

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.195 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 04.12.2014, passed in O.A.A.No.173 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby, the Tribunal dismissed the claim application of the appellants-claimants claiming a compensation of Rs.4,00,000/- for the death of V.Yesuratnam in an untoward incident of accidental fall from train No.7480 Express at Chirala railway station while travelling from Ongole to Tenali on 20.12.2005. The appellants are the wife, children and parents of the deceased.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-applicants would contend that the deceased-V.Yesuratnam was a *bona fide* passenger of train No.7480 Express and he had accidentally fallen from the train at Chirala railway station while travelling from Ongole to Tenali on 20.12.2005; the journey ticket was lost in the accidental fall; there is evidence of A.W.2-co-passenger with regard to the purchase of journey ticket and boarding the subject train; the Tribunal erroneously dismissed the claim application, though there is ample evidence to substantiate that the fall was an accidental fall from the subject train; the findings of the Tribunal are not based on evidence and record; 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 was not a *bona fide* passenger of the subject train; there is no untoward incident of accidental fall of the deceased from the subject train; there is no record to prove that the deceased purchased the train ticket and fallen from the train; A.W.2 was a planted witness for the purpose of this case; the Tribunal rightly dismissed the claim application of the applicants holding that the deceased was not a *bona fide* passenger of the subject train; the findings of the Tribunal are based on evidence and record; there are no circumstances to interfere with the findings of the Tribunal; 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.7480 Express and he died in an untoward incident of accidental fall from train at Chirala railway station while travelling from Ongole to Tenali on 20.12.2005?
- 2) Whether the appellants-applicants are entitled to claim compensation as the dependents on the deceased?
- 3) Whether the impugned order dated 04.12.2014 passed by the Tribunal is liable to be set aside?
- 4) To what relief?

6. Point Nos.1 and 3: The case of the applicants is that the deceased-V.Yesuratnam was a *bona fide* passenger of train No.7480 Express and he died in an untoward incident of accidental fall from train at Chirala railway station while travelling from Ongole to Tenali on 20.12.2005. To substantiate the case of the applicants, the 1st applicant-wife of the deceased deposed as A.W.1 and got examined co-passenger of the deceased as A.W.2 and also got marked Ex.A.1-attested copy of F.I.R., Ex.A.2-attested copy of inquest report, Ex.A.3-attested copy of post-mortem examination report, Ex.A.4-death certificate and Ex.A.5-Family Members Certificate. On behalf of the respondent-railways, R.Ws.1 and 2 were examined and Ex.R.1-Station Control Book and Ex.R.2-Divisional Manager's Report were marked.

7. It is pertinent to state that the Tribunal did not answer the issue with regard to the untoward incident of accidental fall from the subject train. As per Ex.R.2-DRM's report, Ex.A.1-F.I.R. and Ex.A.2-inquest report and the oral evidence of A.Ws.1 and 2, the deceased-V.Yesuratnam had fallen from the train No.7480 Express on 20.12.2005, when he was tried to re-board the train at Chirala railway station. The evidence on record reveals that to give passage to the passengers, he got down from the subject train at Chirala railway station and when he was making attempt to re-board into the train, he accidentally fallen down from the train due to jerks of the train. Thereafter, he died after four days due to the injuries suffered in the said accident. There is ample evidence to

substantiate the accidental fall, which amounts to untoward incident of accidental fall, as defined under Section 123(c) of the Railway Claims Tribunal Act, 1987. Further, there is also such mention in the record produced on behalf of the railway authorities.

8. When A.W.2 had clearly and categorically stated that the deceased purchased the ticket and boarded the subject train at Ongole railway station to travel to Tenali on 20.12.2005, merely because his name is not mentioned in the inquest panchanama and his details are not mentioned in the claim application filed before the Tribunal, his evidence cannot be discarded. When there is accidental fall, there is possibility of misplace of the journey ticket. The same is the contention of the applicants in the claim application.

9. 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

¹ Civil Appeal No.4945 of 2018 dated 09.05.2018

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.”

10. There are so many safeguards for the railway authorities to restrain the entry of the ticket-less travellers in the trains. When the impact of the accident is so huge, there is every possibility of the ticket being lost or misplaced. Under these circumstances and in view of Rina Devi's case (supra), it can safely be concluded that the journey ticket of the deceased was lost in the accidental fall and he died due to the injuries suffered by him in the accidental fall. The Tribunal had not properly appreciated the evidence on record and erroneously dismissed the claim of the applicants. Therefore, the impugned order passed by the Tribunal is liable to be set aside. Accordingly, these points are answered.

11. Point Nos.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.

12. In the result, the appeal is allowed, setting aside the order, dated 04.12.2014, passed in O.A.A.No.173 of 2006 by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad. Consequently, O.A.A. No.173 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. Applicant No.5-father of the deceased died during pendency of the claim application. The 1st applicant-wife of the deceased is entitled to half of the compensation awarded and the remaining half of the compensation shall be apportioned among appellants 2, 3, 4 and 6 equally. On deposit, all the applicants are entitled to withdraw their respective shares. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

29th November, 2018
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Dr. SHAMEEM AKTHER, J

