

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

C.M.A.NO.936 OF 2014

JUDGMENT:

Aggrieved by the order dated 06.06.2014 in O.A.A.No.88 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, the appellants-applicants filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987.

2. Heard both sides. Perused the record.

3. Learned counsel for the appellants would contend that the deceased was a passenger travelling by train No.355, Wadi – Hyderabad passenger from Nawandgi to Tandur on 19.01.2008 and he had accidentally fallen from the said train, suffered injuries and succumbed to those injuries. He possessed valid journey ticket bearing No.01545. The death was in an untoward incident of accidental fall from the train. The Tribunal had not considered the evidence of A.Ws.1 and 2. A.W.2 clearly and categorically stated the purchase of ticket and the deceased travelling by the said train. There is also the document to substantiate the same. The Tribunal did not consider the evidence of A.W.1 and Ex.C1-the CD file in Crime No.9 of 2008 and dismissed the application on two grounds holding that the deceased is not a *bona fide* passenger and he did not die in an untoward incident of accidental fall and ultimately, prayed to set aside the impugned order and allow the application, as prayed for.

4. Learned counsel appearing for the Railways would contend that the entire criminal case record in Crime No.9 of 2008 clearly demonstrates that the death was not in an untoward incident of accidental fall from train. The deceased was not a *bona fide*

passenger. During the course of investigation in Crime No.9 of 2008, the statement of wife of the deceased (A.W.1) was recorded. The Tribunal had analyzed the whole evidence, particularly the evidence adduced on behalf of the Railways and marked the copy of the inquest report as Ex.A2 and rightly held that the death was not in an untoward incident of accidental fall from train and ultimately, prayed to dismiss the appeal.

5. In view of the rival contentions, the following points have come up for determination:-

- (1) Whether the deceased was a *bona fide* passenger of train No.355 Wadi – Hyderabad passenger from Nawandgi to Tandur on 19.01.2008?
- (2) Whether the deceased died as a result of an untoward incident of accidental fall from the said train?
- (3) Whether the impugned order is liable to be set aside? and
- (4) To what relief?

POINTS:

6. The specific case of the appellants is that the deceased was travelling in train No.355 Wadi – Hyderabad passenger from Nawandgi to Tandur with ticket No.01545 in general compartment. A.W.2 is said to be the eye witness to the purchase of the ticket and also who saw the deceased leaving by train No.355 on 19.01.2008. As per Ex.A1, copy of the First Information Report, the dead body of the deceased was found between Mantatti and Nawandgi up-line by Antaiah Papaiah, Keyman at 08.10 hrs on 19.01.2008. Inquest was conducted on the same day. During the inquest, the dead body was identified by his wife, brother-in-law

and sister. As per para-7 of the inquest report “accident occurred to the deceased by unknown up train and died”. There is also mention of ticket No.01545 meant to travel from Nawandgi to Tandur dated 19.01.2008 and the report further states that the ticket is for a down train. There is also specific mention in para-9 of the inquest report that “the deceased was going along the track and accident occurred by unknown up train and died”. The details of the dead body were also mentioned in the inquest report. Having recorded the statements of the family members and other witnesses, it is concluded by way of a final report dated 08.07.2008 that the deceased was proceeding by the side on railway track and was accidentally knocked down by the train. The train ran over him and he died on the spot.

7. During the course of investigation, police also recorded the statement of wife of the deceased, A.W.1 herein. She stated that the deceased was in the habit of drinking and not attending to work. On 18.01.2008 at 06.00 hrs, he left home to go to labour work. She was waiting for him but he did not return. On the next day morning i.e. on 19.01.2008 at 07.00 hrs, she was informed by the villagers, the finding of dead body of the deceased at railway track.

8. There is no mention of A.W.2 witnessing the deceased boarding the train No.354 on 19.01.2008 after purchase of the ticket to travel from Nawandgi to Tandur. Applicant No.1 is the wife of the deceased. She categorically stated to the police that her husband left in the morning of 18.01.2008 to attend some work. The statement of A.W.1 was recorded by the police on 19.01.2008

i.e. immediately on finding of the dead body. Had the deceased gone to railway station, as contended by the applicants in this application, A.W.1 would not have given such a statement to the police.

9. As far as the journey ticket marked as Ex.A1 is concerned, it is meant to travel from Nawandgi to Tandur on 19.01.2008 by train No.355 Wadi – Hyderabad passenger. But the dead body of the deceased is not found on the track, on which the train bearing No.355 passed on that day.

10. Admittedly, no strict proof is required to allow the application but the whole circumstances placed on record are required to be taken into consideration to find out whether the deceased was *bona fide* passenger and had accidentally fell from train No.355. On those aspects, the Tribunal had examined the whole material placed on record and held that the deceased was not a *bona fide* passenger and he did not fall accidentally from train No.355 Wadi –Hyderabad passenger. Further, the Tribunal had given reasons with regard to the ticket marked as Ex.A1. The Tribunal had also recorded specific findings that if it was an accidental fall from train No.355 and further the dead body would not have been found on a different track. The findings of the Tribunal are supported by the evidence on record. Under the circumstances of the case, there is no infirmity in the impugned order passed by the Tribunal. Points 1 to 4 are against the appellants-applicants.

12. The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(DR. SHAMEEM AKTHER, J)

5th November 2018
RRB

