

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.664 of 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 09.04.2014, passed in O.A.A.No.277 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of their son, viz., M. Giri Venkata Satyanarayana in an untoward accidental fall from a running train No.2806 Secunderabad – Visakhapatnam Janmabhoomi Express at Km.No.671/22-24 between Annavaram and Hamsavaram railway stations while travelling from Tadepalligudem to Anakapalli on 03.07.2007, was dismissed.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the investigation as well as final report reveals that the deceased had fallen from the train No.2806 Secunderabad – Visakhapatnam Janmabhoomi Express between Annavaram and Hamsavaram railway stations; the inquest panchanama also reveals the same; the Tribunal held that the deceased was possessing valid journey ticket; the Tribunal further held that there is discrepancy between the oral and documentary evidence with regard to the date of falling of the deceased from the subject train, i.e., 03.07.2007 and

04.07.2007 and ultimately, the Tribunal disbelieved the accidental fall and death of the deceased from the subject train and was pleased to dismiss the application for grant of compensation; the findings of the Tribunal are erroneous; and ultimately, prayed to set aside the impugned order and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways supported the impugned order passed by the Tribunal and would contend that the Tribunal considering the evidence adduced by both parties, rightly dismissed the claim of the appellants; there is no infirmity in the impugned order; and ultimately, prayed to dismiss the appeal.

5. While dealing with the issue whether the deceased was *bona fide* passenger of No.2806 Secunderabad – Visakhapatnam Janmabhoomi Express, the Tribunal held that the deceased was holding a valid journey ticket for No.2806 Secunderabad – Visakhapatnam Janmabhoomi Express. This finding is based on Ex.R.4-Divisional Railway Manager's Report.

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

- 1) Whether the deceased had fallen from the train No.2806 Secunderabad – Visakhapatnam Janmabhoomi Express and died in an untoward incident of accidental fall from the train?
- 2) Whether the appellants are entitled to claim compensation as the dependents on the deceased?

3) Whether the impugned order passed by the Tribunal is liable to be set aside?

7. Points 1 to 3: To substantiate the claim of the appellants, the 1st claimant, who is father of the deceased, deposed as A.W.1 and got marked Ex.A.1-Original ticket, Ex.A.2-attested copy of F.I.R., Ex.A.3-attested copy of inquest report, Ex.A.4-attested copy of post-mortem examination report, Ex.A.5-death certificate, Ex.A.6-copy of ration card and Ex.A.7-Family Member Certificate. On behalf of the respondent-Railways, R.Ws.1 and 2 were examined and Ex.R.1-copy of Guard's rough journal, Ex.R.2-copy of memo issued by Keyman, Ex.R.3-copy of Message issued by Station Superintendent, Annavaram and Ex.R.4-Divisional Railway Manager's Report were marked.

8. As per the evidence of A.W.1-father of the deceased, the accident occurred on 03.07.2007 in the late evening hours; on 04.07.2007 at 6-00 a.m., he received phone call from the friend and co-passenger of the deceased, viz., B.D.G.S.S.Kalyan, stating that his son (deceased) fell down from the train and succumbed to the injuries. As per the entire oral and documentary evidence on record, the dead body of the deceased was found on railway track at 7-00 hours on 04.07.2007 at Km.No.671/22-24. In the course of inquest, ticket was found on the dead body by police. Further, paragraph No.XV of the inquest report reads as follows:

"After train passed Annavaram railway station, the deceased informed that he was going to toilet and

would be back. While he was going to the toilet, hit by the door strongly due to speed of the train, slipped and fell down accidentally from the train and died. It was stated by the eye witness and friend of the deceased."

9. As per the evidence on record, the co-passenger/ friend said to have been travelled with the deceased was B.D.G.S.S.Kalyan. Admittedly, he did not raise any alarm or pulled the alarm chain or inform the accidental fall to anybody in the train. Further, he was not examined before the Tribunal as a witness in the original application. In the evidence of A.W.1 and the pleadings of the original application, it has come that the said B.D.G.S.S.Kalyan was accompanying the deceased when the deceased was travelling by train No.2806 Secunderabad – Visakhapatnam Janmabhoom Express. Ex.R.4-DRM's report also discloses that during the statutory enquiry, the co-passenger and friend of the deceased, viz., B.D.G.S.S.Kalyan, was also examined on 23.07.2007, who stated that both the deceased and himself went to the door while the train was passing through Annavaram to pray Lord Satyanarayana Swamy of Annavaram, thereafter, B.D.G.S.S.Kalyan went back to his seat and sat there and after some time, he was informed by one of the passengers that his friend had fallen down due to hit by the door. He also stated that he reported the accidental fall of the deceased to the father of the deceased. The Tribunal disbelieved the statement made by B.D.G.S.S.Kalyan in the statutory enquiry stating that had the said Kalyan was present, he would have pulled the alarm chain or immediately inform the accidental fall of the deceased

to the authorities concerned and also to the father of the deceased. When there is specific mention under Ex.R.4-DRM's report that the deceased was hit by the door of the train and fell down, there is also specific mention in the inquest report to that effect and when the dead body was found on 04.07.2007 at 7-00 hours at Km.No.671/22-24 and when a valid ticket was found with the dead body, it can be safely concluded that the deceased was a *bona fide* passenger of train No.2806 Secunderabad – Visakhapatnam Janmabhoom Express and died due to accidental fall from the said train on the intervening night of 3/4.07.2007 when the train was passing between Annavaram and Hamsavaram railway stations due to hit by the door of the train. It is nothing but untoward incident of accidental fall from the train No.2806 Secunderabad – Visakhapatnam Janmabhoom Express and it does not fall in the exceptions narrated under Section 124(a) of the Railways Act. The Tribunal had placed reliance on Ex.A.5-death certificate, which shows the date of death as '04.07.2007' and the oral evidence points out the death occurred on 03.07.2007. On what date, the deceased died is not a question, but question is whether the deceased died in an untoward accidental fall from the train. There is ample evidence to substantiate the same. Further, there is also ample evidence to substantiate that the deceased was a *bona fide* passenger. Viewing from any angle, it is not a case of suicide or a case of falling under exceptions of Section 124 of the Railways Act. All the points are answered in favour of the appellants accordingly.

10. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990,

the appellants-claimants are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation for the death of their son- M.Giri Venkata Satyanarayana in an untoward incident of accidental fall from the train No.2806 Secunderabad – Visakhapatnam Janmabhoom Express on 03.07.2007. It is endorsed in the cause title of the appeal grounds, the 1st applicant-father of the deceased died on 10.05.2013. Therefore, the 2nd applicant-mother of the deceased alone is entitled to the entire compensation amount.

11. In the result, the appeal is allowed, setting aside the order, dated 09.04.2014, passed in O.A.A.No.277 of 2007 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.277 of 2007 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the 2nd appellant-applicant within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the 2nd appellant-applicant is entitled to interest @ 6% per annum from the date of this judgment till realisation. On deposit, the 2nd appellant is entitled to withdraw the entire amount of compensation equally. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

6th November, 2018

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