

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.892 of 2015

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 24.08.2015 in O.A.(IIu) No.233 of 2009 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 A.Venkateswara Rao (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train No.2703 Howrah-Secunderabad Falaknuma express (hereinafter referred to, as 'the subject train') between Anarpathi and Dwarapudi railway stations at KM No.598/37-35 on 5/6.03.2009 while travelling from Samalkota to Secunderabad, 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 in Divisional Railway Manager(DRM)'s report and inquest panchanama, there is specific mention that the deceased died in an untoward incident of accidental fall;

that there is specific evidence of A.W.2 that the deceased purchased journey ticket and boarded the subject train on the intervening night of 05/06.03.2009 and accidentally fell down in the wee hours of 06.03.2009; that the initial burden lying on the applicants was discharged by examining A.W.2 and filing inquest panchanama; that when the case of the respondent/railways is that the deceased met with an accident while crossing the railway track or committed suicide, driver of the subject train is required to be examined; that no such evidence is on record; that under these circumstances, the only one inference that can be drawn is that the deceased died in an untoward incident of accidental fall from the subject train; that the journey ticket purchased by the deceased is lost; that the Tribunal did not consider these aspects in right perspective and erroneously dismissed the claim application, 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 the Tribunal had elaborately dealt with the injuries found on the person of the deceased and also the recitals in DRM report; that the evidence of R.W.1, coupled with document Ex.R1, would clearly establish that the deceased committed suicide or

died while crossing the railway track; that the findings of the Tribunal are based on the evidence on record and there is nothing to take a different view, and ultimately prayed to dismiss the appeal.

6. In view of the contentions raised by both sides, the following points arise for determination.

- (1) Whether the deceased A.Venkateswara Rao was a *bona fide* passenger of the subject train No.2703 Howrah-Secunderabad Falaknuma express on 05/06.03.2009 ?
- (2) Whether the deceased A.Venkeswara Rao died as a result of an untoward incident of accidental fall from subject train No.2703 Howrah-Secunderabad Falaknuma express on 05/06.03.2009
- (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, the applicant no.1 examined himself as A.W.1 and got examined A.W.2 and got marked Ex.A1-copy of FIR; Ex.A2-copy of inquest report; Ex.A3-copy of post mortem examination report; Ex.A4-death certificate; Ex.A5-copy of ration card; Ex.A6-copy of ration card; Ex.A7-copy of study certificate and Ex.A8-copy of study certificate.

On behalf of railways, R.W.1-Senior Trackman and R.W.2-Inspector, RPF, Rajahmundry were examined and Ex.R1-DRM report was got marked.

8. Specific case of the applicants is that the journey ticket purchased by the deceased was lost. Admittedly, in the course of enquiry conducted by the railway authorities or at the time of conducting inquest panchanama over the dead body of the deceased, no journey ticket was found. The dead body of the deceased was found in between the Anarpathi and Dwarapudi railway stations on 06.03.2009. Admittedly, there are no direct witnesses to the accidental fall. There is evidence of A.W.2 who stated that he saw the deceased purchasing ticket and boarding the subject train and that he was present when inquest was conducted over the dead body of the deceased. As per Ex.A3-post mortem examination report, all four limbs of the deceased were severed from the trunk and no clothes were found on the dead body. As per the marks present at the scene of offence, the dead body was dragged to a distance of 150 sleepers. The same is mentioned in the inquest panchanama of the deceased. Even as per the inquest panchanama, the dead body was found in between the rails of the track. Post mortem was completed by 4.00 PM on 07.03.2009. As per the opinion of the Doctor, the subject death occurred 48 to 60 hours prior to post mortem examination. Specific case of the applicant is that the deceased had fallen on the intervening night of 05/06.03.2009. If that is so, time of death would

be in the afternoon of 05.03.2009 or earlier to that. The time of death mentioned in the post mortem examination report is not in consonance with the time of death pleaded by the applicants.

9. A.W.2 is a co-son-in-law of the deceased. As per the record placed before the Court, he has not given any statement to the railway police with regard to the deceased purchasing a journey ticket and boarding the subject train on 05.03.2009. For the first time, A.W.2 supported the case of the applicants by way of his affidavit. Admittedly, dead body of the deceased was found by R.W.1. Nobody had seen the deceased either crossing railway track or committing suicide. The injuries mentioned in the inquest report as well as post-mortem examination of the deceased are 4 limbs severed from the trunk, and the body being found in between two rails of the track and was being dragged for 150 sleepers. These types of cut injuries are not possible in case of fall from a running train. They are possible when a person commits suicide or crosses a railway track unmindfully and hit by a train.

10. Further more, at the place where the dead body of the deceased was found, a purse and other articles were found. Had the deceased purchased the ticket, he would have kept the same in the purse. In all cases, it cannot be

said that the tickets would be lost in accidental falls and death. A.W.2, being close relative of the deceased, there is every possibility of supporting the case of the applicants. He has not made a statement to police at the earliest stage though he was present at the time of inquest panchanama. Therefore, it is unsafe to act on his testimony. Further, the time of death indicated in the post mortem examination report would not match with the time of accidental fall set up by the applicants. Further, the injuries found on the dead body are also not possible in an accidental fall.

11. There is no evidence to conclude that the deceased died in an untoward incident of accidental fall within the meaning of Section 123 © of the Railways Act, 1989. The Tribunal upon proper appreciation of the evidence on record, rightly dismissed the claim petition. There is no infirmity in the impugned order. The appeal is devoid of merit and is liable to be dismissed.

12. In the result, the C.M.A. is dismissed.

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

20.11.2018
DRK

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