

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No. 145 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 22.01.2016, passed in OAI (U) No. 328 of 2011, by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition filed by the appellants/applicants, claiming a compensation of Rs.4,00,000/- for the death of the deceased-Duryodhana Biswal in the alleged untoward incident of accidental fall from the train, was dismissed.

2. Heard both sides, Perused the record.

3. The learned counsel for the appellants/applicants would contend that the deceased-Duryodhana Biswal was travelling from Brahmapur to Bangalore on 23.07.2011 by Train No.18463 Bhubhaneswar – Bangalore City Prashanthi Express in Coach No.S6 with a second class tatkal seva cum journey reservation ticket bearing No.03911567 with PNR No.626-0939965. He accidentally fell down from the subject train between Gajulapalli and Nandyal railway stations due to speed, jolt and sudden jerks of the said train, suffered fatal injuries and died on the spot. The Tribunal erroneously held that the deceased had fallen from the subject train due to his own criminal negligence and that the injuries suffered by him were self inflicted injuries and denied the compensation to the appellants/applicants, who are his wife and children and ultimately prayed to set aside the impugned order and grant compensation as prayed for.

4. On the other hand, the learned Standing Counsel for the respondent-Railways would contend that the deceased-Duryodhana Biswal fell down from the subject running train due to his own criminal negligence.

The Tribunal, after analysing the entire evidence on record, rightly declined to grant compensation to the appellants/applicants. There is no infirmity in the order under challenge and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. There is no dispute that the deceased-Duryodhana Biswal was travelling from Brahmapur to Bangalore on 23.07.2011 by Train No.18463 Bhubhaneswar – Bangalore City Prashanthi Express in Coach No.S6 with a second class tatkal seva cum journey reservation ticket bearing No.03911567 with PNR No.626-0939965. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. **Whether the deceased–Duryodhana Biswal died in an untoward incident of accidental fall from running Train No.18463 Bhubhaneswar–Bangalore City Prashanthi Express on intervening night 23/24.07.2011?**
2. **Whether the order under challenge is liable to be confirmed/set aside?**
3. **To what result?**

Point No.1:

6. There is the specific evidence of A.W.1 and A.W.2 that the deceased-Duryodhana was a *bona fide* passenger. When there is the evidence of A.W.1 and A.W.2, it is for the respondent/Railways to substantiate that the deceased-Duryodhana was not a *bona fide* passenger. In a decision rendered by the Apex Court in **Union of India vs. Rina Devi** in Civil Appeal No.4945 of 2018 [Special Leave Petition (Civil) No.10223 @ D.No.6059 of 2018], it is held at para No.16.6 as under:

"We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which

cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in ***United India Insurance Co. Ltd. versus Sunil Kumar*** [2017 (13) SC ALF 652] laying down that plea of negligent of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

7. The term 'self inflicted injury' used in the statute can be construed as one which a person suffers on account of one's own action, which is something more than a rash or negligent act, but, it shall not be an intentional act of attempted suicide. 'Self inflicted injury' would require an intention to inflict such injury and not mere negligence of any degree. The principles of contributory negligence are of no consequences in determining and awarding compensation under the Railways Act, 1989, which is a beneficial legislation, intended to compensate the victims for the injuries/death of a person in an untoward incident of accidental fall from a running train. Viewed from any angle, it cannot be said that the injuries suffered by the deceased-Duryodhana Biswal were self inflicted injuries and he, in any manner, contributed for the same. Merely because the son of the deceased did not find the deceased immediately after the accident, it cannot be said that the deceased did not die in an accidental fall from the subject running train.

8. As per the evidence of A.W.1 and A.W.2, the deceased-Duryodhana Biswal was travelling in the subject train with a second class tatkal seva cum journey ticket bearing No.03911567 with PNR No.626-0939965, in a reserved compartment, i.e., Coach No.S6, from Brahmapur to Bangalore City on 23.07.2011 and had accidentally fallen down from the said train on

the intervening night of 23/24.07.2011, suffered fatal injuries and succumbed to the said injuries on the spot. Though there were no direct witnesses to the said accidental fall, it can be safely culled out from the record that the injuries suffered by the deceased were neither self inflicted injuries nor intentional. There is ample evidence on record to substantiate that the deceased was a *bona fide* passenger travelling with his wife and son by Train No. 18463 Bhubhaneswar – Bangalore City Prashanthi Express on 23.07.2011 with a valid journey ticket bearing No.03911567 with PNR No.626-0939965 and had accidentally fallen down from the said train in the early hours of 24.07.2011 between kilometre No.247/3-4, suffered fatal injuries and died on the spot. Merely because the dead body was found by the Keyman, the claim of the appellants/applicants cannot be negated. Under these circumstances, it is held that the deceased—Durydhana Biswal died in an untoward incident of accidental fall from running Train No.18463 Bhubhaneswar–Bangalore City Prashanthi Express on intervening night 23/24.07.2011. This point is answered in favour of the appellants/applicants and against the respondent-Railways.

Point No.2:-

9. The findings of the Tribunal are not in consonance with the evidence on record. There is infirmity in the order under challenge and the same is liable to be set aside.

Point No.3:-

10. In the result, the appeal is allowed and the order dated 22.01.2016, passed in OAI (U) No. 328 of 2011 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad, is set aside. Consequently, the O.A.A. stands allowed. The appellants/applicants are entitled for a compensation of Rs.8,00,000/-, in view of the 2016 amendment made to

the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. The respondent–Railways is directed to deposit the compensation within three months from the date of receipt of copy of this judgment, failing which, the appellants/applicants are entitled for interest @ 6% from the date of this order to the date of realisation. Out of the awarded compensation, the 1st appellant/applicant, who is the wife of the deceased, is entitled for Rs.4,00,000/- and the remaining amount of compensation shall be shared by all other applicants herein.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

28th November, 2018
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Dr. SHAMEEM AKTHER, J



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