

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.174 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 08.09.2014 in O.A.II (U) No.156 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 appellants-applicants claiming compensation for the death of their son Bonagiri Visveswar Veera Venkateswarlu @ Srinivas (hereinafter referred to, as 'the deceased') in an untoward accidental fall from Navjeevan Express on 20.04.2008 at Kolanikonda while travelling from Chennai to Vijayawada, 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 applicants would contend that the deceased died in an untoward incident of accidental fall from the subject train on 20.04.2008; that A.W.2, his relative, saw the deceased purchasing journey ticket and boarding the subject train on that day morning;

that the deceased, while travelling in the said train, had accidentally fallen from the train at Kolanikonda, suffered grievous injuries and succumbed to those injuries; that the ticket purchased by the deceased was lost in the accidental fall; that the Tribunal placed reliance on Ex.A4 post mortem report and the time given therein with regard to time of subject death and dismissed the claim application; that there is Ex.A3 inquest report and Ex.R1 DRM report which show the accidental fall from the train; that the findings of the Tribunal are based on surmises and imagination, and ultimately, prayed to set aside the impugned order and grant compensation.

5. On the other hand, the learned counsel for the Railways supported the impugned order passed by the Tribunal and would contend that the Tribunal placed reliance on Ex.A4 post mortem examination report as there is much discrepancy with regard to time of death; that there are also other discrepancies in the evidence with regard to purchasing the journey ticket and boarding of the train; that A.W.2, relative of the deceased, is a planted witness to support the applicants' case to claim compensation; that the findings of the Tribunal are based on the evidence on record and there is no infirmity in the impugned order, and ultimately prayed to dismiss the appeal.

6. In view of the above submissions, the following points arise for determination in this appeal:

- 1) Whether the deceased Bonagiri Visveswar Veera Venkateswarlu @ Srinivas was a *bona fide* passenger of Navjeevan express on 20.04.2008 ?
- 2) Whether the deceased Bonagiri Visveswar Veera Venkateswarlu @ Srinivas died in an untoward incident of accidental fall from running train viz. Navjeevan Express on 20.04.2008 at Kolanikonda ?
- 3) Whether the impugned order passed by the Tribunal is liable to be modified or set aside ?
- 4) To what relief ?

Points 1 to 4:

7. To substantiate the claim of the applicants, A.Ws.1 and 2 were examined and Exs.A1-message copy, Ex.A2-first information report, Ex.A3-inquest report, Ex.A4-post mortem examination report, Ex.A5-death certificate, Ex.A6-photo copy of voter identity card and Ex.A7-family member certificate were got marked. On behalf of railways, no oral evidence was adduced, but Ex.R1-DRM report was marked.

8. A.W.1, who is father of the deceased, is not an eye-witness to the deceased purchasing the ticket and boarding the Navjeevan Express. A.W.2, relative of the deceased, deposed that he saw the deceased purchasing ticket and getting into the general compartment of

Navjeevan Express. He also stated in his evidence that at about 8.00 PM, he was informed by an unknown person about the accidental fall of the deceased at Kolanikonda. This witness was present during the inquest panchanama conducted over the dead body of the deceased on 21.04.2008. In inquest report Ex.A3, it has come up that the deceased had accidentally fallen from Navjeevan Express.

9. According to A.W.2, he gave send off to the deceased in morning hours of 20.4.2018. As per Ex.A4 post mortem examination report, the dead body was cut into two parts. It is specifically mentioned in Ex.A4 that the death occurred 36 to 48 hours prior to completion of the post mortem examination. So, as per Ex.A4, the subject death would be between 14.30 hours on 19.4.2008 and 2.30 hours on 20.4.2008. The Tribunal took the margin of error at 4 to 5 hours in the time of death as opined by the post mortem examination doctor, and concluded that the death would be around 2.00 hours of 20.4.2008 or earlier thereto. As per Ex.R1-DRM report, on 20.4.2008, Navjeevan Express passed Peddavarlapudi at 15.53 hours, halted at Krishna Canal 16.01 hours for line clearance and left at 16.15 hours. Had the deceased travelled by the said train on that day, he would have fallen down around 16.00 hours when the train reached

Kolanikonda at 15.53 hours and left the said station at 16.01 hours. Under these circumstances, the subject fall could have been around 16.00 hours. But, neither any of the passengers nor the Guard of the train nor any other person had witnessed the alleged accidental fall around 16.00 hours on 20.04.2008. Further, had there been a fall at that hour, certainly the passers-by, Keyman or other employees of the railway department would have found the deceased by the side of the track at that evening. But, the dead body was noticed on the next day i.e.21.4.2008 at 9.30 hours. When A.W.2 specifically stated that the deceased had travelled by Navjeevan express on that day, there would not have been any discrepancy in the time mentioned in Ex.A4-post mortem examination report with regard to death. Further, the dead body could have been found on 20.4.2008 itself. These two circumstances are against the case of the applicants that the deceased had accidentally fallen from Navjeevan Express on 20.4.2008. These two circumstances also falsify that A.W.2 witnessed the deceased purchasing the journey ticket and boarding the subject train on 20.4.2008 morning. From the above discussion, it can be safely concluded that due to relationship in between the deceased and A.W.2, the latter had supported the case of applicants and no other conclusion can be drawn.

10. Admittedly, no journey ticket was found from the apparels of the dead body or within the vicinity of the place of finding of dead body. Therefore, it is difficult to conclude that the deceased was a *bona fide* passenger of the subject train. The Tribunal had elaborately dealt with the oral and documentary evidence on record and rightly concluded that the deceased was not a *bona fide* passenger of Navjeevan Express and he did not die in an untoward incident of accidental fall from the said train. The findings recorded by the Tribunal on both the points are based on evidence on record and cannot be faulted. There is no infirmity. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

11. In the result, the appeal is dismissed. No costs. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

14.11.2018
DRK

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