

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.456 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 (for short 'Act'), is filed by the appellants - applicants challenging the order, dated 24.02.2016, passed in OA II (U) No.507 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad (for short 'Tribunal'), whereby, the claim petition filed by the appellants - applicants for a compensation of Rs.4,00,000/- for the death of deceased - Shravan Pandurang Dhale, in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard Sri T.L. Krishna Prasad, learned counsel for the appellants, and Mrs. K. Aruna, learned standing counsel for Railways appearing for the respondent.

3. Perused the material on record, both oral and documentary.

4. The appellants herein are applicants in OA II (U) No.507 of 2008 before the Tribunal, while respondent - Railways is arrayed as such.

5. For the sake of convenience, the parties herein are referred to as they were arrayed in the foresaid OA before the Tribunal.

6. The learned counsel for the applicants would contend that the deceased - Shravan Pandurang Dhale was a *bona fide* passenger of Train No.7430 Tirupati - Hyderabad Rayalaseema Express on 06.09.2008, and he had fallen from the said train on that day while travelling along with his three friends from Tirupati to Vikarabad. Though, there is ample evidence on record, the Tribunal did not consider the same and erroneously held that the deceased was not *bona fide* passenger and did not die in an untoward incident of accidental fall, and ultimately prayed to set aside the impugned order and grant compensation as prayed for by allowing the appeal.

7. On the other hand, the learned standing counsel for Railways would submit that no journey ticket was filed, but photostat copy of ticket was filed. The same was elaborately dealt with by the Tribunal. There are no direct witnesses either with regard to the deceased purchasing ticket or falling from the subject train. The Tribunal rightly dismissed the claim, and ultimately prayed to dismiss the appeal.

8. In view of the above submissions made by both sides, the following points that arise for determination in this appeal:

- i. Whether the deceased - Shravan Pandurang Dhale was a *bona fide* passenger of Train No.7430 Tirupati - Hyderabad Rayalseem Express, and was travelling from Tirupati to Vikarabad on 06.09.2008?

- ii. Whether the deceased - Shravan Pandurang Dhale died in an untoward incident of accidental fall from the said Train in the early hours of 07.09.2008 at Km.No.535/1-2 between Iranagallu and Mantralayam Road Railway Station due to jerks and jolts of the subject train?
- iii. Whether the impugned order is liable to be set aside?
- iv. To what result?

9. To substantiate the claim of the applicants, wife of the deceased, who is applicant No.1, was examined as AW.1 and got marked Ex.A.1- attested copy of first information report, Ex.A.2- attested copy of Inquest Report, Ex.A.3-certificate from police (which was marked subject to proof), Ex.A.4-family member certificate issued by Sarpanch, and Ex.A.5-attested copy of post-mortem examination report. On behalf of the respondent-Railways, none were examined, however, Ex.R.1-Divisional Railway Manager's Report was marked.

Point Nos.(i) and (ii):-

10. The specific case of the applicants is that the deceased along with his friends viz., i) Ashok Mekhale, ii) Gunavaht Londe and iii) Harish Chandra Solanki, went to Tirupati and had darshan of Lord Venkateswara at Tirumala and thereafter they started their return journey in the after-noon of 06.09.2008 having purchased II Class train journey ticket bearing No.4452558888 to travel from Tirupati to Latur and boarded train No.7340 Tirupati - Hyderabad Rayalaseema

Express. They sat in the general compartment. At about 7.00 P.M., the deceased went to attend the calls of nature, and while washing hands in the wash basin, accidentally slipped and fell down from the running train at KM.No.535/1-2 between Iranagallu and Mantralayam Road Railway Stations due to jerks and jolts of the train, suffered severe injuries and died on the spot in the early hours of 07.09.2008. To substantiate their travel and purchase of journey tickets, none of the colleagues/co-passengers of the deceased was examined. Further, the original journey ticket was not filed, and in the course of inquest, no journey ticket was found with the deceased.

i) The Tribunal while dealing with the evidence of applicants held that the deceased was not a *bona fide* passenger and did not die in an untoward incident of accidental fall from the subject train. The return journey to be undertaken by the deceased was from Tirupati to Vikarabad and, thereafter, to Latur. As per the evidence, the friends of the deceased did not notice the alleged fall from the subject train and continued the journey up to Vikarabad. Even there also, they did not notice the missing of deceased and left to Latur. Generally, no friend or colleague would fail to notice the accidental fall of his friend. If really the deceased was travelling with his friends as contended, his friends, as indicated above, would have noticed the accidental fall, would have immediately informed the same to the Railway Authorities and thereafter searched the dead body, and the dead body would have been found by them. It did not happen so in

the instant case. So, the case set up by the applicants that the deceased was travelling with his friends appears to be a false one. There is no legally acceptable evidence with regard to the original journey ticket. The Tribunal held that Photostat copy of journey ticket does not bear the signature and seal of the police officials. The Tribunal assigned plausible reasons to discard the Photostat copy of ticket filed before it. That apart, the same was marked subject to objection raised by the Railways. It is of no use to the applicants to establish that the deceased was travelling with a valid journey ticket. In Ex.R.1-DRM report also, there is no mention of the deceased purchasing valid ticket to undertake the subject journey. In Ex.R.1, it has come that the deceased while travelling on the foot board, might have fallen and died. It constitutes an offence under Railways Act. Such finding is also of no use to the applicants. Therefore, the case set up by the applicants is doubtful. The initial burden of deceased purchasing journey ticket and accidental fall is not discharged. The Tribunal elaborately discussed all the issues and rightly concluded against the applicants. Under these circumstances, the Tribunal had rightly held that the deceased was neither a *bona fide* passenger, nor died in an untoward incident of accidental fall from the subject train. The impugned order passed by the Tribunal is inconsonance with the evidence on record. Accordingly, these points are answered against the applicants and in favour of the respondent - Railways.

Point No.(iii):-

11. The Tribunal had elaborately dealt with the contentions and the evidence on record and rightly reached the conclusion dismissing the claim petition. There is no infirmity in the impugned order. There is nothing to take a different view. Hence, the appeal is devoid of merit and is liable to be dismissed.

Point No.(iv):-

12. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the order, dated 24.02.2016, passed in OA II (U) No.507 of 2008 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the present appeal, stand closed.

Dr. SHAMEEM AKTHER, J**December 10, 2018**

Mgr