

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.128 OF 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 05.04.2010, in O.A.A.No.391 of 2003 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, (for short, 'the Tribunal'), whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Section 124-A of the Railways Act, 1989 (for short, 'the Act') with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Gootala Joseph in an untoward incident of railway accident that took place on 12.07.2003 was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways. Perused the material on record.

3. Learned counsel for the appellants/applicants would contend that the deceased was a railway employee and he had accidentally fallen from Golconda Passenger on 12.07.2003 while travelling from Vijayawada to Peddakhakhani; that the ticket purchased by him was lost in the train and the same was substantiate by inquest report; that the deceased also informed about purchase of ticket and travel from Golconda Express and there is ample evidence, but the Tribunal erroneously dismissed the application for the grant of claim holding that the deceased was not a *bona fide* passenger and did not die in an untoward incident of accidental fall from Golconda train; that

ultimately prayed to set aside the impugned order and award compensation.

4. Learned counsel for the respondent/railways would contend that there are inconsistencies in the pleadings and evidence; that as per the inquest report, stomach was cut open and the dead body was found in between two tracks; that the deceased was not a *bona fide* passenger; that there is no record to establish that by which train, the deceased had accidentally fallen; that the Tribunal had rightly appreciated all the facts and circumstances and held that it was a case of suicide and rightly dismissed the claim application and there are no merits to allow the appeal and ultimately prayed to dismiss the same.

5. In view of the submissions made by both sides, the following points have come up for determination:

1. Whether the deceased Gootala Joseph was a *bona fide* passenger travelling by Golconda Express?
2. Whether the deceased died accidentally fallen from Golconda Express on 12.07.2003 as contended?
3. Whether the impugned order passed in O.A.A.No.391 of 2003 is liable to be set aside?
4. To what relief?

6. The initial burden is on the appellants/applicants about purchased of ticket, travel by Golconda Express train and accidentally fall from the train are required to be established by the applicants, who are wife and children of the deceased.

7. To substantiate the claim, the wife of the deceased was examined as A.W.1 and got marked Ex.A.1-FIR, Ex.A.2-Inquest

report, Ex.A.3-Postmortem Examination report. Ex.A.4-Death certificate and Ex.A.5-Family Members Certificate. On behalf of the Railways, R.W.1 was examined, but no documents were marked.

8. Admittedly, A.W.1 is not an eyewitness to purchase of ticket as well as alleged accidental fall from Golconda Express. She states that the deceased informed her that he would attend the hospital and DRM's office at Vijayawada and return on the evening by Golconda Express; that no witness is examined to substantiate that the deceased had travelled to Vijayawada to attend railway hospital for treatment or to substantiate that the deceased had undertaken the return journey on 12.07.2003 to his village Peddakhakhani. Even there is no oral evidence with regard to the deceased going to any of the railway stations at Peddakhakhani or Vijayawada and boarding trains. Except the self serving testimony of A.W.1, there is no other evidence on record. As per the inquest report, stomach was cut open and separated and dead body is lying in between two tracks. Left leg was also severed lying between two tracks. The dead body was dragged to a considerable length. Apart from the dead body, a zip bag, a long note book, some documents, medicine and tablets, resin bag, an umbrella, a pair of Hawaii Chappals were recovered in the course of inquest panchanama. But, no ticket was recovered. The deceased, admittedly, was a railway employee in service on the date of alleged accident. The case of the appellants/applicants is that the deceased went to Vijayawada for treatment, in such an event the deceased need not purchase ticket to travel to Vijayawada railway hospital; that initially the appellants/applicants did not state the name of train, by which the deceased returning to his village and met with an accident. Later Golconda Express is brought on record by

way of amendment. There is no witness to substantiate that the deceased had travelled by Golconda Express on that day. Furthermore, the dead body of the deceased was found 200 kilometres away from Peddakhakhani railway station. The deceased returning by Golconda Express is also not figured him in Ex.A.2 inquest report. A.W.1 was present during the course of inquest so also the relatives. Non finding of the ticket with the dead body is not crucial, however, the appellants/applicants have to prove that the deceased travelled by train and fell down at relevant point of time. Absolutely, there is no iota of evidence on record on that aspect. The Tribunal, had elaborately dealt with all the contentions and held that the deceased was not a *bona fide* passenger and did not fall accidentally from Golconda Express. The Tribunal had elaborately discussed and rightly reached the above conclusion. There is no irregularity or infirmity in the impugned order. Point Nos.1 and 2 are answered accordingly. The appeal is devoid of merit and is liable to be dismissed.

9. Accordingly, the appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

DR.JUSTICE SHAMEEM AKTHER

OCTOBER 29, 2018
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Date: 29.10.2018

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