

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.994 OF 2015

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 29.04.2014, passed in O.A.A.No.257 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- for the death of their son – P.Nagachari @ Raju in a railway accidental fall that took place on 02.06.2008, was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellants/applicants would contend that the deceased P.Nagachari @ Raju died in an untoward incident of accidental fall from MMTS train No.FL6 travelling from Malakpet to Lingampally on 02.06.2008; that there is specific evidence of A.W.2 and other documents to establish that the death of the deceased P.Nagachari @ Raju was due to accidental fall from the said train, but the Tribunal erroneously dismissed the claim application placing reliance on the post mortem examination report wherein it is stated that the death was 24 hours prior to the post mortem examination on 02.06.2008, but in fact, the death occurred within 12 hours from the time of

completion of the post mortem examination and there is ample evidence to substantiate the same, and ultimately, prayed to set aside the impugned order and allow the appeal.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that A.W.2 is a planted witness to claim compensation and he did not see the deceased P.Nagachari @ Raju falling from the subject train; that there are no direct witnesses to demonstrate that the fall of the deceased P.Nagachari @ Raju was from MMTS train No.FL6 on 02.06.2008; that the Tribunal, having examined the entire evidence and relying on the post mortem examination report, rightly dismissed the claim application holding that the deceased P.Nagachari @ Raju was not a *bona fide* passenger and did not fall from MMTS train No.FL6 travelling from Malakpet to Lingampally on 02.06.2008; that the findings of the Tribunal are supported by evidence on record; that there is nothing to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the points that arise for determination are:-

- “1. Whether the deceased P.Nagachari @ Raju was a bona fide passenger of MMTS train No.FL6, travelling from Malakpet to Lingampally on 02.06.2008?***
- 2. Whether the deceased P.Nagachari @ Raju died as a result of an untoward incident of accidental fall from MMTS train No.FL6 travelling from Malakpet to Lingampally? and***
- 3. Whether the order, dated 29.04.2014, passed in O.A.A.No.257 of 2008 by the Tribunal is liable to be set aside?”***

6. **POINT Nos.1 & 2:-**

Admittedly, the burden is on the applicants to substantiate their claim. A.W.1 is not a direct witness to the purchase of ticket by the deceased P.Nagachari @ Raju or fall of the deceased P.Nagachari @ Raju from the subject train on 02.06.2008. There is evidence of A.W.2, who categorically stated that on 02.06.2008, he accompanied the deceased P.Nagachari @ Raju to Malakpet Railway Station and the deceased P.Nagachari @ Raju purchased a ticket to travel by MMTS train No.FL6 from Malakpet to Lingampally, and that he also purchased a ticket to travel from Malakpet to Secunderabad; that both of them travelled by MMTS train No.FL6 on 02.06.2008 and he got down from the said train at Secunderabad whereas the deceased P.Nagachari @ Raju proceeded further. The specific case of the applicants is that the deceased P.Nagachari @ Raju had fallen from the running train - MMTS train No.FL6 on 02.06.2008 at Sanjeevaiah Park Railway Station and that the deceased P.Nagachari @ Raju was found with injuries by the side of the railway track at Sanjeevaiah Park and he was shifted by 108 Ambulance to Gandhi Hospital where he succumbed to the injuries on the same day at 12.40 hours. Ex.A-4 is a report submitted by the Sub-Inspector of Police, R.P.S., Secunderabad wherein he stated that during the course of investigation, it has come to light that the deceased P.Nagachari @ Raju was got admitted in Gandhi Hospital, Secunderabad for treatment *vide* M.L.C.No.15811 and at 12.50 hours, he received information from Gandhi Hospital, Secunderabad stating that while undergoing treatment, the injured by name P.Raju,

S/o.Kanakachari, aged 22 years, Carpenter, resident of L.B.Nagar, Hyderabad, succumbed to the injuries on the same day at 12.40 hours in that hospital. In the F.I.R. also, there is mention that the injured was shifted to Government Hospital on 02.06.2008 by 108 ambulance. It goes to show that the deceased P.Nagachari @ Raju was alive in the early hours of 02.06.2008. As per the F.I.R., the Clerk working in Sanjeevaiah Park saw the deceased P.Nagachari @ Raju alive at 10:30 A.M. on 02.06.2008 near Sanjeevaiah Park.

7. Ex.A-3 is copy of post mortem examination report, dated 02.06.2008, where post mortem examination was conducted over the dead body of the deceased P.Nagachari @ Raju. The post mortem examination was concluded on that day by 4:40 P.M. In Ex.A-3 - post mortem examination report, it is specifically mentioned that the death occurred 24 hours prior to the post mortem examination. The Tribunal had taken the time of death of the deceased P.Nagachari @ Raju given in Ex.A-3 - post mortem examination report as 01.06.2008 and acted upon. In Ex.A-3, there is also mention that as per the information furnished by the doctor, the deceased P.Nagachari @ Raju was found dead at 12.40 hours on 02.06.2008 in Gandhi Hospital. Further, the condition of the body is not mentioned in Ex.A-3 – post mortem examination report. There is also specific evidence that the deceased P.Nagachari @ Raju was found alive at 10:30 hours on 02.06.2008 by the side of the railway track. Therefore, it can be safely concluded that the deceased P.Nagachari @ Raju died at 12.40 hours on 02.06.2008. The time of death given under Ex.A-3 copy of the post mortem examination report is incorrect. A.W.2 had specifically stated about the deceased P.Nagachari @ Raju

purchasing ticket and boarding MMTS train No.FL6. It is also appropriate to state that there is no D.R.M's report in this case. Further, there is no iota of evidence from the side of the respondent Railways. The copy of the inquest report also corroborates with regard to the deceased P.Nagachari @ Raju suffering injuries, last seen alive and dying in Gandhi Hospital, as contended by the applicants. Under these circumstances, it cannot be said that A.W.2 is planted for the purpose of this case.

8. The applicants have discharged the initial burden with regard to the deceased P.Nagachari @ Raju possessing ticket and accidentally falling from MMTS train No.FL6. Therefore, the applicants have successfully proved that the deceased P.Nagachari @ Raju was a *bona fide* passenger and had accidentally fallen from MMTS train No.FL6 at about 10.30 hours on 02.06.2008 and there is ample evidence to show that the deceased P.Nagachari @ Raju succumbed to the injuries suffered from the accidental fall from MMTS train No.FL6. Under these circumstances, the death of the deceased P.Nagachari @ Raju had arisen in an untoward incident of accidental fall from MMTS train No.FL6. Therefore, the findings recorded by the Tribunal are liable to be set aside and the applicants are entitled for a compensation of Rs.8,00,000/- (Rupees eight lakhs only).

9. **POINT No.3:-**

Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 29.04.2014, passed in O.A.A.No.257 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A.No.257 of 2008 stands

allowed. The applicants are awarded a compensation of Rs.8,00,000/-. The respondent/Railways shall pay the compensation awarded within three (3) months from the date of receipt of a copy of this order, failing which, interest at the rate of 6% per annum shall be payable on the compensation amount from the date of this order till the date of realisation. Both the applicants, who are the parents of the deceased P.Nagachari @ Raju, are entitled to share the compensation awarded equally. On deposit, they are permitted to withdraw their shares. There shall be no order as to costs.

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

Date : 09.11.2018
AMD

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