

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.1008 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 07.09.2015, passed in O.A.A.No.274 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the claim petition of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of Md. Mohinuddin in an untoward accidental fall from a running train No.359 Passenger near Chittapur while travelling from Gulbarga to Falaknuma on 01.02.2006, was dismissed. The appellants 1 and 2 are the parents, appellants 3 and 4 are the sisters and appellants 5 and 6 are the brothers of the deceased-Md. Mohinuddin.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased was a *bona fide* passenger of train No.359 Passenger, he was possessing a valid journey ticket and he had fallen from the said train near Chittapur while travelling from Gulbarga to Falaknuma on 01.02.2006; there is evidence of A.W.2 to substantiate the same and Ex.R.1-Divisional Railway Manager's report also shows the same; the Tribunal erroneously held that the deceased was negligent while travelling in the subject train and had fallen at Chittapur; the findings of the Tribunal are based on evidence and record and

are erroneous; and ultimately, prayed to set aside the impugned order and grant compensation in favour of the appellants by allowing the appeal.

4. On the other hand, the learned counsel for the respondent-Railways would contend that the deceased made an attempt to get into running train No.359 Passenger at Chittapur and due to his negligence fallen on the track and succumbed to the injuries; the statutory enquiry conducted reveals the same; railway ticket marked as Ex.A.7 is a planted ticket; A.W.2 also pressed into service to support the claim of the applicants to gain wrongfully; the Tribunal considering the evidence adduced by both parties, rightly dismissed the claim of the appellants holding that the deceased was not a *bona fide* passenger; there is no infirmity in the impugned order; and ultimately, prayed to dismiss the appeal.

5. In view of the above submissions, the following points have come up for determination in this appeal:

- 1) Whether the deceased was a *bona fide* passenger of train No.359 Passenger and died in an untoward incident of accidental fall from the said train near Chittapur while travelling from Gulbarga to Falaknuma on 01.02.2006?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 07.09.2015 passed by the Tribunal is liable to be set aside?
- 4) To what relief?

6. Point No.1 and 3: The case of the applicants is that the deceased-Md.Mohinuddin boarded train No.359 Express to travel from Gulbarga to Falaknuma on 01.02.2006 and on the same day, he had accidentally fallen from the said train near Chittapur and succumbed to the injuries on 04.02.2006 while undertaking treatment in Yashoda Hospital. To substantiate the claim of the applicants, the 1st claimant, who is father of the deceased, deposed as A.W.1 and got examined co-passenger of the deceased as A.W.2 and got marked Ex.A.1-F.I.R., Ex.A.2-Inquest Report, Ex.A.3-Postmortem Examination Report, Ex.A.4-Death Summary, Ex.A.5-Letter copy, Ex.A.6-O.P. card, Ex.A.7-Original ticket, Ex.A.8-Medical Certificate, Ex.A.9-Form 'B', Ex.A.10-Death Certificate, Ex.A.11-Ration Card (Original), Ex.A.12-Birth Certificate and Ex.A.13-Family Members Certificate. On behalf of the respondent-Railways, no witnesses were examined, but Ex.R.1-Divisional Railway Manager's Report was marked.

7. A.W.1 is the father of the deceased. He is not an eyewitness either to the purchase of the journey ticket or to the alleged accidental fall from the subject train. The applicants have marked Exs.A.1 to A.7 through A.W.1. There is no evidence from the railways whether Ex.A.7-journey ticket was meant to travel between Gulbarga to Falaknuma on 01.02.2006. However, the Tribunal held that Ex.A.7 is a planted ticket. There is no oral evidence from the side of the railways, but they are depending upon Ex.R.1-Divisional Railway Manager's Report,

wherein it is mentioned that the deceased made an attempt to board the running train No.359 Passenger on 01.02.2006 and due to his negligence had fallen and succumbed to the injuries. It is not the case that the deceased died on the spot. Having undergone treatment for about three days, he succumbed to the injuries. Therefore, the applicants who are the dependents and kith and kin are the right persons to file Ex.A.7-journey ticket. There would be no panchanama when a person is alive to find out his belongings and when he died after three days of occurrence of the accident, the ticket would not remain with the dead body. Therefore, Ex.A.7 was filed before the Tribunal from right sources. In the absence of any contra evidence, the genuineness of Ex.A.7-journey ticket cannot be doubted.

8. The evidence of A.W.2 reveals that he along with the deceased and his three friends went to Gulbarga for offering prayers to Bande Nawaz Dargah and after completing the prayers, they were returning back having purchased tickets on 01.02.2006. He gave the ticket number, etc. He also stated about their boarding the train No.359 Passenger. He specifically stated that the ticket was with him, the deceased went to toilet when the train was reaching Chittapur railway station, some of the passengers standing in the corridor at the wash basin shouted that one boy fell out accidentally from the open door while washing hands at wash basin and then, he concluded that the deceased-Moinuddin had fallen from the train. The whole controversy arose as per the applicants that the deceased had fallen from the train at Chittapur, but in the first information

report, it has come up that the deceased was fallen from the train at Gulbarga. In the inquest report marked as Ex.A.2, there is specific mention that the deceased had fallen from the train No.359 Passenger at Chittapur.

9. The applicants have also filed medical certificate issued by the Government Hospital at Chittapur, which was marked as Ex.A.8, which reveals the admission of the deceased in the hospital on 01.02.2006 and also there is specific mention in that certificate that the deceased had fallen from the train at Chittapur. In the death summary of the deceased marked as Ex.A.4 issued by Yashoda Hospital, Hyderabad, there is specific mention that the deceased was 19 years old, had crushed injury over the right leg after fall from the running train on 01.02.2006. There is also specific mention that the deceased suffered injury with acute renal failure. The deceased was brought to Hyderabad and was taken to different hospitals and thereafter, admitted in Yashoda Hospital at Hyderabad. The Tribunal had also considered the entries made in Ex.A.4-death summary and Ex.A.1-F.I.R. and held that the subject incident of accidental fall took place at Gulbarga railway station. Under Ex.A.4-death summary, there is mention that the deceased suffered head injury and there was loss of consciousness. Under these circumstances, there is possibility of mentioning the place of accident as Gulbarga instead of Chittapur. There is specific evidence of A.W.2 also that the subject accident occurred when the deceased was going to attend calls of nature in the subject

train No.359 Passenger. To substantiate the averments of Ex.R.1-DRM's report, no person was examined.

10. It is appropriate to refer the decision of the Hon'ble Supreme Court in Union of India vs. Rina Devi¹, wherein it is held as follows:

“Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari vs. Union of India [(1993) ACJ 846] referring to the scheme of Railways Act, 1890, it was observed that since traveling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation.

11. Even as per the above decision of the Apex Court, boarding and de-boarding of a train would be only an untoward incident. As seen from the record, there is absolutely no negligence on the part of the deceased when he had fallen down at Chittapur. The evidence of A.W.2-friend of the deceased cannot be discarded. There is no evidence to prove the shifting of the deceased from Chittapur to Gulbarga. In view of the evidence on record, it can be safely concluded that the deceased

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

was possessing journey ticket and he had accidentally fallen from the train No.359 Passenger at Chittapur but not at Gulbarga. The Tribunal without considering the oral and documentary evidence adduced on behalf of the applicants, placed reliance on the DRM's report marked as Ex.R.1 and also took the recitals made in the first information report marked as Ex.A.1. Ex.A.1 was issued on 04.02.2006 by the police concerned. On information furnished by Yashoda Hospital, Ex.A.1-F.I.R. was issued. There is discrepancy with regard to the place of suffering injuries in Ex.A.4 Yashoda Hospital record, the same discrepancy has crept into the first information report. The fact is otherwise. In view of the specific mention of place of accident in the evidence of A.W.2 and the manner how the deceased suffered injuries exhibited in Ex.A.8-certificate issued by the Government Hospital, Chittapur, it can be safely concluded that the place of accident is 'Chittapur', but not 'Gulbarga'. So, the applicants have substantiated that the deceased was a *bona fide* passenger of train No.359 Passenger and died in an untoward incident of accidental fall from the said train near Chittapur while travelling from Gulbarga to Falaknuma on 01.02.2006. The Tribunal erroneously dismissed the claim application without considering these aspects. Therefore, the impugned order passed by the Tribunal is liable to be set aside. Accordingly, these points are answered.

12. Points 2 and 4: The applicants are dependents on the deceased. In view of the amendment made to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990,

the appellants-claimants are entitled to Rs.8,00,000/- (Rupees eight lakhs only) as compensation.

13. In the result, the appeal is allowed, setting aside the order, dated 07.09.2015, passed in O.A.A.No.274 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.274 of 2006 filed by the appellants-applicants is allowed granting Rs.8,00,000/- (Rupees eight lakhs only) in favour of the appellants-applicants as compensation. The respondent-Railways is directed to pay the said compensation to the appellants-applicants within a period of three (03) months from the date of receipt of a copy of this judgment, failing which, the appellants-applicants are entitled to interest @ 6% per annum from the date of this judgment till realisation. The appellants 1 and 2, being parents of the deceased, are entitled to Rs.3,00,000/- (Rupees three lakhs only) each and the remaining amount shall be shared equally by the other appellants. On deposit, all the appellants are entitled to withdraw their respective shares. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

9th November, 2018

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