

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.609 OF 2014

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 03.03.2014, in O.A.A.No.427 of 2007 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased K.Srinivasa Rao in an untoward incident of railway accident was dismissed.

2. Heard the learned Standing Counsel for the respondent/Railways. Though the matter is listed under the caption "For Orders", there is no representation for the appellants/applicants. Hence, the matter can be disposed of basing on the material available on record. Perused the material on record.

3. In the grounds of appeal, the applicants would contend that the findings of the Tribunal are erroneous; that there is the specific evidence of A.W.2 with regard to the deceased K.Srinivasa Rao purchasing ticket; that the Tribunal ought not have placed reliance on the Post Mortem Examination Report of the deceased K.Srinivasa Rao with regard to the time of his death; that the statement of Keyman ought not have been taken into consideration

and ultimately, prayed to set aside the impugned order and allow the appeal as prayed for.

4. On the other hand, Smt N.Sasikala, learned Standing Counsel for the respondent/Railways, would contend that as per the Post Mortem Examination Report, the subject death occurred 48 hours prior to commencement of autopsy, which falsifies the evidence of A.W.2; that the place of finding the dead body of the deceased K.Srinivasa Rao and the injuries found in the Post Mortem Examination Report and other evidence clearly establish that the subject death was not occurred in an untoward incident of railway accident; that the Tribunal, while determining the issues, had elaborately dealt with all these aspects and rightly dismissed the application; that there is no infirmity in the impugned order and there are no circumstances to take a different view and ultimately, prayed to dismiss the appeal.

5. Under these circumstances, the following points arise for determination:

- “1. Whether the deceased K.Srinivasa Rao died as a result of the untoward incident of railway accident? and***
- 2. Whether the deceased K.Srinivasa Rao was a bona fide passenger of train No.D-103 Narsapur – Gudivada Passenger travelling from Akividu to Gudivada on 09.10.2007?”***

6. **POINT Nos.1 and 2:-**

To substantiate the case of the applicants, A.Ws.1 and 2 were examined and Exs.A-1 to A-7 were got marked. On behalf of the Railways, R.Ws.1 and 2 were examined and Exs.R-1 and R-2 were got marked.

7. A.W.2 deposed about the deceased K.Srinivasa Rao purchasing a ticket and travelling by a train from Akividu on 09.10.2007 by train bearing No.D-103 passenger. Post Mortem Examination was conducted in this case on 10.10.2007 at 10:00 A.M. which shows the time of death of the deceased K.Srinivasa Rao as 48 hours prior to conduct of autopsy. So, as per the P.M.E. Report, the subject death would be around 10:00 A.M. on 08.10.2007. Six hours (+) or (-) can be taken into consideration. The Keyman's statement under Ex.R-1 produced by the Divisional Railway Manager reveals that the dead body was found in the mid section. The evidence of A.W.2 that the deceased K.Srinivasa Rao boarded the train on 09.10.2007 is not in conformity with the P.M.E. Report. Further, the dead body would not have been found in the mid section had it been a death in an untoward incident. The evidence given by the Keyman during the course of enquiry conducted by the Railway Protection Force shows that the Keyman found the dead body. He did not see the deceased K.Srinivasa Rao alive. Though the initial burden is on the applicants to establish that the death occurred in an untoward incident of railway accident, the same has not been discharged. Further, no ticket was found in the possession of the dead body of the deceased K.Srinivasa Rao. The Tribunal had also discussed with regard to the dragging of the dead body by the train by a length of 15 sleepers. In case of accidental fall from a train, there is no possibility of dead body being dragged by a length of 15 sleepers. Under these circumstances, the subject death was not the result of an untoward incident of railway accident or by train No.D-103 Narsapur – Gudivada Passenger. There is no infirmity in the

impugned order. There is nothing to take a different view. The appeal is devoid of merits and is liable to be dismissed.

8. Accordingly, the appeal is dismissed. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 11.10.2018
AMD



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