

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.690 of 2012

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 22.06.2012, passed in O.A.A.No.65 of 2002 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellant-claimant claiming a compensation of Rs.4,00,000/- for the injuries sustained by him in an untoward accidental fall from a running train No.8563 Visakhapatnam – Bangalore Prashanti Express on 21.03.2001 at Km No.301/02-03 between Malliyala and Linganeni Doddi Railway Stations, was dismissed.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellant-applicant would contend that the appellant had fallen accidentally from a train No.8563 – Visakhapatnam to Bangalore Prashanti Express; he possessed a valid ticket bearing No.05645 dated 21.03.2001; there is evidence with regard to the accidental fall of the deceased from the train No.8563; on the date of incident, the subject ticket bearing No.05645 was collected; the railways erroneously contended that the said ticket was issued in the month of April, 2001; the deceased was physically carrying the ticket on the date of incident, i.e., on 21.03.2001, and it was witnessed by the railway authorities; the appellant was a *bona*

fide passenger; the Tribunal without considering the evidence on record, erroneously dismissed the claim of the appellant; and ultimately, prayed to grant compensation to the appellant.

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 appellant holding that the appellant failed to prove that he was a *bona fide* passenger travelling with a valid ticket; there are no circumstances to interfere with the finding of the Tribunal; and ultimately, prayed to dismiss the appeal.

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

- 1) Whether the applicant was a *bona fide* passenger of train No.8563 Visakhapatnam – Bangalore Prashanti Express, travelling from Nandyal to Bangalore on 21.03.2001?
- 2) Whether the applicant had fallen from the train No.8563 and his left leg was amputated due to the untoward incident of accidental fall from the train?
- 3) Whether the applicant is entitled to claim compensation as prayed for?
- 4) Whether the impugned order passed by the Tribunal is liable to be set aside?

Points 1 to 4:

6. To substantiate the claim of the appellant-applicant, the appellant himself deposed as A.W.1 and got marked Ex.A.1- certificate issued by police, Ex.A.2-wound certificate, Ex.A.3-

certificate issued by Sub Inspector of Police, G.R.P., Ex.A.4-disability certificate and Ex.A.5-original journey ticket. On behalf of the respondent-Railways, R.Ws.1 and 2 were examined and Ex.R.1-copy of application in O.A.A. No.71 of 2002, Ex.R.2-copy of memo, Ex.R.3-copy of printed card tickets classification month-wise for March, 2001 and Ex.R.4-copy of printed card tickets classification month-wise for April, 2001 were marked.

7. As per the evidence on record, the applicant was travelling from Nandyal to Bangalore in Train No.8563 Visakhapatnam – Bangalore Prashanti Express possessing a valid ticket bearing No.05645 on 21.03.2001. In the evidence and the statement, the applicant specifically mentioned that he was travelling from Nandyal to Bangalore with ticket bearing No.05645 and the date of travelling was given on 21.03.2001. In the statement given by the applicant to police on 22.03.2001, he did not give the ticket number. Ex.R.2 is the copy of message issued by the Station Superintendent, Dhone, to all the concerned, wherein it is stated that “one male passenger by name Jogender, son of Ramchander, aged 30 years, had fallen by some train holding two tickets, i.e., first ticket No.15006362 to travel from Mathura – Vijayawada and the second ticket No.05645 dated 21.03.2001 from Nandyal to Bangalore and had fallen down from train at Km No.301/2-3”. The applicant specifically stated that he was undertaking the journey at the time of accident holding ticket No.05645. As per the evidence adduced on behalf of the railways, i.e., printed card ticket month-wise classification for March, 2001, Ex.R.3, the ticket

mentioned by the applicant was not issued in the month of March, 2001, but the same was issued in the month of April, 2001. So, the printed card ticket month-wise classification for the month of April, 2001, reveals that the ticket bearing Nos.05582 to 06057 to travel from Nandyal to Bangalore was issued. Had the injured was not possessing the ticket on the date of untoward accidental fall on 21.03.2001, he would not have mentioned the ticket number as '05645'. He is not aware under what series the tickets were being issued by the railways on that day. Ex.A.5 is the original journey ticket, wherein the first two digits are not visible and last three digits are '645'. Having examined Ex.A.5, the railway authorities had incorporated the ticket numbers, i.e., '05645'. It is not in dispute that Ex.A.5 is the ticket issued by the railway authorities. At the most, there can be some discrepancy in the number of the ticket mentioned in Ex.R.2 message, as the first two digits are not visible. So, the evidence of A.W.1 and Ex.A.5 journey ticket establishes that the applicant was possessing a valid journey ticket to travel from Nandyal to Bangalore on the date of accidental fall itself. The accident fall of the applicant from the train is conceded by the railways. Therefore, it cannot be said that a fabricated ticket is placed on record and got it marked as Ex.A.5 to avail the benefit under the Act. The applicant was a *bona fide* passenger on train No.8563 and had an accidental fall on 21.03.2001 while travelling from Nandyal to Bangalore. The Tribunal had not properly examined Ex.A.5 and also the mention of ticket No.05645 in Ex.R.2 copy of the message. Under these circumstances, the impugned order is liable to be set aside.

8. As per the evidence on record and Ex.A.2-wound certificate placed before the Tribunal, the applicant suffered amputation of left leg leaving the stump exceeding 5 inches. This injury is covered under the notification dated 22.12.2016, under Serial No.22 of Part III of the amended Schedule of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, i.e., amputation below knee which stump exceeding 5 inches. Therefore, the appellant-applicant is entitled to Rs.3,20,000/- (Rupees three lakhs and twenty thousand only) as compensation.

9. In the result, the appeal is allowed, setting aside the order, dated 22.06.2012, passed in O.A.A.No.65 of 2002 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.65 of 2002 filed by the appellant-applicant is allowed granting Rs.3,20,000/- (Rupees three lakhs and twenty thousand only) in favour of the appellant-applicant as compensation. The respondent-Railways is directed to pay the said compensation to the appellant-applicant within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellant-applicant is entitled for interest @ 6% per annum from the date of this judgment till realisation. On deposit, the appellant is entitled to withdraw the entire amount of compensation. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

31st October, 2018

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