

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.733 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant-applicant, challenging the order, dated 06.07.2015 in O.A.A. No.433 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellant-applicant claiming compensation of Rs.4,00,000/- for the death of Pydi Ammadu (hereinafter referred to, as 'the deceased') in an untoward accidental fall from train No.225 Palasa - Visakhapatnam passenger (hereinafter referred to, as 'the subject train') on platform no.3 of Srikakulam road railway station, while travelling from Poondi to Dusdi on 11.09.2007, was dismissed.

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 applicant would contend that the deceased was travelling in the subject train on 11.09.2007 with a valid journey ticket No.07684

(Ex.A4) from Poondi to Dusi; that he accidentally fell down from the said train; that there is ample evidence to substantiate the same; that the Tribunal erroneously held that the deceased was not a *bona fide* passenger and did not succumb to the injuries suffered in an untoward incident of accidental fall from the subject train. He relied on decisions in **Union of India vs. Prabhakaran Vijaya Kumar & others**¹ and in **Union of India vs. Rina Devi**², and ultimately, prayed to allow the appeal.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the deceased made an attempt to board the running train and there is specific evidence of R.W.1-Guard of the train to that effect; that the Tribunal considered the decision in **Prabhakaran Vijaya Kumar's case (1 supra)** and held that the deceased did not die in an untoward incident of accidental fall from the subject train but suffered injuries due to his own negligence, and the railways cannot be made to pay compensation to dependant of the deceased; that the Tribunal rightly recorded a finding that the subject ticket marked as Ex.A4 was meant for travel on 10.09.2007 i.e. one day before the date of the alleged accidental fall; that the Tribunal rightly held that the deceased was not a *bona*

¹2008 (2) TAC 777

² Civil Appeal No.4945 of 2018 dated 09.05.2018

fide passenger and did not die in an untoward incident of accidental fall from running train; that the findings of the Tribunal are based on evidence on record and there is nothing to take a different view, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the deceased Pydi Ammadu was a *bona fide* passenger of train No.225 Palasa-Visakhapatnam passenger travelling from Poondi to Dusi on 11.09.2007 ?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No. No.225 Palasa-Visakhapatnam passenger on 11.09.2007 on platform no.3 of Srikakulam road railway station ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 4:

7. To substantiate the claim, the applicant, who is wife of the deceased, was examined as A.W.1 and Ex.A1-attested copy of FIR; Ex.A2-attested copy of inquest report; Ex.A3-attested copy of post-mortem examination report; Ex.A4-journey ticket and Ex.A5-copy of ration card were got marked. On behalf of railways, R.Ws.1 and 2 (Guards

of train) were examined and Ex.R1-rough journal and Ex.R2-DRM report were got marked.

8. A.W.1 is admittedly not an eye-witness either to purchase of ticket by the deceased or boarding the subject train by him. There is no other evidence to establish that the deceased purchased the journey ticket to travel from Poondi to Dusi by the subject train on 11.09.2007. As per the applicant, Ex.A4 is the journey ticket to undertake the journey by the deceased on 11.09.2007. As per Ex.R2-DRM report, Ex.A4-journey ticket bearing no.07684 was issued by the railways on 10.09.2007 between 12.30 and 13.00 hours and it was valid on 10.09.2007. The subject journey undertaken by the deceased from Poondi to Dusi was on 11.09.2007. Ex.R2-DRM report establishes that the journey ticket marked as Ex.A4 was not valid to undertake journey on 11.09.2007 by the subject train. There is no evidence to substantiate that the deceased had purchased some other journey ticket to undertake the journey by subject train. Therefore, Ex.A4-journey ticket, filed to substantiate that the deceased was holding a valid journey ticket at the time of occurrence of the subject accident, is of no use to the appellant. The applicant failed to discharge the initial onus to establish that the deceased was a *bona fide* passenger of the subject train. The Tribunal discussed this issue elaborately after examining

the entire oral and documentary evidence, and rightly held that the deceased was not a *bona fide* passenger of the subject train.

9. As per the evidence of R.W.1-Guard of the train and the entire record placed before the Tribunal, on 11.09.2007, the deceased made an attempt to board the subject train and in that process he fell down, suffered injuries and succumbed to the same on the same day. The Tribunal discussed the issue whether the deceased died in an untoward incident of accidental fall from the subject train by examining the decisions of the Hon'ble Apex Court relied on by the applicant in **Jameela & others v. Union of India³** and in **Prabhakaran Vijaya Kumar's case (1 supra)**, and ultimately held that the subject death was not as a result of an untoward incident of accidental fall from the subject train. As per the evidence on record placed before the Tribunal, it can safely be concluded that the deceased made an attempt to board the subject train when it gathered speed. Had it been an ordinary boarding and de-boarding into the train, certainly the ratio laid down decision in **Rina Devi (2 supra)** would apply. If a person makes an attempt to get into a train once it gains momentum and falls down, it is difficult to hold that the

³(2010) 12 SCC 443

accident resulting from such fall is covered under Section 123 (c) (ii) of the Railways Act, 1989.

10. Case of the applicant is that there was an accidental fall from the subject train. The evidence on record is otherwise and establishes that the deceased tried to board running train i.e. when the train gained momentum, at Srikakulam railway station. The manner in which the deceased sustained injuries would not amount to an untoward incident of accidental fall from the subject train. This aspect was also elaborately dealt with by the Tribunal. The Tribunal also considered the provisions contained in Section 124A of the Railways Act, 1989 and held that in view of proviso to Section 124A of the Act, the respondent/railways is exonerated from the liability to pay compensation when once it is shown that the injuries are self-inflicted.

11. The findings recorded by the Tribunal on both the points are based on evidence on record and cannot be faulted. There is no infirmity. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

12. In the result, the appeal is dismissed. No costs.
Pending Miscellaneous Petitions, if any, in the appeal shall
stand closed.

Dr. SHAMEEM AKTHER, J

08.11.2018
DRK



THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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