

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.464 OF 2015

JUDGMENT:

The Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order, dated 29.05.2015, in O.A. II (U) No.147 of 2008 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 Sections 124 & 124-A of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Dasari Srinivasa Rao in an untoward incident of railway accident that took place on 27.03.2007 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 Tribunal had not recorded any finding with regard to occurrence of an untoward incident of accidental fall from train No.319 Passenger while the deceased Dasari Srinivasa Rao was travelling from Repalle to Guntur; that the Tribunal erroneously found that the deceased Dasari Srinivasa Rao was not a *bona fide* passenger and ultimately, prayed to set aside the impugned order and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that the Tribunal disbelieved the evidence of A.W.2 as his name was not mentioned in the application filed for grant of compensation and he is a planted witness; that the Tribunal rightly held that the deceased Dasari Srinivasa Rao was not a *bona fide* passenger; that there is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the short point that arises for determination is:

“Whether the order, dated 29.05.2015, in O.A. II (U) No.147 of 2008 passed by the Tribunal is liable to be set aside?”

6. **POINT:-**

The Tribunal had not decided the issue as to whether the deceased Dasari Srinivasa Rao died in an untoward incident of accidental fall from the subject train. The Tribunal held that the final report submitted by the police to the Mandal Executive Magistrate regarding the conclusions arrived at by the Railway police was not filed and that document is essential to determine the issues. It is appropriate to state that the issues whether the deceased Dasari Srinivasa Rao was a *bona fide* passenger or not and whether he died in an untoward incident of accidental fall from the subject train, are required to be adjudicated together. Certainly, these issues have bearing on each other. These two issues are essentially required to be answered in most of the cases when the claim applications are being disposed of by the Tribunals. Since the other issue i.e., whether the deceased Dasari

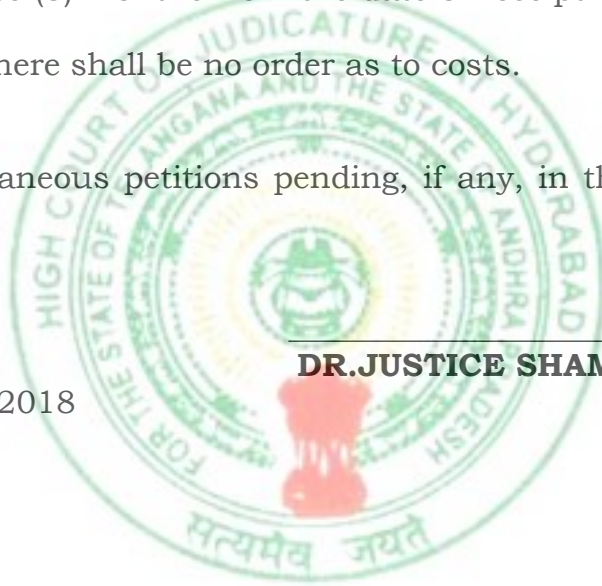
Srinivasa Rao died in an untoward incident of accidental fall from the subject train, is not decided by the Tribunal, the finding of the Tribunal that the deceased Dasari Srinivasa Rao was not a *bona fide* passenger is liable to be set aside. Therefore, the order, dated 29.05.2015, in O.A. II (U) No.147 of 2008 passed by the Tribunal is set aside and O.A. II (U) No.147 of 2008 is restored to file.

7. Accordingly, the appeal is allowed and the matter is remanded to the Tribunal. The Tribunal is directed to adjudicate all the issues, after affording an opportunity to both sides within a period of three (3) months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

8. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Date : 08.11.2018
AMD

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