

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.818 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 14.08.2014, passed in O.A.A. No.378 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal dismissed the application of the appellants claiming a compensation of Rs.4,00,000/- for the death of M.Venkatamma (mother of the appellants) in an untoward incident of accidental fall from train No.2722 Dakshin Express in between Bellampally and Mandamarri railway stations while travelling from Bellampally to Secunderabad on 30/31.07.2006.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased-M.Venkatamma had fallen down from train No.2722 Dakshin Express while travelling from Bellampally to Secunderabad on the intervening night of 30/31.07.2006 in between Bellampally and Mandamarri railway stations and died due to multiple injuries; that her journey ticket was lost in the accident; the Tribunal had erroneously recorded that the deceased was not a *bona fide* passenger of Dakshin Express train, though there is ample evidence to substantiate the same; the finding of the Tribunal is perverse and not based

on evidence and record; and ultimately, prayed to set aside the impugned order passed by the Tribunal and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways would contend that there is absolutely no evidence to prove that the deceased had fallen accidentally from train No.2722 Dakshin Express; the Tribunal had rightly held that the deceased did not die in an untoward incident of accidental fall from a running train and the deceased was not a *bona fide* passenger of the subject train; A.W.2 is a planted witness in this case; there is nothing to interfere with the finding of the Tribunal; there is no infirmity in the impugned order; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the points that arise for determination in this appeal are as follows: -

1. Whether the deceased-M.Venkatamma was a *bona fide* passenger of train No.2722 Dakshin Express on 30/ 31.07.2006?
2. Whether the deceased died in an untoward incident of accidental fall from the train No.2722 Dakshin Express?
3. Whether the impugned order dated 14.08.2014 passed by the Tribunal is liable to be set aside?
4. To what result?

Points 1 to 4:

6. To substantiate the claim of the appellants-applicants, 1st applicant-son of the deceased deposed as A.W.1 and got examined one K.Venkatesh as A.W.2 and got marked Ex.A.1-First Information Report, Ex.A.2-Inquest Report, Ex.A.3-Post-mortem Examination Report, Ex.A.4-Death Certificate,

Ex.A.5-Final Report and Exs.A.6 to A.9-Family Members Certificates. On behalf of the respondent-Railways, R.W.1 was examined and Ex.R.1-copy of Station Superintendent Message was marked.

7. Admittedly, A.W.1, who is the son of the deceased, is not an eyewitness to the incident. A.W.2 is nephew of the deceased. He deposed that he purchased journey ticket for the deceased to travel from Bellampally to Secunderabad and the deceased boarded train No.2722 Dakshin Express on the intervening night of 30/31.07.2006. He immediately informed about journey to A.W.1 over cell phone and on the morning of 31.07.2006, he received a phone call from A.W.1 informing him that his mother did not reach Secunderabad. They searched for the deceased on the next day and they conducted enquiries for her with the railways as she boarded the train. The dead body of the deceased was not identified immediately after the accident, but it was identified 16 days after the incident, i.e., on 16.08.2006. No panch witness opined that the death was due to accidental fall from a train. A.W.1 is not a witness to the alleged travel of deceased by the subject train. A.W.2 is the nephew of the deceased. As per the first information report, the age of the deceased is 35 years. As per the post-mortem examination report, the age of the deceased is 50-52 years. Except A.W.2, nobody said to have seen the deceased in train No.2722. A.W.2 being the nephew of the deceased is an interested witness. Had the deceased boarded the subject train on 30/31.09.2006, within 3-4 days,, A.W.1, A.W.2 and other relatives of the deceased

could have found the dead body. The subject dead body was found after 16 days of the alleged travel, i.e., on 16.08.2006. It goes to show that A.W.1, A.W.2 and the family members of the deceased were not aware where the deceased had left on 30.07.2006. After seeing the photographs of the dead body in newspapers and collecting copies of record from the railway police, etc., it appears, a claim is laid contending that the deceased had fallen from the train. The contentions raised herein are all elaborately dealt by the Tribunal. The Tribunal justified in holding the issues, i.e., the deceased was not *bona fide* passenger and did not die in an untoward incident of accidental fall from the train No.2722 on the intervening night of 30/31.07.2006. There is no infirmity. There is nothing to take a different view and allow the claim application. The appeal is devoid of merit and it is liable to be dismissed.

8. In the result, the appeal is dismissed, confirming the order, dated 14.08.2014, passed in O.A.A. No.378 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

1st November, 2018

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