

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.305 of 2011

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 ('the Act', for brevity), is filed by the appellants-applicants, challenging the order, dated 25.01.2011, passed in O.A.A.No.16 of 2004 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity).

2. Heard the learned counsel for the appellants-applicants, the learned Standing Counsel for the respondent-Railways and perused the record.

3. Learned counsel for the appellants/applicants would contend that the deceased-P.Venkatachalam was a *bona fide* passenger of train No.7406 and he was travelling from Kalahasti to Nidubrolu on 29.04.2003 and he accidentally fell down from the said train. The ticket handed over by the police to the wife of the deceased was filed before the Tribunal. In the inquest panchanama also, there is mention that the deceased had accidentally fallen down and succumbed to the injuries. The appellants discharged their initial burden to establish that the deceased was a *bona fide* passenger and had an accidental fall from train No.7406 on 29.04.2003. The Tribunal erroneously dismissed the application and ultimately, prayed to set aside the impugned order and allow the appeal granting compensation.

4. On the other hand, learned counsel for the respondent-railways would contend that in the inquest panchanama and in the enquiry conducted by railways, no journey ticket was found with the deceased. The ticket said to have been handed over by the

police is absolutely false. No police personnel were examined to establish the same. Further, the fact that the dead body was cut into two pieces, establishes that the deceased was run over by train. Further, the ticket marked in this case as Ex.A1 is not meant to travel by train No.7406 on 29.04.2003. The Tribunal having elaborately analysed all these contentions, was pleased to dismiss the application. There is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:

1. Whether the deceased-P.Venkatachalam was a *bona fide* passenger of train No.7406 on 29.04.2003?
2. Whether the deceased-P.Venkatachalam died in an untoward incident of accidental fall from train No.7406 on 29.04.2003?
3. Whether the impugned order, dated 25.01.2011, passed in O.A.A.No.16 of 2004 by the Tribunal is liable to be set aside?"
4. To what relief?

6. POINTS 1 & 2:- To substantiate the claim, applicant No.1- wife of the deceased deposed as A.W.1 and got marked Ex.A1- journey ticket, Ex.A2-copy of FIR, Ex.A3-inquest report, Ex.A4-P.M.E. report, Ex.A5-death certificate and Ex.A6-family members certificate. No witnesses were examined on behalf of the railways. The Court examined C.W.1 and got marked Ex.C1-Entire case file of police in Crime No.47 of 2003.

7. When inquest was conducted over the dead body of the deceased, Identification Card of the communist party of India, a small pocket book and a watch were recovered from the dead body of the deceased. No journey ticket was found. In the inquest

panchanama also, there is no mention of seizure of journey ticket. Though A.W.1 contended that Ex.A1-journey ticket was handed to her by the police, the same was not mentioned in any of the enquiries conducted by the police, particularly, in the inquest panchanama. As per the evidence and the material placed on record, Ex.A.1-journey ticket was not meant to travel by train No.7406 on 29.04.2003. The Tribunal had thoroughly examined Ex.A1-journey ticket and held that it was not the journey ticket meant for travel of the deceased on that day by the subject train.

8. It is also pertinent to state that the FIR was registered stating that a person was run over by train. As per Ex.A.4-P.M.E. report, the body was cut into two pieces. Generally, in case of accidental fall from a train, there will be severance of limbs. In the inquest report also, there is specific mention that a Gateman had seen the deceased running over by a train. The same was the first message in the instant case. Admittedly, A.W.1 is not a witness either to state that the deceased purchased a ticket or travelled by train No.7406 on 29.04.2003. The schedule of train No.7406 reflects that the said train travelled from Nidubrolu to Srikalahasti on 29.04.2003. The case of the applicants is that the deceased boarded the said train to travel from Srikalahasti to Nidubrolu on that day. It reflects that the whole case set up by the applicants is false. The Tribunal had elaborately discussed the entire evidence, particularly, the evidence of C.W.1 and also Ex.C1-entire criminal case file produced by the police and ultimately, concluded that the deceased was not a *bona fide* passenger and did not fall from train No.7406 on 29.04.2003. The finding of the Tribunal is based on

oral and documentary evidence. There is no infirmity to vary the decision. The appeal is devoid of merit and is liable to be dismissed.

9. In the result, the appeal is dismissed.

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

Date: 22.11.2018
ssp

Dr. SHAMEEM AKTHER, J

