due to which he had accidentally fallen down from the subject train and sustained severe injuries; that the appellant had examined A.W.2, who stated that the appellant purchased ticket to travel from Secunderabad to Tenali and boarded Delta passenger, but, however, the Tribunal erroneously dismissed the application and ultimately prayed to set aside the impugned order and allow the application as prayed for.

4. Learned Standing Counsel for the Respondent/Railways would contend that there is discrepancy with regard to the appellant possessing journey ticket at the time of incident; that as per the DRM report and enquiry made by the police personnel, the appellant was possessing ticket to travel from Secunderabad to Nalgonda and he also made a statement to that effect to the railway police; that the appellant had fallen down at Tenali Railway Station i.e., beyond Nalgonda Railway Station so the Tribunal justified in dismissing the application and ultimately prayed to confirm the impugned order and dismiss the appeal.

5. In view of submissions made by both sides, the following points arise for determination:

1. Whether the appellant/applicant was a *bona fide* passenger of Delta Passenger?
2. Whether the appellant/applicant had accidentally fallen from the Delta Passenger at Tenali Railway Station on 09.06.2006 and sustained injuries?
3. Whether the impugned order is liable to be set aside?
4. To what relief?

6. **POINT No.1:**

In the enquiry conducted by the railway authorities as well as GRP personnel, it has come up that the appellant made a statement when he was in the hospital and handed over journey ticket bearing No.27350518 and it is upto Nalgonda railway station only. The appellant himself examined as A.W.1 and also examined his friend A.W.2 to demonstrate that on 09.06.2006 they travelled together by special train i.e., Delta Passenger. A.W.2 had undertaken journey from Secunderabad to Nalgonda railway station. A.W.2 deposed that due to heavy rush and in order to secure a seat in the train, he handed over his ticket, bag and other things to the appellant and after securing seat, both occupied the seat and thereafter, he got down from the train at Nalgonda railway station. When the appellant was standing near the door to get down from the train, when train reached at Tenali railway station, some unknown person had pushed him, due to which, A.W.1 accidentally fell down from the said train at Tenali railway station, suffered injuries to his right hand and it was amputated upto to shoulder. To demonstrate the same, the appellant had filed tickets, marked as Ex.A.1, which corroborates the testimony of A.W.s 1 and 2. It is contended on behalf of the appellant that the appellant was semiconscious and while taking treatment in the hospital by mistake he handed over the ticket of A.W.2 and that ticket details are incorporated in the police record as well as DRM report. Having regained consciousness, the appellant gave correct ticket. Admittedly, two tickets are filed and the same are marked as Ex.A.1, which corroborate the testimony of A.W.1 and 2. There is no reason for A.W.1 for purchasing ticket to Nalgonda when he

wanted to travel upto Tenali. However, in the course of cross-examination of A.W.2, it has come up that he is relative of A.W.1 on that sole ground, the evidence of A.W.2 cannot be discarded. As per the railway enquiry also, A.W.1 had accidentally fallen from the subject train, suffered injuries to his right upper arm and it was amputated upto shoulder. As per the oral evidence on record, the journey ticket of A.W.2 from Secunderabad to Nalgonda was in possession of the applicant (A.W.1). As he was in semi-conscious position after the occurrence of the subject accident, there is possibility of his handing over the journey ticket of A.W.2 to the police concerned. When the journey ticket of A.W.1 along with the journey ticket of A.W.2 are filed before the Tribunal and marked as Ex.A.1, it cannot be said that the applicant was not possessing valid journey ticket to travel by Delta passenger on 09.06.2006. A.W.3 is the Doctor, who deposed as stated by A.W.2. In these circumstances, the Tribunal ought not to have disbelieved the evidence of A.Ws.1 and 2 and tickets marked as Ex.A.1. There is consistency and corroboration in the evidence adduced on behalf of the appellant. Therefore, it can safely be concluded that the appellant was a *bona fide* passenger of Delta Passenger on 09.06.2006 and he had accidentally fallen from the said train on 09.06.2006 at Tenali railway station. Accordingly, the point is answered.

7. The evidence of Doctor and the medical record substantiate that the appellant had suffered amputation of his right upper arm upto shoulder. This injury falls under Sl.No.1 of Part-III of the Schedule appended to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 issued by the Ministry of

Railways *vide* notification, dated 22.12.2016. Therefore, the appellant / applicant is entitled for a compensation of Rs.7,20,000/-.

8. Accordingly, the appeal is allowed setting aside the impugned order. Consequently, O.A.A.No.288 of 2006 filed by the appellant/applicant is allowed granting compensation of Rs.7,20,000/- to the appellant/applicant and 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 appellant is entitled for 6% interest from the date of this order till realization. Since the accident took place long back, the appellant is permitted to withdraw the entire amount on deposit.

Miscellaneous petitions pending, if any, in this appeal shall stand closed. There shall be no order as to costs.

DECEMBER 14, 2018
YVL

DR.JUSTICE SHAMEEM AKTHER

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



CIVIL MISCELLANEOUS APPEAL No.66 OF 2016

Date: 14.12.2018

YVL