

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.202 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 28.11.2013 in O.A.A. No.307 of 2005 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-applicants claiming compensation for the death of S.Maraiah (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.226 Visakhapatnam-Palasa passenger (hereinafter referred to, as 'the subject train') on 02.08.2005 on the platform of Vizianagaram railway station, 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 applicants would contend that the deceased died due to fall from running train bearing No.226 Visakhapatnam-Palasa passenger; that there is specific evidence of A.W.1, A.W.2 and R.W.1 to substantiate the accidental fall; that the journey ticket

possessed by the deceased was lost in the fall; that there is also Ex.R4-Divisional Railway Manager(DRM)'s report and Ex.A4-inquest report to establish the same; that there is also Ex.A2-post mortem examination report to substantiate the death of the deceased by accidental fall from the subject train; that the Tribunal erroneously held that the deceased did not die due to accidental fall and was not possessing journey ticket and that it was a case of suicide; that the findings of the Tribunal are erroneous and contrary to the evidence on record, and ultimately prayed to set aside the impugned order and grant compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that there is evidence of R.W.2 wherein it is stated that the deceased committed suicide due to mental problem; that there was no ticket with the deceased; that there is ample evidence on record brought by the railways to substantiate that the subject fall was not an accidental fall and it is a case of suicide. It is further contended that there is inconsistency in the evidence of A.W.2 and R.W.1 with regard to manner how the deceased had fallen from the subject train; that the Tribunal had elaborately dealt with the oral and documentary evidence and rightly held that the deceased was not possessing a journey ticket and he did not die in an untoward incident of

accidental fall from the subject train; that there is no infirmity 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 S.Maraiah was a *bona fide* passenger of train No.226 Visakhapatnam-Palasa passenger on 02.08.2005 travelling from Vizianagaram to Garividi ?
- 2) Whether the deceased died in an untoward incident of accidental fall from running train No.226 Visakhapatnam-Palasa passenger on 02.08.2005 on the platform of Vizianagaram 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 3:

7. To substantiate the claim of the applicants, applicant no.1, who is wife of the deceased, was examined as A.W.1 and got examined A.W.2, and Ex.A1-copy of First Information Report; Ex.A2-copy of post mortem examination report; Ex.A3-copy of ration card; Ex.A4-inquest report; Ex.A5-copy of I.D. card and Ex.A6-death certificate. On behalf of railways, R.Ws.1 to 3 were examined and Ex.R1-message of guard; Ex.R2-message of

Station Master; Ex.R3-original station diary and Ex.R4-DRM's report were got marked.

8. Specific case of the applicants is that on 02.08.2005, the deceased boarded train No.226 Visakhapatnam-Palasa passenger in general compartment around 1.30 PM by purchasing a ticket, to travel from Vizianagaram to Garividi in order to go to house of his uncle Kondala Rao, and when the train was about to leave Vizianagaram railway station, he slipped and fell down accidentally, sustained injuries and succumbed to the same on the spot. The railways denied the accidental fall as well as the deceased travelling in the subject train with a valid journey ticket. Admitted, no journey ticket was placed before the Tribunal to prove that the deceased was a *bona fide* passenger to travel by the subject train. It is stated that the journey ticket was lost in the alleged accident. A.W.1 deposed to that effect. A.W.2, who is a licensed porter in the railway station, deposed that the deceased was holding a passenger journey ticket to travel by the subject train on that day and that he saw the deceased boarding the train on platform no.4 and that when the train was leaving the platform no.4, a man slipped suddenly and fell down accidentally from the subject train in between platform and the train. He further deposed that the person who fell down is the same

person whom he saw with the journey ticket and who had enquired him with regard to schedule of passing of the train. As per the inquest report Ex.A4, A.W.2 was the last person who saw the deceased alive.

9. The evidence of R.W.1, who is Guard of the train, reveals that the deceased had fallen on the offside of the train. This evidence is corroborated with the recitals of Ex.R4-DRM's report, wherein it is stated that the subject death is emanated by accidental fall from a running train when the deceased was trying to board the train from offside. The evidence of R.W.2 reveals that on hearing hue and cry from the passenger, he went there and saw a person on the spot almost breathing his last, and the dying person said to have stated to R.W.2 that his mind was not well and hence he put himself before the train. The Tribunal placed reliance on this statement. It had placed much reliance on the evidence of R.Ws.1 and 2, who are Guard of the train and the Station Superintendent. It pointed out inconsistency in the evidence of A.W.2, who stated that the deceased boarded the subject train from platform side, and the recitals in Ex.R4-DRM's report which show that the deceased boarding the train from offside. However, the platform number stated in both the versions is the same i.e. platform no.4.

10. As per the evidence on record, the deceased died on the spot and his dead body was cut into pieces. The statement given to R.W.2 that the deceased himself was responsible for his death, has not been mentioned anywhere in the records. Even assuming for a moment that the deceased made such a statement to R.W.2, Station Superintendent, it requires to be examined with reference to the other evidence on record. The evidence of R.W.1 is clear that there was an accidental fall of the deceased, no doubt, from offside of the train. R.W.1 and other passengers were very much present at the scene of occurrence. Nothing has come up from their mouth that the deceased made such a statement to R.W.2. No such evidence has come up from the mouth of R.W.1 also, who was also present at the time of removing the dead body of the deceased from the scene of occurrence. What R.W.1 heard from the passengers of the train was that a male person fell down from offside and his body was on the track. The passengers saw the body of the deceased and shouted. Had there been no fall from the train, they would not have shouted that a person had fallen from offside. They would have stated that somebody had come under the train. Further more, the body of the deceased was cut from the centre. In such an event, the deceased making the said statement to R.W.2 that his mental condition was

not good and he himself was responsible for his death, becomes more improbable.

11. In entire DRM report under Ex.R4, which was filed after thorough enquiry, it has come up that the deceased person was not a *bona fide* passenger of subject train on 02.08.2005. It is further stated in the DRM report Ex.R4 that apparently, the deceased person tried to board the train from offside of the platform while the train was in motion, and probably, as a result, he fell down and was run over by the moving train, and that the accident did not occur due to any fault of any railway personnel or railway administration and the claim preferred by the party could not be concurred during the enquiry. Even in the enquiry conducted by the railways, they could not make out that the deceased himself came under the train and succumbed to the injuries. They conceded that it is a fall from offside of the train. Whether it is from offside of the train or from the platform side of the train, it does not matter much. In view of the clear cut evidence, it can be safely concluded that the deceased had an accidental fall from the subject train on 02.08.2015.

12. R.W.3 is a hearsay witness and no credibility can be given to his evidence, to hold that the deceased was not a *bona fide* passenger and did not die in an untoward incident of accidental fall from the subject train.

13. There is specific evidence of A.W.2, who is a porter in the railway station, with regard to the deceased possessing a valid journey ticket. Therefore, the possibility of ticket being lost in the accidental fall cannot be ruled out. The evidence of A.W.2 cannot be disbelieved. His evidence is sufficient to hold that the deceased was possessing a valid journey ticket. Therefore, it can safely be concluded that the deceased was a *bona fide* passenger of the subject train.

14. The Tribunal has not analysed the evidence on record in right perspective and arrived at perverse findings. Hence, the impugned order passed by the Tribunal is liable to be set aside. The points are answered in favour of the applicants and against the railways.

Point No.4:

15. In the result, the C.M.A. is allowed. The impugned order of the Tribunal is set aside. The claim application O.A.A. No.307 of 2005 filed by the applicants is allowed awarding compensation of Rs.8,00,000/- (Rupees eight lakhs) to the applicants as per the amended Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent-railways are directed to deposit the said amount within a period of three months from the date of receipt of a copy of this judgment, failing which the applicants are entitled to

interest @ 6% per annum on the compensation amount awarded from the date of this judgment till date of realization. Out of the compensation awarded, applicant no.1 is entitled to 50%, and the remaining 50% shall be shared by the other applicants equally. On deposit, the applicants are entitled to withdraw their respective shares along with accrued interest.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

30.10.2018
DRK



Dr. SHAMEEM AKTHER, J