

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.386 of 2016

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 01.03.2016, passed in O.A.A.No.406 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of Kola Ramaiah (father of applicants) in an untoward incident of accidental fall from train No.322 Ramagiri Passenger at Ravindrakhani railway station while travelling from Sirpur Kagaznagar to Ravindrakhani on 09.09.2009, was dismissed.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased-Kola Ramaiah boarded train No.322 Ramagiri Passenger to travel between Sirpur Kagaznagar and Ravindrakhani on 09.09.2009, while getting down at Ravindrakhani, he had accidentally fallen down from the train, suffered grievous injuries and while undergoing treatment on the same day evening, he succumbed to the injuries; the journey ticket was lost in the accident; though there is final report to substantiate the same, coupled with the evidence of A.W.1-second son of the deceased, the Tribunal disbelieved that the deceased was not *bona fide* passenger of the subject train and he did not die in a untoward incident of accidental fall from

Ramagiri passenger train; the findings of the Tribunal are not based on evidence and record, which are erroneous; and ultimately, prayed to set aside the impugned order 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 the deceased was not a *bona fide* passenger of the subject train; there is no untoward incident of accidental fall of the deceased from the subject train; the Tribunal rightly dismissed the claim application of the applicants; the findings of the Tribunal are based on evidence and record; there are no circumstances to interfere with the findings 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 deceased was a *bona fide* passenger of Ramagiri Passenger train and he died in an untoward incident of accidental fall from train at Ravindrakhani railway station while travelling from Sirpur Kagaznagar to Ravindrakhani on 09.09.2009?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 01.03.2016 passed by the Tribunal is liable to be set aside?
- 4) To what relief?

6. Point Nos.1 and 3: To substantiate the case of the applicants, the 2nd applicant-second son of the deceased

deposed as A.W.1 and got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of MLC discharge, Ex.A.3-attested copy of police intimation, Ex.A.4-attested copy of inquest report, Ex.A.5-attested copy of post-mortem examination report, Ex.A.6-attested copy of final report, Ex.A.7-Family Members Certificate and Ex.A.8-xerox copy of ration card (compared with original). On behalf of the respondent-railways, Guard of the subject train was examined as R.W.1 and Ex.R.1-attested copy of Guard's memo book was marked.

7. The evidence of A.W.1-second son of the deceased reveals that his father wanted to go to Ramakrishnapur to see his eldest son. A.W.1 met his father at Sirpur Kagaznagar railway station and purchased journey ticket for his father to travel from Sirpur Kagaznagar to Ravindrakhani and his father boarded Ramagiri passenger train No.322 and continued the journey on 09.09.2009. In Ex.A.1-F.I.R. and Ex.A.4-inquest panchanama, there is no mention of the deceased possessing journey ticket. A.W.1 reiterated with regard to the purchase of journey ticket for the travel of his father. R.W.1-Guard of the train stated that he did not witness any untoward incident. Ex.R.1-Guard's memo book does not reflect any untoward incident on 09.09.2009. Ex.A.6-copy of final report reveals that it was submitted by the police concerned to the Executive Magistrate-cum-Tahsildar, Mandamarri. It also reveals that on 09.09.2009, the deceased-Kola Ramaiah, son of Gouraiah, resident of Sirpur Kagaznagar of Adilabad District, was travelling from Sirpur Kagaznagar to Ravindrakhani by 322 passenger train

and when the train was arrived on platform No.1 at Ravindrakhani, the deceased tried to get down from the train No.322 passenger on platform No.1 of Ravindrakhani railway station and he accidentally fell down from the running train and that he was taken to the Area Hospital, Ramakrishnapur for treatment and, on the same day at about 10-15 p.m., he succumbed to the injuries. In Ex.A.6-final report, there is also mention of the deceased was not possessing any ticket.

8. It is appropriate to refer the decision of the Hon'ble Supreme Court in Union of India vs. Rina Devi¹, wherein it is held as follows:

“Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari vs. Union of India [(1993) ACJ 846] referring to the scheme of Railways Act, 1890, it was observed that since traveling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation.”

9. Under Ex.A.6-final report, there is specific mention that the deceased had accidentally fallen from the subject train

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

No.322 Ramagiri passenger. In view of Rina Devi's case (supra) and from the circumstances of the case, it can be culled out that neither the deceased intended nor wanted to fall from the train. The fall was only an accidental fall and it amounts to untoward incident of accidental fall, as defined under Section 123(c) of the Railway Claims Tribunal Act, 1987. Though there are number of documents projected by the respondent-railways that the deceased did not possess any ticket, as seen from the evidence of A.W.1-second son of the deceased, the deceased was travelling from Sirpur Kagaznagar to Ravindrakhani by purchasing a valid journey ticket by the subject train No.322 Ramagiri passenger. The deceased had accidentally fallen at about 5-00 p.m. and thereafter, he was carried to the Area Hospital, Ramakrishnapur for treatment and he succumbed to the injuries on the same day at 10-15 p.m. Under these circumstances, there is every possibility of the ticket being misplaced or lost. Therefore, the above decision is applicable to the instant case. Under these circumstances, it is held that the deceased was a *bona fide* passenger and died in an untoward incident of accidental fall from the train No.322 Ramagiri passenger. The Tribunal had not properly appreciated the evidence on record and erroneously dismissed the claim of the applicants. Therefore, the impugned order passed by the Tribunal is liable to be set aside. Accordingly, these points are answered.

10. Point Nos.2 and 4: The applicants are dependents on the deceased. In view of the amendment made to the

Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, the appellants-claimants are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

11. In the result, the appeal is allowed, setting aside the order, dated 01.03.2016, passed in O.A.A.No.406 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.406 of 2009 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants are entitled to interest @ 6% per annum from the date of this judgment till realisation. The applicants 1 and 2 are entitled to share the compensation awarded equally. On deposit, both the applicants are entitled to withdraw their respective shares. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

22nd November, 2018

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