

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.755 of 2013

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the Union of India, represented by the General Manager, South Central Railway, Secunderabad, challenging the order, dated 21.03.2013 passed in O.A.A. No.430 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal allowed the claim petition filed by respondents/applicants granting compensation of Rs.4,00,000/- in their favour for the death of one Shaik Masthan Vali (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train no.122 Repalle passenger at KM No.24/19-20 on 09.11.2008, while he was travelling from Guntur to Repalle.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the appellant-Railways would contend that the deceased committed suicide on 09.11.2008 by coming under an unknown train; that he was not a *bona fide* passenger of train no.122 Repalle passenger; that the enquiry conducted by the Divisional Railway Manager revealed the same; that the Tribunal, without there being any direct evidence, erroneously held that the deceased was a *bona fide* passenger of train no.122 Repalle passenger and died in an untoward incident of accidental fall from the said train; and ultimately prayed

to set aside the impugned order and dismiss the claim application.

5. On the other hand, the learned counsel for the respondents-applicants would contend that the deceased was a *bona fide* passenger of train no.122 Repalle passenger; that in the course of inquest, his journey ticket was found; that it is meant to travel from Guntur to repalle on 09.11.2008; that the report of the Divisional Railway Manager was not marked and no witnesses were examined on behalf of the railways; that the evidence of A.W.1 and the recitals in Exs.A1 to A7 demonstrate that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall from the train; that the Tribunal rightly determined the issues and granted compensation, and there is no infirmity to take a different view; and ultimately, prayed to dismiss the appeal.

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

- 1) Whether the deceased Shaik Mastan Vali was a *bona fide* passenger of train no.122 Repalle passenger on 09.11.2008 travelling from Guntur to Repalle ?
- 2) Whether the deceased Shaik Mastan Vali died in an untoward incident of accidental fall from running train no.122 Repalle passenger on 09.11.2008 at KM No.24/19-20 ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 3:

7. To substantiate the claim of the respondents-applicants, the applicant no.1, who is father of the

deceased, was examined as A.W.1 and got marked Ex.A1-attested copy of F.I.R.; Ex.A2-attested copy of message; Ex.A3-original journey ticket; Ex.A4-attested copy of inquest report; Ex.A5-attested copy of post-mortem report; Ex.A6-attested copy of final report and Ex.A7-family member certificate. No oral or documentary evidence was adduced on behalf of railways.

8. Admittedly, railways have not adduced any evidence, either oral or documentary. Evidence of A.W.1, father of the deceased, is that on 09.11.2008 at about 7.30 AM, his son boarded train no.122 Repalle passenger after purchasing a ticket no.03335544 to travel from Guntur to Repalle, and at about 7.36 AM, when the train reached near Manipuram railway gate, his son accidentally slipped and fell down under the train between KM 24/19-20, suffered grievous injuries and succumbed to the same. Ex.A3 is the journey ticket. It is not the case of the railways that Ex.A3 is not meant to travel on 09.11.2008 from Guntur to Repalle by train no.122 Repalle passenger. Under Ex.A1-copy of FIR and Ex.A2-copy of message, there is no mention with regard to the alleged suicide. These documents disclose about finding of a dead body. Ex.A4 is the inquest report, wherein there is mention that on 09.11.2008 morning, the deceased started from Pedakurapadu village, reached Guntur railway station, purchased a ticket to travel from Guntur to Repalle and fell down under unknown train. There is no mention in Ex.A4 that the deceased committed suicide. There is no single document or oral evidence to show that the deceased committed suicide. Further more, as per record, Ex.A3-journey ticket was found in the apparels of dead body of the deceased. It is clearly mentioned in column no.VII of Ex.A4-inquest report. Under these circumstances, it

cannot be held that the deceased was not a *bona fide* passenger of the subject train and did not die by accidental fall from the said train.

9. The Tribunal had elaborately dealt with all these issues and rightly held that the deceased was a *bona fide* passenger of the subject train and died in an untoward incident of accidental fall on 09.11.2008 and ultimately granted compensation in favour of the respondents-applicants. There are no circumstances to take a different view than the view taken by the Tribunal. So, the contentions raised on behalf of the appellant-Railways do fail. The appeal is devoid of merit and is liable to be dismissed. These points are answered in favour of the respondent-applicant.

10. In the result, the appeal is dismissed, confirming the order, dated 21.03.2013 passed in O.A.A. No.430 of 2008 passed by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

15.11.2018
DRK

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