

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.253 of 2011

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant-Union of India represented by the General Manager, East Coast Railways, Bhubaneswar, challenging the order, dated 27.10.2009, passed in O.A.A.No.240 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity).

2. Heard the learned Standing Counsel for the appellant-Railways, the learned counsel for the respondents-claimants and perused the record.

3. The learned Standing Counsel for the appellant-Railways would contend that the dead body of the deceased was cut into two pieces, which is possible only in case of suicide. The Inquest report and other record would substantiate the same. Further, nobody has seen the deceased travelling by the subject train on the date of the subject accident. There is no evidence that the deceased purchased a valid journey ticket to undertake travel by the subject train. He is not a *bona fide* passenger. The Tribunal had not appreciated the oral and documentary evidence on record in proper perspective and erroneously held that the deceased was a *bona fide* passenger of the subject train and died in an untoward incident of accidental fall from the train and

ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned counsel for the respondents-claimants would contend that the deceased was a *bona fide* passenger of the subject train and he succumbed to the injuries suffered by him as a result of an untoward incident of accidental fall from the running train. The Tribunal, after analyzing the entire evidence on record, rightly concluded so. There are no circumstances to take a different view and ultimately prayed to dismiss the appeal by confirming the order under challenge.

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

1. Whether the deceased-K.Kailash died on account of an untoward incident of accidental fall from the train (East Coast Express) on the intervening night of 10/11.11.2004 between Tilaru and Kotabommali railway stations?
2. Whether the deceased-K.Kailash was a bona fide passenger of East Coast Express travelling from Secunderabad to Kolkata as on the date of the untoward incident?
3. Whether the impugned order of the Tribunal is sustainable (or) liable to be set aside?

Point No.1:

6. To substantiate the claim of the respondents-claimants, A.W.1 and A.W.2 were examined and Exs.A.1 to A.4 were marked. On behalf of the appellant-Railways, R.W.1 and R.W.2 were examined and Exs.R.1 to R.4 were marked. C.W.1 was examined and Ex.C.1 was marked by the Tribunal.

7. Admittedly, there are no eye-witnesses to the alleged untoward incident. In Ex.A.2-copy of Inquest report and in the Final report, it is mentioned that the deceased-K.Kailash accidentally fell from the running train and there was no foul play. No doubt, the body of the deceased was cut into two pieces and there is a mention to that effect in the inquest panchanama also. As per Modi's Jurisprudence, such thing is possible only in case of suicide. Admittedly, no medical expert was examined to substantiate that the injuries mentioned in Ex.A.2-copy of Inquest report are possible only in case of suicide by coming under the running train. The entire criminal record is in favour of the respondents-applicants. When two views are possible and when there are no eye-witnesses to the alleged untoward incident, the view which is favorable to the applicants is required to be adopted. Moreover, the respondents-applicants cannot be called upon to strictly prove the manner of death of the deceased. Sometimes, claims arising out of the railway accidents are required to be adjudicated basing on the circumstantial evidence, and the view, which is in favour of the applicants, is required to be taken. When the entire criminal case record is to the effect that the deceased died as a result of an untoward incident of accidental fall from East Coast Express on the intervening night of 10/11.11.2004 and in the absence of expert's evidence that the dead body of the deceased was cut into two pieces as a result of committing suicide, the Tribunal rightly held that the deceased died on account of an untoward incident of accidental fall from a running train. The findings of

the Tribunal are not perverse. There is nothing to take a different view. This point is accordingly answered in favour of the respondents-claimants and against the appellant-Railways.

Point No.2:

8. A.W.2-K.Govindarajulu is the uncle of the deceased. He testified before the Tribunal that the deceased stated to him that he was going to Kolkata by East Coast Express on the date of the subject accident and he would buy a journey ticket. If the deceased had fallen from a running train, there is every possibility of losing the journey ticket. C.W.1-Ch.J.Kumar is a Railway Police Constable. He was summoned and was examined by the Tribunal. He categorically stated that from his experience, he did not think that it was a case of suicide. The police authorities, who have experience in these matters, ruled out suicide. The Railway authorities, except expressing an opinion that the deceased might have committed suicide, failed to prove the same by leading cogent and convincing evidence. Under these circumstances, the only plausible presumption that could be drawn is that the deceased was a *bona fide* passenger travelling by East Coast Express from Secunderabad to Kolkata on the date of the subject accident. The Tribunal rightly held the same and there is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

9. In the result, the appeal is dismissed, confirming the order, dated 27.10.2009, passed in O.A.A.No.240 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

04th October, 2018
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