

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.904 OF 2012

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 21.03.2011, in O.A.A.No.248 of 2007 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 M.Sanjanna Goud in an untoward incident of accidental fall that took place on the intervening night of 19/20.05.2007 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 M.Sanjanna Goud died in an untoward incident occurred during the intervening night of 19/20.05.2007; that the deceased purchased ticket bearing No.15739 to travel from Kotakadra station to Kurumurti and boarded Train No.535 Secunderabad – Kurnool Town Passenger; that while travelling, the deceased accidentally fell from the said train and succumbed to injuries; that there is evidence of A.W.1, father, A.W.2 friend, of the deceased and the criminal case record, to establish that the

subject death was occurred due to accidental fall from running Train No.535; that there is valid journey ticket so also post-mortem report and inquest report to establish that the death occurred in an accident from a running train; that the Tribunal had not considered the evidence of A.W.2, who is an eyewitness to the accident and A.W.1 father of the deceased and also the ticket and other details; that no strict proof is required to establish the accident of falling from running train; that there is other evidence on record to substantiate the contentions made on behalf of the appellants/applicants; that the order passed by the Tribunal is liable to be set aside and ultimately prayed to award compensation for the death of M.Sanjanna Goud as envisaged in the Schedule.

4. Learned counsel for the respondent/Railways would contend that the subject ticket number pertains to Train No.525 as per the evidence of A.W.2; that Train No.535 said to have left the station at 18:45 hours on 19.05.2007, in fact Train No.535 left the railway station on that day at 19:55 hours; that as per the inquest report and post-mortem report, head and hand were cut and dead body was found in between the railway track; that A.W.2 is a planted witness to support of the case of the appellants/applicants being friend of the deceased; that the Tribunal held that it is a case of suicidal; more over the deceased was not at all a *bona fide* passenger; that the ticket number was also pressed into service to show that the deceased was a *bona fide* passenger; that further the dead body was also found near the Village of the deceased; that the Tribunal while dealing with all the contentions, elaborately dealt with the same and recorded a finding that the deceased was not a *bona fide* passenger and did not die in an untoward incident of

accidental fall from Train No.535 and ultimately prayed to dismiss the appeal.

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

- 1) Whether the deceased M.Sanjanna Goud a bona fide passenger of Train No.535 from Secunderabad – Kurnool Town passenger?
- 2) Whether the deceased died on the intervening night of 19/20.05.2007 in an untoward incident of accidental fall from Train No.535?
- 3) Whether the impugned order passed in O.A.No.248 of 2007 is liable to be set aside?
- 4) To what relief?

6. **POINT Nos.1 and 2:** To substantiate the case of the applicants/applicants, the appellants have examined A.Ws.1 and 2 and got marked Ex.A.1-attested copy of FIR, Ex.A.2-Attested copy of inquest report, Ex.A.3-Attested copy of post-mortem examination report, Ex.A.4-death report, Ex.A.5-copy of ration card and Ex.A.6-Voter's identity card of deceased. On behalf of the respondent/Railways, R.Ws.1 and 2 were examined and got marked Ex.R1-Attested copy of Station Diary, Ex.R.2-Attested copy of Control Message, Ex.R.3-Divisional Railway Manger's Report and Ex.R.4-Attested copy of Guard's Rough Journal. C.Ws.1 and 2 were examined as Court witnesses and Ex.C.1-extract of DTC Register and Ex.C.2-Original Case file with ticket, were marked as Court documents.

7. A.W.1 is father of the deceased. He is not an eyewitness to the incident. But his evidence is specific that the deceased left the

house at 6:00 PM on 19.05.2007 to proceed to Kurumurti by passenger Train No.535. A.W.2 is friend of the deceased. He deposed that the deceased came to him at 6:00 PM on 19.05.2007 and both of them went to railway station and the deceased purchased a ticket to travel to Kurumurti by train No.535 Secunderabad – Kurnool passenger train at 6:35 PM on that day. He also deposed the accidental fall of the deceased from train No.535 and also his acquaintance with the deceased.

8. Admittedly, A.Ws.1 and 2 are not the direct witnesses to the fall of the deceased from train No.535. The case of the respondent is that the deceased is neither a *bona fide* passenger nor died in an accidental fall from Train No.535. As per the evidence of R.Ws.1 and 2 and documents marked on behalf of Railways, the dead body was found 2 to 3 kilometres away from the village of the deceased. Ticket No.15739 produced by the appellants was issued in between 12:00 and 12:15 hours on 19.05.2007 for train No.525, which is clear from Ex.R.3 DRM Report. During that period, train No.525 passes towards Kurumurti. As per the evidence of A.W.1, the deceased left the house at 6:00 PM on the date of the incident. Therefore, there is no possibility to the deceased to purchase ticket between 12:00 and 12:15 hours on that date. As per the evidence of A.W.2, the deceased purchased ticket at 6:35 PM on that day. As per the documents placed on record, the said ticket number was not issued at that point of time. There is specific evidence of C.W.1 to that effect. Further, subject ticket number is not meant to travel by train No.535. As per the post-mortem report, head and hand were cut and as per the inquest report, the dead body was found not by the side of the track. The

evidence of A.W.2 is specific with regard to the deceased leaving by train No.535 on 19.05.2007 at 18.45 hours. As per the oral and documentary evidence on record, on the date of incident the train left the station at 19:55 hours. If A.W.2 was present at the scene, at least he could have given correct time of leaving Train No.535 on that day. Much more discrepancy with regard to the details of the ticket and the subject train leaving the station on that day. From this, it can be easily established that A.W.2 is pressed into service to support the case of the appellants/applicants. A.W.2 has given general timings with regard to arrival and departure of Train No.535. Further, viewed from any angle, A.W.2 is a doubtful witness and he is planted for the purpose of this case. The details in the post-mortem and inquest are also against the appellants, the injuries suffered by the deceased are not possible by accidental fall from running train. The Tribunal, as per the evidence of C.W.2, held that there was no untoward incident as contended by the appellants/applicants. The Tribunal, while dealing with the oral and documentary evidence, examined the entire evidence in detail and rightly appreciated all the facts and circumstances that were projected before it. The finding is that the subject accident is not an accidental fall from Train No.535. The Tribunal had rightly recorded that the deceased was not a bona fide passenger and did not die in an untoward incident of fall from Train No.535. There is nothing to take a different view. Point Nos.1 and 2 answered accordingly. .

9. As far as other points are concerned, there is no infirmity in the impugned order. The appeal is devoid of merit and is liable to be dismissed.

10. 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