

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.1056 of 2010

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 26.11.2010, passed in OAA No.192 of 2004 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 their son-T.Latchubabu in an alleged untoward incident of accidental fall from a running train, was dismissed.

2. Heard the learned counsel for the appellants/applicants, the learned Standing Counsel for the respondent-Railways and perused the record.

3. The Learned counsel for the appellants/applicants would contend that the deceased-T.Latchubabu died in an untoward incident of accidental fall from the Train No.436 Passenger on 20.02.2004. The same has been recorded in column No.7 of the Inquest Panchanama Ex.A2. There is also evidence of A.W.1 (father of the deceased) to that effect. Further, the details of the journey ticket of the deceased were also incorporated in the Inquest Panchanama. Though there is ample evidence on record to substantiate the claim of the appellants/applicants, the Tribunal erroneously dismissed the claim petition holding that the deceased was not a *bona fide* passenger of Train No.436 Passenger travelling from Tuni Gollaprolu

on 20.02.2004 and ultimately prayed to allow the appeal by setting aside the order under challenge and award compensation as claimed.

4. On the other hand, the learned Standing Counsel for the respondent-Railways would contend that there is no legally acceptable evidence on record to hold that the deceased was a *bona fide* passenger of Train No.436 Passenger travelling from Tuni to Gollaprolu on 20.02.2004. The Tribunal, after analysing the entire evidence on record in proper perspective, rightly dismissed the claim petition. 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 appellants/applicants are the parents of the deceased-T.Latchubabu and are dependant on him. In view of the above submissions made by both sides, the points that arise for determination in this appeal are as follows:

1. Whether the deceased-T.Latchubabu was a *bona fide* passenger of Train No.436 Passenger and was travelling from Tuni to Gollaprolu on 20.02.2004?
2. Whether the deceased-T.Latchubabu died in an untoward incident of accidental fall from running Train No.436 Passenger on 20.02.2004?
3. Whether the order under challenge is liable to be confirmed/ set aside?
4. To what result?

Points Nos.1 and 2:-

6. To substantiate the claim of the appellants/applicants, father of the deceased deposed as A.W.1 and Ex.A.1-First Information Report, Ex.A.2-Inquest Report, Ex.A.3-Post Mortem Examination Report, Ex.A.4-Death Certificate and Ex.A.5-Legal Heir Certificate were marked. On behalf of the respondent-Railways, no oral and

documentary evidence has been adduced. C.W.1 was examined by the Tribunal.

7. A.W.1-T.Satyanarayana is the father of the deceased. He deposed that the deceased boarded Train No.436 Visakhapatnam to Rajahmundry Passenger on 20.02.2004 to travel from Tuni to Gollaprolu with a valid journey ticket bearing No.19724191; that due to rush of passengers and jerks of the subject train, the deceased accidentally fell down from the subject train between Hamsavaram and Timmapuram and sustained bleeding injuries; he was immediately shifted to Rangaraya Medical Hospital, Kakinada, where, he succumbed to the injuries on 26.02.2004 at 04:30 AM. Admittedly, A.W.1 is not an eye-witness either to the deceased purchasing the journey ticket or to his alleged accidental fall from the subject train.

8. As per Ex.A.1 First Information Report lodged in this case, one Rambabu said to have admitted the deceased in the hospital. As per the information given by the Regional Medical Officer to the Station House Officer concerned, the deceased was unconscious and incoherent at the time of his admission into the hospital. The same is mentioned in Ex.A.1 First Information Report also. The deceased died on 26.02.2004. Hence, there was no opportunity for the deceased to state before anybody the manner and the reason for suffering injuries and the consequences arose therefrom. The appellants/applicants did not choose to examine Rambabu, who is said to have admitted the deceased into the hospital.

9. It is also pertinent to state that initially, the claim petition was filed by the appellants/applicants stating that the deceased was

travelling by train no.436 Rajahmundry to Visakhapatnam passenger, but later it was amended as tran no.436 Visakhapatnam to Rajahmundry passenger, vide order dated 03.01.2006 passed in I.A.No.534 of 2005 by the Tribunal. It goes to show that A.W.1 (father of the deceased) was not aware by which train the deceased actually travelled. Further, the journey ticket number was mentioned as '19724191' in the claim petition. The same ticket number was also incorporated in column No.7 of Ex.A.2 Inquest Panchanama. Admittedly, Inquest was conducted over the dead body of the deceased after six days from the date of his alleged accidental fall from the subject train, wherein there is no mention about the recovery of the journey ticket from the apparel of the deceased or handing over the same to the parents of the deceased. If really the journey ticket was available at the time of inquest panchanama, the same would have been either handed over to the applicants or the same could have been available with the police. Ample opportunity was given to the applicants to examine the police concerned and got marked the journey ticket. In spite of that, no journey ticket was produced before the Tribunal. Further, Mr.Rambabu, who got the deceased admitted into the hospital, was the right person to prove the manner and the cause of the injuries suffered by the deceased. For the reasons best known to the appellants/applicants, said Rambabu was not examined before the Tribunal. Further, there are no eye-witnesses to the deceased boarding the subject train or accidentally falling down from the said train. Under these circumstances, it is held that the deceased-T.Latchubabu was not a *bona fide* passenger of Train No.436 Passenger on 20.02.2004 and did not die in an untoward incident of accidental fall from the subject

train. The Tribunal elaborately dealt with these two issues and rightly answered the same against the appellants/applicants. There is nothing to take a different view.

Point No.3:-

10. The findings recorded by the Tribunal are in consonance with the evidence on record. There is no infirmity in the order under challenge. The appeal is devoid of merit and is liable to be dismissed.

Point No.4:-

11. In the result, the appeal is dismissed, confirming the order, dated 26.11.2010, passed in OAA No.192 of 2004 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

10th December, 2018
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Dr. SHAMEEM AKTHER, J

