

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.969 of 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity), is filed by the appellant-Union of India represented by the General Manager, South Central Railway, Secunderabad, challenging the order, dated 04.06.2012, passed in O.A.A.No.312 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-applicants and perused the record.

3. Learned counsel for the appellant-Railways would contend that the deceased-Syed Abrar was not a *bona fide* passenger and did not die in an untoward incident of accidental fall from train No.SB-5 local passenger on 24.06.2005. It is contended that the deceased, while crossing the railway track, was hit by a running train and in the inquest panchanama, so also in the DRM's report, the same was mentioned. The Tribunal erroneously recorded the finding that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall and ultimately, prayed to set aside the impugned order.

4. Learned counsel for the respondents-applicants would contend that the Tribunal had dealt with all the aspects elaborately and held that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall from train No.SB-5 local

passenger. There is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. The specific case of the railways is that the deceased was hit by a running train while he was crossing the railway track. To substantiate their contention, the railway authorities examined Senior Passenger Guard as R.W.1 and Station Master-II as R.W.2 and got marked Ex.R1-DRM's report, Ex.R2-Rough journal and Ex.R3-true copy of message. R.Ws.1 and 2 are the direct witnesses to the alleged hit by a train as contended by the railways, but they did not say while crossing the track, the deceased came under the train or committed suicide. The recitals under Ex.A2-inquest panchanama are not recorded basing on the direct witnesses version. What is mentioned in Ex.A2-inquest report is the opinion of panchas. The dead body was cut into two pieces, the panchas opined that the deceased was hit by a running train while crossing the railway track. The evidence of A.W.1-wife of the deceased is that the deceased was her husband and he left along with A.W.2 to board the passenger train on 24.06.2005 to travel from Secunderabad to Bollaram. She also stated that her husband undertaken the journey after purchase of the ticket. A.W.2-brother of the deceased has corroborated the evidence of A.W.1 and stated that after purchase of journey ticket, the deceased boarded train No.SB-5 local passenger to travel from Secunderabad to Bollaram. He reiterated the same in his cross-examination. There is also a copy of case disposal report prepared by Sub-Inspector of Police i.e., Ex.A6. It reflects that the deceased was a *bona fide* passenger of train No.SB-5 local passenger and died in an untoward incident of accidental fall on 24.06.2005. The Tribunal had placed reliance

on this report and held that the railways have not examined any direct witnesses to substantiate that the deceased died while crossing the railway track and was negligent. Even they did not say, the deceased was hit by which train. If really the deceased was crossing the railway track, certainly, some persons would have witnessed the same. Even R.W.1-Senior Passenger Guard and R.W.2-Station Master-II, who are discharging their duties at the place of accident, did not have the information that the deceased was hit by running train. Their information was that some dead body was found on the railway track. When there is specific evidence of A.Ws.1 and 2 with regard to the deceased travelling by the subject train having purchased valid journey ticket, the initial burden stands discharged. Therefore, much reliance cannot be placed in the recital made in the inquest report. The Tribunal had elaborately dealt with all the contentions and issues and rightly considered the same. There is no infirmity in the impugned order. The appeal is devoid of merit and is liable to be dismissed.

6. In the result, the appeal is dismissed, confirming the order, dated 04.06.2012, passed in O.A.A.No.312 of 2005 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 28.11.2018
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