

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.167 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 24.04.2015, passed in O.A.A.No.99 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants/applicants claiming compensation for the death of the deceased-P.Daveedu in an untoward incident of accidental fall from a running train, was dismissed.

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

3. The learned counsel for the appellants/applicants would submit that the deceased-P.Daveedu and A.W.2 were together travelling from Eluru to Visakhapatnam by Train No.2717 Ratnachal Express on 02.01.2009 by purchasing journey tickets. The deceased-P.Daveedu had accidentally fallen down from the subject train while he was going to toilet around 19:00 hours, suffered injuries and succumbed to the same while undergoing treatment on 03.01.2009. The journey ticket was lost in the subject accident. There is specific evidence of A.W.2, who is the grandson of the deceased and who was accompanying the deceased in the subject train on the date of subject accident, to that effect. A.W.2 had clearly and categorically stated that he purchased journey tickets for himself and his grandfather (deceased) and both of them boarded the subject train in

the evening hours of 02.01.2009. The Tribunal did not consider the evidence of A.W.2 and erroneously held that he was an unreliable witness. In the Inquest Panchanama also, there is a mention that the deceased accidentally fell down from the subject train, suffered injuries and succumbed to the same. There is also other record to substantiate the same. The Tribunal erroneously dismissed the claim application of the appellants/applicants and ultimately prayed to allow the appeal by setting aside the order under challenge and grant compensation as claimed.

4. On the other hand, the learned Standing Counsel for the respondent-Railways would contend that a story is concocted by the appellants/applicants in order to claim compensation from the Railways. A.W.2 was pressed into service to claim compensation. As per Ex.A.2-copy of Inquest Report and Ex.A.3-copy of PME Report, the deceased suffered only head injury, which is not possible by fall from a running train. The Tribunal, after analysing the entire evidence on record, rightly dismissed the claim petition. There is no infirmity in the order under challenge and ultimately prayed to dismiss the appeal by confirming the order under challenge.

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

1. Whether the deceased-P.Daveedu was a *bona fide* passenger of Train No.2717 Ratnachal Express travelling from Eluru to Vijayawada on the date of the subject accident, i.e., 02.01.2009?
2. Whether the deceased-P.Daveedu died in an untoward incident of accidental fall from the train No.2717 Ratnachal Express on 03.01.2009?
3. Whether the order under challenge is liable to be set aside/ confirmed?
4. To what result?

Point Nos.1 to 4:

6. To substantiate the claim of the appellants/applicants, A.W.1-P.Yesupadam and A.W.2-P.Rajasekhar were examined and Ex.A.1-attested copy of FIR, Ex.A.2-attested copy of Inquest Report, Ex.A.3-attested copy of PME Report and Ex.A.4-Family members certificate were marked. On behalf of the respondent-Railways, R.W.1-U.V.Anjaneyulu, Station Master, Mustabad Railway Station was examined and Ex.R.1-D.R.M's Report was marked.

7. Admittedly, A.W.1 is not an eye-witness either to the boarding of the subject train by the deceased and A.W.2 or to the alleged purchase of journey tickets by A.W.2. The entire case of the appellants/applicants revolves around the evidence of A.W.2, who is the grandson of the deceased and who is said to have accompanied the deceased on the date of subject accident in the subject train. A.W.2 deposed that he, along with his grandfather (deceased), went to Eluru Railway Station on 02.01.2009, purchased a journey ticket to travel from Eluru to Vijayawada and boarded the general compartment of the subject train; when his grandfather (deceased) was going to toilet in the subject train, he had accidentally fell down from the subject train at 19:00 hours on 02.01.2009. In his cross-examination, he deposed that at 04:30 PM on 02.01.2009, he purchased journey ticket for himself and his grandfather (deceased) to travel from Eluru to Vijayawada by the subject train. A.W.2, in his evidence, deposed that after his grandfather (deceased) fell down from the running train, alarm chain was pulled, but the train did not stop. This was not mentioned in the application filed before the Tribunal by the appellants/applicants for grant of compensation.

There is no evidence on record with regard to A.W.2 informing about the incident to the railway authorities. Admittedly, no journey ticket was found with the deceased. Ex.R.1-D.R.M's Report filed before the Tribunal reveals that the deceased was lifted from Gunadala Railway Station at 07:43 PM on 02.01.2009 and was shifted to Government Hospital, Vijayawada, by ambulance at 08:18 PM and the deceased was admitted in Government Hospital, Vijayawada, at 08:35 PM. There is no record to show that even after getting down the subject train at Vijayawada Railway Station, A.W.2 had informed about the fall of his grandfather (deceased) from the subject train to the railway authorities at Vijayawada Railway Station. There is neither pleading in the claim petition nor the evidence of A.W.2 that A.W.2 accompanied the deceased from Eluru to Vijayawada in the subject train on 02.01.2009. If really A.W.2 was travelling along with the deceased in the subject train on the date of the subject accident, he would have certainly informed about the fall of the deceased from the subject train to the railway authorities concerned. As per the evidence of A.W.2, after getting down from the subject train at Vijayawada Railway Station, he informed about the incident to his parents and other relatives. The Tribunal, while dealing with the evidence of A.W.2, had assigned reasons for not accepting his evidence and held that his conduct was most improbable.

8. It is pertinent to state that the deceased suffered injury only to his head and to his eye in the subject accident. In the event of accidental fall from a running train, generally, injuries would be caused to the hands, legs and other parts of the body. Further, it is pertinent to state that there is specific mention in Ex.A.2 Inquest Report that the deceased died due to the injuries suffered by him in

an accidental fall from the running train. It goes to show that A.W.2 was pressed into service from the beginning to lay a foundation to claim compensation under the Railways Act, 1989. Further, it has come up in the evidence of A.W.2 that the deceased was not wearing any shirt at the time of his travel in the subject train. Generally, no person will travel without wearing a shirt. As seen from the circumstances of the case, had there been a fall from the running train and the impact was not much, there is no possibility of losing the journey ticket in the said incident. Under these circumstances, it can be safely concluded that the initial burden to substantiate that the deceased was a *bona fide* passenger of Train No.2717 Ratnachal Express travelling from Eluru to Vijayawada on 02.01.2009 and he died in an untoward incident of accidental fall from the subject train was not discharged by the appellants/applicants. The Tribunal, after analysing the entire evidence on record in proper perspective, rightly declined to grant compensation to the appellants/applicants. There is nothing to take a different view. There is no infirmity in the order under challenge. The appeal is devoid of merit and is liable to be dismissed.

9. In the result, the appeal is dismissed, confirming the order, dated 24.04.2015, passed in O.A.A.No.99 of 2009 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

29<sup>th</sup> November, 2018  
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Dr. SHAMEEM AKTHER, J