

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.926 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellant-applicant, challenging the order, dated 06.03.2014 in O.A.A. No.6 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellant-applicant claiming compensation for the injuries suffered by him in an untoward incident of accidental fall from Delta passenger on 22.08.2007 while travelling from Secunderabad to Tenali, was dismissed.

2. Heard both sides. Perused the record.

3. For convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. The learned counsel for the applicant would contend that the applicant had fallen from Delta passenger on 22.08.2007 when he was travelling from Secunderabad to Tenali; that the Tribunal held that the applicant was a *bona fide* passenger of the said train; that as far as the injuries suffered by the applicant and the consequences arose therefrom, including amputation of his left leg below knee, inspite of there being evidence of A.Ws.2 and 3-Doctors, Exs.A5-MLC opinion,

Ex.A6-accident register and Ex.A8-case sheet, the Tribunal disbelieved the same holding that nature of injuries is not properly established and that the injury is not properly linked with the alleged accident which is said to have taken place at Secunderabad railway station; that the Tribunal erred in declining compensation to the applicant, and ultimately prayed to allow the appeal granting the compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that there is inconsistency in medical record as well as oral evidence adduced on behalf of the applicant with regard to crush injuries suffered to the left leg and the consequences arose therefrom; that the applicant had not proved that the amputation of the left leg below the left knee was on account of accidental fall from Delta passenger; that the Tribunal rightly appreciated the entire evidence on record and recorded findings, and there is nothing to take a different view, and ultimately prayed to dismiss the appeal.

6. There is no dispute that the applicant was holding a valid journey ticket on 22.8.2007 to travel from Secunderabad to Tenali by Delta passenger. The question that falls for consideration in this appeal is whether the applicant had accidentally fallen from the said train at Secunderabad railway station and whether the injuries suffered by the applicant in the

said fall led to amputation of left leg below knee and whether the applicant is entitled for compensation as claimed.

7. To substantiate his case, the applicant as A.W.1 specifically stated that on 22.08.2007, he went to Secunderabad railway station to go to Tenali by Delta passenger along with his friend Nasirwali by purchasing a journey ticket; that after boarding the said train at platform no.4 of the Secunderabad railway station, as general compartment was crowded and as the said train moved suddenly, he lost his balance, accidentally fell down from the train and suffered injuries. It is his further evidence that immediately he was admitted in Gandhi Hospital, Secunderabad; that as he was not provided proper medical care there, he left the said hospital on 04.09.2007 and joined in S.V.Nursing Home, Tenali, which is situated at his native place; that on 05.09.2007, a surgery was performed and his left leg was amputated below knee.

8. A.Ws.2 and 3 are Doctors, who worked in S.V. Nursing Home. They clearly and categorically stated with regard to admission of the applicant in the Nursing Home and amputation of left leg of the applicant below knee in the surgery. The applicant placed Ex.A9-case sheet of S.V. Nursing Home, Tenali which reveals amputation of left leg of the applicant below knee on 05.09.2007. Ex.A6-accident register of Gandhi Hospital, Hyderabad, and Ex.A.9-Case sheet reveals crush injuries suffered by the applicant on left lower limb.

Ex.A5-MLC record issued by Gandhi Hospital, Secunderabad reveals admission of the applicant on 23.08.2007 with injuries. There is evidence of A.W.2-Doctor that the applicant was admitted in his hospital on 04.09.2007; the applicant had highly infected injury on left lower limb and the wound was smelling, and that amputation was conducted by A.W.3-Dr. J.Hanumanth Rao. The evidence of A.W.3 corroborated the evidence of A.W.2.

9. As per Gandhi Hospital records, the applicant left the hospital against medical advice on 04.09.2007. As per the oral and documentary evidence, after leaving Gandhi Hospital on 04.09.2007, the applicant joined S.V.Nursing Home, Tenali on the same day. Under these circumstances, there was no possibility of the applicant suffering injuries somewhere else and taking treatment in S.V.Nursing Home, Tenali. As already indicated above, there is also evidence of A.W.2-Doctor that the applicant was admitted in his hospital on 04.09.2007 with highly infected injury on left lower limb and the wound was smelling. The injuries spoken to, by the applicant are substantiated by oral and documentary evidence. There is no reason for A.Ws.2 and 3 to depose false and support the claim of the applicant. The Tribunal erroneously recorded a finding that the applicant had not properly established the nature of the injuries suffered by him. There is unimpeachable evidence on record that the applicant suffered crush injuries to his left

leg when he fell down at Secunderabad railway station from Delta passenger on 22.08.2007.

10. The other evidence on record Ex.A1-FIR, Ex.A2-statement of friend of the applicant and Ex.A3-journey ticket also substantiate the fall of the applicant from Delta passenger on 22.08.2007 on platform no.4 of Secunderabad railway station. There is ample evidence to substantiate the accidental fall of the applicant on 22.8.2007 from Delta passenger. Under these circumstances, it can be safely concluded that the applicant suffered crush injuries to his left leg in an untoward incident of accidental fall from Delta passenger on 22.08.2007 and suffered crush injury to his left leg leading to amputation of left leg below knee joint. The Tribunal has not appreciated the evidence on record in right perspective and arrived at perverse findings. The impugned order of the Tribunal is liable to be set aside. Under these circumstances, the points are held in favour of the applicants and against the railways.

11. The injury suffered by the applicant viz. amputation of left leg below knee joint, falls at sl.no.22 of Part III of the Schedule annexed to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Therefore, the applicant is entitled to compensation of Rs.3,20,000/-.

12. In the result, the C.M.A. is allowed. The impugned order dated 06.03.2014 in O.A.A. No.6 of 2008 on the file of the

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

20.12.2018
DRK

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